

2000-1 Addison Circle  
Streets Use and Rental Agreement (Final) - 1996

nt

**COWLES & THOMPSON**

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

901 MAIN STREET, SUITE 4000  
DALLAS, TEXAS 75202-3793

TELEPHONE (214) 672-2000

METRO (972) 263-0005

FAX (214) 672-2020

CHARLES SORRELLS  
(1925-1982)

114 E. LOUISIANA ST., SUITE 200  
McKINNEY, TEXAS 75069-4463  
TELEPHONE (972) 542-5000

100 W. ADAMS AVE., SUITE 321  
P.O. BOX 785

TEMPLE, TEXAS 76503-0785  
TELEPHONE (254) 771-2800

ONE AMERICAN CENTER, SUITE 777  
909 E.S.E. LOOP 323

TYLER, TEXAS 75701-9684  
TELEPHONE (903) 581-5588

JOHN M. HILL  
(214) 672-2170  
JMHILL@CTPCLAW.COM

October 28, 1997

Mr. John Baumgartner  
City Engineer  
Town of Addison  
P.O. Box 144  
Addison, Texas 75001


Re: Multi-technology Services

Dear John:

I received a copy today of a License Agreement between Addison Circle Access, Inc. and Multi-technology Services, L.P. regarding the provision of telecommunication services to Addison Circle. Enclosed is a copy of that License Agreement for the City's files. I also received a copy of an Equipment Room Lease Agreement between Addison Circle One, Ltd. and Addison Circle Access, Inc., and have enclosed a copy of that document as well for the City's files.

Please give me a call if you have any questions.

Very truly yours,



John M. Hill

JMH:wn  
Enclosures

cc: Mr. Kenneth C. Dippel

6/12/57

EQUIPMENT ROOM LEASE AGREEMENT

between

ADDISON CIRCLE ONE, LTD.,

a Texas limited partnership,

as Landlord,

and

ADDISON CIRCLE ACCESS, INC.,

a Delaware corporation,

as Tenant

## TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS AND BASIC PROVISIONS .....	1
2. GRANTING CLAUSE .....	3
3. EARLY OCCUPANCY .....	3
4. RENTAL .....	3
5. USE .....	4
6. SERVICES TO BE PROVIDED BY LANDLORD .....	4
7. REPAIR AND MAINTENANCE .....	4
8. FIRE AND OTHER CASUALTY .....	4
9. COMPLIANCE WITH LAWS AND USAGE .....	5
10. LIABILITY AND INDEMNITY .....	6
11. ADDITIONS AND FIXTURES .....	7
12. ASSIGNMENT AND SUBLETTING .....	7
13. SUBORDINATION .....	9
14. EMINENT DOMAIN .....	9
15. ACCESS BY LANDLORD .....	10
16. LANDLORD'S LIEN .....	10
17. DEFAULTS .....	10
18. NONWAIVER .....	11
19. HOLDING OVER .....	11
20. COMMON AREA .....	12

TABLE OF CONTENTS  
(Continued)

	<u>Page</u>
21. TAXES .....	12
22. INSURANCE .....	12
23. PERSONAL LIABILITY .....	12
24. NOTICE .....	12
25. LANDLORD'S MORTGAGEE .....	13
26. BROKERAGE .....	13
27. SPRINKLERS .....	13
28. MISCELLANEOUS .....	13
29. ENTIRE AGREEMENT AND BINDING EFFECT .....	18

Exhibit A Leased Premises

Exhibit B Land

## LEASE AGREEMENT

### 1. DEFINITIONS AND BASIC PROVISIONS.

A. Date of Lease: June 12, 1997.

B. "Landlord": Addison Circle One, Ltd.

C. Address of Landlord:

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248 -

D. "Tenant": Addison Circle Access, Inc., a Delaware corporation

E. Address of Tenant:

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248

F. "Building": The structure commonly known as Buildings A and B of Addison Circle Apartments and which is located on the tract of land (the "Land") described on Exhibit B attached hereto and made a part hereof for all purposes.

G. "Leased Premises": Approximately 945 square feet of rentable area on the floor(s) of the Buildings, and approximately 220 square feet on the roof of the parking garage as outlined and cross-hatched on the floor plan attached hereto as Exhibit A and made a part hereof for all purposes.

H. "Commencement Date": June 12, 1997, or the date upon which Tenant occupies the Leased Premises with the prior written consent of Landlord, whichever shall first occur. Upon request of either party hereto, Landlord and Tenant agree to execute and deliver a written declaration in recordable form expressing the Commencement Date hereof.

I. "Term": Commencing on the Commencement Date and ending the later of (i) twenty (20) years after the Commencement Date, plus any partial calendar month following the Commencement Date, or (ii) the termination of the Services Agreement (hereinafter defined), unless sooner terminated as provided herein.

J. "Base Rental": Tenant shall pay to Landlord, as Base Rental, the sum of \$1,200 per year.

The Base Rental shall be due and payable in equal quarterly installments on the first day of each calendar quarter, quarterly in advance, without demand and without setoff or deduction whatsoever. The term "Lease Year" is defined to mean twelve (12) consecutive calendar months, the first Lease Year to commence on (i) the Commencement Date, if such date is the first day of any month, or (ii) the first day of the month following the month during which the Commencement Date occurs, if the Commencement is not the first day of any month. The portion of the Lease Term prior to the first Lease Year shall be treated for all purposes hereunder as part of the first Lease Year.

K. "Prepaid Rental": \$ 0, to be applied to the first accruing monthly installments of rental.

L. "Security Deposit": \$ 0.

M. "Services Agreement": MTSLP Services Agreement of even date herewith by and between Landlord and MultiTechnology Services, L.P. ("MTSLP").

N. "Permitted Use": The Leased Premises shall be used only for an equipment room for equipment and installation and operation of multi-feed satellite earth receive antenna(s) for providing telephone, television and related services consistent with the Services Agreement.

O. "Common Area": That part of the project designated by Landlord from time to time for the common use of all tenants, including among other facilities, sidewalks, service corridors, curbs, truckways, loading areas, private streets and alleys, lighting facilities, mechanical and electrical rooms, janitors' closets, halls, lobbies, delivery passages, elevators, drinking fountains, meeting rooms, public toilets, parking areas and garages, decks and other parking facilities, landscaping and other common rooms and common facilities.

P. "Prime Rate": The rate announced as such from time to time by Chase Manhattan Bank, N.A., or its successors, at its principal office.

Q. "Broker": None.

Each of the foregoing definitions and basic provisions shall be construed in conjunction with the references thereto contained in the other provisions of this Lease and shall be limited by such other provisions. Each reference in this Lease to any of the foregoing definitions and basic provisions shall be construed to incorporate each term set forth above under such definition or provision.

2. GRANTING CLAUSE. Landlord, in consideration of the covenants and agreements to be performed by Tenant and upon the terms and conditions hereinafter stated, does hereby lease, demise and let unto Tenant, and Tenant does hereby lease from Landlord, the Leased Premises specified in Paragraph 1. hereof to have and to hold for the Term of this Lease, as specified in Paragraph 1. hereof.

3. EARLY OCCUPANCY. Any occupancy of the Leased Premises by Tenant prior to the Commencement Date shall be subject to all of the terms and provisions of this Lease excepting only those requiring the payment of rental and other charges.

If this Lease is executed before the Leased Premises becomes vacant, or if any present tenant or occupant of the Leased Premises holds over and Landlord cannot acquire possession thereof prior to the Commencement Date, Landlord shall not be deemed in default hereunder, and Tenant agrees to accept possession of the Leased Premises at such time as Landlord is able to tender the same and, in such event, the date of such tender by Landlord shall be deemed to be the Commencement Date, and Landlord hereby waives the payment of rental and other charges covering any period prior to the date of such tender.

4. RENTAL. As rental for the lease and use of the Leased Premises, Tenant will pay Landlord or Landlord's assigns, at the address of Landlord specified in Paragraph 1. hereof, without demand and without deduction, abatement or setoff, the Base Rental in the manner specified in Paragraph 1. hereof, in lawful money of the United States. If the Term of this Lease does not commence on the first day of a calendar month, Tenant shall pay to Landlord in advance a pro rata part of such sum as rental for such first partial month. Tenant shall not pay any installment of rental more than one (1) month in advance. All past due installments of rental or other payment specified herein past due more than ten (10) days shall bear interest at the highest lawful rate per annum from the date due until paid. In addition, Tenant shall pay to Landlord upon demand a late charge in an amount equal to five percent (5%) of any installments of rental or other payments specified herein if not paid within ten (10) days after the date that such rental or other payment is due and payable.

If Tenant fails to timely pay two (2) consecutive installments of Base Rental, or other payment specified herein, or any combination thereof, Landlord may require Tenant to pay (in addition to any interest) Base Rental and other payments specified herein (as estimated by Landlord, if necessary) quarterly in advance, and, in such event, all future payments shall be made on or before the due date in cash or by cashier's check or money order, and the delivery of Tenant's personal or corporate check shall no longer constitute payment thereof. Any acceptance of Tenant's personal or corporate check thereafter by Landlord shall not be construed as a waiver of the requirement that such payments be made in cash or by cashier's check or money order. Any amount so estimated by Landlord and paid by Tenant shall be adjusted promptly after actual figures become available and paid or credited to Landlord or Tenant, as the case may be.



5. USE. Tenant shall use the Leased Premises solely for the Permitted Use specified in Paragraph 1. hereof and for no other business or purpose without the prior written consent of Landlord.

6. SERVICES TO BE PROVIDED BY LANDLORD. Subject to the rules and regulations hereinafter referred to, Landlord shall furnish Tenant, at Landlord's expense, while Tenant is occupying the Leased Premises and is not in default hereunder, any services required to be furnished to MTSLP under the Services Agreement and elevators for ingress to and egress from the Building as may in the judgment of Landlord be reasonably required. Landlord may reasonably limit the number of elevators in operation after usual and customary business hours and on Saturday afternoons, Sundays and legal holidays.

7. REPAIR AND MAINTENANCE.

A. Landlord shall, at Landlord's own cost and expense, except as may be provided elsewhere herein, make necessary repairs of damage to the Building corridors, lobby, structural members of the Building and equipment used to provide the services referred to in Paragraph 6 hereof, unless any such damage is caused in whole or in part by acts or omissions of Tenant, or Tenant's agents, employees or invitees, in which event Tenant shall bear the cost of such repairs. Tenant shall promptly give Landlord notice of any damage in the Leased Premises requiring repair by Landlord, as aforesaid.

B. Tenant shall not in any manner deface or injure the Leased Premises or the Building but shall maintain the Leased Premises, including, without limitation, all fixtures installed by Tenant and all plate glass, walls, carpeting and other floor covering placed or found therein, in a clean, attractive, first-class condition and in good repair, except as to damage required to be repaired by Landlord, as provided in Paragraph 7.A. hereof. Upon the expiration of the Term of this Lease, Tenant shall surrender and deliver up the Leased Premises with all improvements located thereon (except as provided in Paragraph 11.B. hereof) to Landlord broom-clean and in the same condition in which they existed at the commencement of the Lease, excepting only ordinary wear and tear and damage arising from any cause not required to be repaired by Tenant, failing which Landlord may restore the Leased Premises to such condition, and Tenant shall pay the cost thereof.

C. This Paragraph 7 shall not apply in the case of damage or destruction by fire or other casualty which is covered by insurance maintained by Landlord on the Building (as to which Paragraph 8 hereof shall apply), or damage resulting from an eminent domain taking (as to which Paragraph 14 hereof shall apply).

8. FIRE AND OTHER CASUALTY.

A. If at any time during the Term of this Lease, the Leased Premises or any portion of the Building shall be damaged or destroyed by fire or other casualty, then Landlord shall have the election to terminate this Lease or to repair and reconstruct the Leased Premises and the Building to substantially the same condition in which they

existed immediately prior to such damage or destruction, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures and other improvements which may have been installed by Tenant or other tenants within the Building.

B. In any of the aforesaid circumstances, rental shall abate proportionately during the period and to the extent that the Leased Premises are unfit for use by Tenant in the ordinary conduct of Tenant's business. If Landlord has elected to repair and restore the Leased Premises, this Lease shall continue in full force and effect and such repairs shall be made within ninety (90) days thereafter, subject to delays arising from shortages of labor or material, acts of God, war or other conditions beyond Landlord's reasonable control. In the event that this Lease is terminated as herein permitted or the Leased Premises are not fully repaired within ninety (90) days after the damage, Landlord shall refund to Tenant the prepaid rental (unaccrued as of the date of damage or destruction) less any sum then owing Landlord by Tenant. If Landlord has elected to repair and reconstruct the Leased Premises, then the Term of this Lease shall be extended by a period of time equal to the period of such repair and reconstruction. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Leased Premises shall be for the sole benefit of the party carrying such insurance under its control, and it is understood that Landlord shall in no event be obligated to carry insurance on Tenant's contents.

9. COMPLIANCE WITH LAWS AND USAGE. Tenant, at Tenant's own expense, (a) shall comply with all federal, state, municipal, fire underwriting and other laws, ordinances, orders, rules and regulations applicable to the Leased Premises and the business conducted therein by Tenant, (b) shall not engage in any activity which would cause Landlord's fire and extended coverage insurance to be cancelled or the rate therefor to be increased (or, at Landlord's option, Tenant shall pay any such increase to Landlord immediately upon demand as additional rental in the event of such rate increase by reason of such activity), (c) shall not commit, and shall cause Tenant's agents, employees and invitees not to commit, any act which is a nuisance or annoyance to Landlord or to other tenants, or which might, in the exclusive judgment of Landlord, damage Landlord's goodwill or reputation, or tend to injure or depreciate the Building, (d) shall not commit or permit waste in the Leased Premises or the Building, (e) shall comply with rules and regulations from time to time promulgated by Landlord applicable to the Leased Premises and/or the Building, (f) shall not paint, erect or display any sign, advertisement, placard or Lettering which is visible in the corridors or lobby of the Building or from the exterior of the Building without Landlord's prior written approval, and (g) shall not occupy or use, or permit any portion of the Leased Premises to be occupied or used, for any business or purpose other than the Permitted Use specified in Paragraph 1. hereof. If a controversy arises concerning Tenant's compliance with any federal, state, municipal or other laws, ordinances, orders, rules or regulations applicable to the Leased Premises and the business conducted therein by Tenant, Landlord may retain consultants of recognized standing to investigate Tenant's compliance. If it is determined that Tenant has not complied as required, Tenant shall reimburse Landlord on demand for all consulting and other costs incurred by Landlord in such investigation.

10. LIABILITY AND INDEMNITY.

A. Tenant agrees to indemnify and save Landlord harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from any act or omission of Tenant or Tenant's agents, employees, invitees or contractors, or arising from any injury to any person or damage to the property of any person occurring during the term of this Lease in or about the Leased Premises, save and except those caused by the intentional acts or negligence of Landlord. Tenant agrees to use and occupy the Leased Premises and other facilities of the Building at Tenant's own risk and hereby releases Landlord, Landlord's agents or employees, from all claims for any damage or injury to the full extent permitted by law, save and except those caused by the intentional acts or gross negligence of Landlord.

B. No party shall have any right or claim against Landlord, Landlord's agents or employees for property damage by way of subrogation or assignment, save and except those caused by the intentional acts or gross negligence of Landlord, Tenant hereby waiving and relinquishing any such right. Landlord agrees to indemnify and hold Tenant harmless from any claims (including reasonable attorneys' fees) for any loss or damage resulting from intentional acts or gross negligence of Landlord.

C. Tenant, to the extent permitted by law, waives all claims Tenant may have against Landlord, and against Landlord's agents and employees for injury to person or damage to or loss of property sustained by Tenant or by any occupant of the Leased Premises, or by any other person, resulting from any part of the Building or any equipment or appurtenances becoming out of repair, or resulting from any accident in or about the Building or resulting directly or indirectly from any act or neglect of any tenant or occupant of any part of the Building or of any other person, unless such damage is a result of the intentional acts or gross negligence of Landlord, or Landlord's agents or employees. If any damage results from any act or neglect of Tenant, Landlord may, at Landlord's option, repair such damage, and Tenant shall thereupon pay to Landlord the total cost of such repair. All personal property belonging to Tenant or any occupant of the Leased Premises that is in or on any part of the property belonging to Tenant or any occupant of the Leased Premises that is in or on any part of the Building shall be there at the risk of Tenant or of such other person only, and Landlord, Landlord's agents and employees shall not be liable for any damage thereto or for the theft or misappropriation thereof unless such damage, theft or misappropriation is a result of the intentional acts or gross negligence of Landlord or Landlord's agents or employees. Tenant agrees to indemnify and hold Landlord harmless from and against any and all loss, cost, claim and liability (including reasonable attorneys' fees) for injuries to all persons and for damage to or loss of property occurring in or about the Building, due to any act or negligence or default under this Lease by Tenant, Tenant's contractors, agents or employees, save and except those caused by the intentional acts or negligence of Landlord.

11. ADDITIONS AND FIXTURES.

A. Tenant will make no alteration, change, improvement, repair, replacement or physical addition in or to the Leased Premises without the prior written consent of Landlord, except for improvements provided for in the Services Agreement. If such prior written consent of Landlord is granted, the work in such connection shall be at Tenant's expense but by workmen of Landlord or by workmen and contractors approved in advance in writing by Landlord and in a manner and upon terms and conditions and at times satisfactory to and approved in advance in writing by Landlord. In any instance where Landlord grants such consent, Landlord may grant such consent contingent and conditioned upon Tenant's contractors, laborers, materialmen and others furnishing labor or materials for Tenant's job working in harmony and not interfering with any labor utilized by Landlord, Landlord's contractors or mechanics or by any other tenant or such other tenant's contractors or mechanics; and if at any time such entry by one (1) or more persons furnishing labor or materials for Tenant's work shall cause disharmony or interference for any reason whatsoever without regard to fault, the consent granted by Landlord to Tenant may be withdrawn at any time upon written notice to Tenant.

B. Tenant, if Tenant so elects, may remove Tenant's trade fixtures, office supplies and movable office furniture and equipment not attached to the Building provided (i) such removal is made prior to the expiration of the Term of this Lease, (ii) Tenant is not in default of any obligation or covenant under this Lease at the time of such removal, and (iii) Tenant promptly repairs all damage caused by such removal; provided, however, that notwithstanding the foregoing or any other provision in this Lease, MTSLP, subtenant or assignee of Tenant, shall have the rights granted under Article 3 of the Services Agreement to remove its removable equipment without limitation by any provision contained in this Lease. All other property at the Leased Premises and any alteration or addition to the Leased Premises (including wall-to-wall carpeting, paneling or other wall covering) and any other article attached or affixed to the floor, wall or ceiling of the Leased Premises shall become the property of Landlord, shall be in good condition, normal wear and tear excepted, and shall remain upon and be surrendered with the Leased Premises as part thereof at the expiration of the Term of this Lease, Tenant hereby waiving all rights to any payment or compensation therefor. If, however, Landlord so requests in writing, Tenant will, prior to the termination of this Lease, remove in a good and workmanlike manner any and all alterations, additions, fixtures, equipment and property placed or installed by Tenant in the Leased Premises and will repair any damage occasioned by such removal.

12. ASSIGNMENT AND SUBLETTING.

A. Neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise shall assign this Lease or sublease the Leased Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Leased Premises without the prior express written permission of Landlord, and any attempt to do any of the foregoing without the prior

express written permission of Landlord shall be void and of no effect; provided, however, that notwithstanding the foregoing or any other provision to the contrary in this Lease, Tenant is hereby granted the right to sublease or assign this Lease to MTSLP and MTSLP, as subtenant or assignee of the Tenant, shall have the right to further sublease or assign the Leased Premises to any permitted assignee of the Services Agreement.

B. Notwithstanding that the prior express written permission of Landlord to any of the aforesaid transactions may have been obtained, the following shall apply:

(1) In the event of an assignment, contemporaneously with the granting of Landlord's aforesaid consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder, and such assignee shall be jointly and severally liable therefor along with Tenant; provided, however, MTSLP, as assignee or subtenant of Tenant, shall be released from liability hereunder and under its sublease or assignment with Tenant if MTSLP is released from liability under the Services Agreement pursuant to its terms in connection with MTSLP's assignment of the Services Agreement to a permitted assignee thereunder.

(2) A signed counterpart of all instruments relative thereto (executed by all parties to such transactions with the exception of Landlord) shall be submitted by Tenant to Landlord prior to or contemporaneously with the request for Landlord's prior express written permission thereto (it being understood that no such instrument shall be effective without the prior express written permission of Landlord);

(3) Tenant shall subordinate to Landlord's statutory lien and Landlord's aforesaid contract Lien and security interest any liens or other rights which Tenant may claim with respect to any fixtures, equipment, goods, wares, merchandise or other property owned by or leased to the proposed assignee or sublessee or other party intending to occupy the Leased Premises;

(4) No usage of the Leased Premises different from the usage herein provided to be made by Tenant shall be permitted, and all other terms and provisions of this Lease continue to apply after any such transaction;

(5) In any case where Landlord consents to an assignment, sublease, grant of a concession or license or mortgage, pledge or hypothecation of the leasehold, the undersigned Tenant will nevertheless remain directly and primarily liable for the performance of all of the covenants, duties and obligations of Tenant hereunder (including, without limitation, the obligation to pay all rental and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this Lease against the undersigned Tenant and/or any assignee, sublessee, concessionaire, licensee or other transferee without demand upon or proceeding in any way against any other person; and

(6) In the event that the rental due and payable by a sublessee under any such permitted sublease (or a combination of the rental payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the hereinabove provided rental payable under this Lease or if with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case might be.

13. **SUBORDINATION.** Tenant accepts this Lease subject and subordinate to any easement, mortgage, deed of trust or other lien presently existing or hereafter placed upon the Leased Premises or upon the Building or any part thereof, and to any renewals, modifications, extensions and refinancings thereof, which might now or hereafter constitute a lien upon the Building or any part thereof, and to zoning ordinances and other building and fire ordinances and governmental regulations relating to the use of the Leased Premises, but Tenant agrees that any such ground Lessor, mortgagee and/or beneficiary of any deed of trust or other lien ("Landlord's Mortgagee") and/or Landlord shall have the right at any time to subordinate such ground lease, mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such Landlord's Mortgagee may deem appropriate in its discretion. Upon demand Tenant agrees to execute such further instruments subordinating this Lease, as Landlord may request, and such nondisturbance and attornment agreements, as any such Landlord's Mortgagee shall request, in form satisfactory to Landlord's Mortgagee. In the event that Tenant shall fail to execute any such instrument within ten (10) days after requested, Tenant hereby irrevocably constitutes Landlord as Tenant's attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being stipulated by Landlord and Tenant that such agency is coupled with an interest in Landlord and is, accordingly, irrevocable. Upon foreclosure of the Building or upon acceptance of a deed in lieu of such foreclosure, Tenant hereby agrees to attorn to the new owner of such property after such foreclosure or acceptance of a deed in Lieu of foreclosure, if so requested by such new owner of the Building. Landlord shall use reasonable efforts to attempt to obtain for the benefit of Tenant from any lender or other holder of such mortgage or deed of trust an agreement acknowledging the existence of this Lease for the full term hereof, and agreeing that any transfer of the Building or underlying realty, voluntarily or involuntarily, shall be subject to the continuation of this Lease for the full term hereof, as long as Tenant and/or MTSLP (as assignee or subtenant of Tenant) shall not be in default under this Lease.

14. **EMINENT DOMAIN.** If there shall be taken by exercise of the power of eminent domain during the Term of this Lease any part of the Leased Premises or the Building, Landlord may elect to terminate this Lease or to continue same in effect. If Landlord elects to continue this Lease, the rental shall be reduced in proportion to the area of the Leased Premises so taken, and Landlord shall, within ninety (90) days, repair any damage to the Leased Premises or the Building resulting from such taking. All sums awarded or agreed upon between Landlord and the condemning authority for the taking of the interest of Landlord or Tenant, whether as

damages or as compensation, will be the property of Landlord without prejudice, however, to claims of Tenant against the condemning authority on account of the unamortized cost of leasehold improvements paid for by Tenant taken by the condemning authority. If this Lease should be terminated under any provision of this Paragraph 14, rental shall be payable up to the date that possession is taken by the condemning authority, and Landlord will refund to Tenant any prepaid unaccrued rental less any sum then owing by Tenant to Landlord.

15. ACCESS BY LANDLORD. Landlord, Landlord's agents and employees shall have access to and the right to enter upon any and all parts of the Leased Premises at any reasonable time during normal business hours upon not less than 24 hours notice to MTSLP and if accompanied by a representative of MTSLP (except in cases of emergency, defined to be any situation in which Landlord perceives imminent danger of injury to person and/or damage to or loss of property, in which case Landlord may enter upon any and all parts of the Leased Premises at any time) to examine the condition thereof, to clean, to make any repairs, alterations or additions required to be made by Landlord hereunder, to show the Leased Premises to prospective purchasers or tenants or mortgage tenders (prospective or current) and for any other purpose deemed reasonable by Landlord, and Tenant shall not be entitled to any abatement or reduction of rental by reason thereof.

16. LANDLORD'S LIEN. Landlord hereby waives the statutory landlord's Lien, and agrees that Tenant and/or MTSLP, as assignee or subtenant of Tenant, shall have all of the rights to deal with MTSLP's System (as defined in the Services Agreement) and MTSLP's removable and non-removable equipment as are granted to MTSLP in the Services Agreement without limitation by any provision contained in this Lease.

17. DEFAULTS.

A. Each of the following acts or omissions of Tenant or occurrences shall constitute an "Event of Default":

(1) Failure or refusal by Tenant to timely pay rental or other payments hereunder upon the expiration of a period of ten (10) days following written notice to Tenant and MTSLP of such failure.

(2) Failure to perform or observe any covenant or condition of this Lease by Tenant to be performed or observed, except as provided in (1) above upon the expiration of a period of thirty (30) days following written notice to Tenant and MTSLP of such failure.

Landlord hereby agrees that upon the occurrence of an Event of Default, if Tenant does not timely cure the default, MTSLP shall have an additional fifteen (15) days following Tenant's cure period to cure such default and Tenant shall be responsible for reimbursing MTSLP for any amounts expended by MTSLP in curing Tenant's default.

B. This Lease and the Term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, Landlord may, at Landlord's option, in addition to all other rights and remedies given hereunder or by law or equity, do any one (1) or more of the following:

(1) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Leased Premises to Landlord.

(2) Enter upon and take possession of the Leased Premises and expel or remove Tenant and any other occupant therefrom, with or without having terminated the Lease.

(3) Alter locks and other security devices at the Leased Premises; provided, however, that notwithstanding the foregoing provisions or any other provisions of this Lease, to the contrary, under no circumstances shall Landlord take any action which would conflict with or limit any rights which MTSLP has in the event of a default by MTSLP under the Services Agreement.

C. Exercise by Landlord of any one (1) or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Leased Premises by Tenant, whether by agreement or by operation of Law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. All claims for damages by reason of such re-entry and/or possession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other Legal process. Tenant agrees that any re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise.

D. In the event that Landlord elects to terminate this Lease by reason of an Event of Default, then, Landlord shall be entitled to pursue any remedy available at law or in equity.

18. **NONWAIVER**. Neither acceptance of rental or other payments by Landlord nor failure by Landlord to complain of any action, nonaction or default of Tenant shall constitute a waiver of any of Landlord's rights hereunder. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default. Receipt by Landlord of Tenant's keys to the Leased Premises shall not constitute an acceptance of surrender of the Leased Premises.

19. **HOLDING OVER**. If Tenant should remain in possession of the Leased Premises after the expiration of the Term of this Lease, without the execution by Landlord and Tenant of a new lease or an extension of this Lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance, subject to all the covenants and obligations of this



Lease and at a daily rental of twice the per day rental provided for the last month of the Term of this Lease, computed on the basis of a thirty (30) day month. The inclusion of the preceding sentence shall not be construed as Landlord's consent for Tenant to hold over.

20. COMMON AREA. The Common Area, as defined in Paragraph 1. hereof, shall be subject to Landlord's sole management and control and shall be operated and maintained in such manner as Landlord in Landlord's discretion shall determine. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, to construct additional Stories on the Building and to place, construct or erect new structures or other improvements on any part of the Land without the consent of Tenant. Tenant, and Tenant's employees and invitees shall have the nonexclusive right to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants of the Building and other persons entitled to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to prevent the public from obtaining prescriptive rights or to make repairs or alterations.

21. TAXES. Tenant shall be liable for the timely payment of all taxes levied or assessed against personal property, furniture or fixtures or equipment placed by Tenant in the Leased Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and if Landlord elects to pay the same, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is liable hereunder.

22. INSURANCE. Tenant shall, at Tenant's expense, procure and maintain throughout the Term of this Lease insurance consistent with that required by the Services Agreement.

23. PERSONAL LIABILITY. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the proceeds of sale on execution of the interest of Landlord in the Building and in the Land, and neither Landlord, nor any party comprising Landlord, shall be personally liable for any deficiency. This clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord.

24. NOTICE. Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand (including commercially recognized messenger and express mail service) or sent by United States Mail, registered or certified, return receipt requested, postage prepaid, if for Landlord, to the Building office and at the address specified in Paragraph 1. hereof, or if for Tenant, to the Leased Premises or, if prior to the Commencement Date, at the address specified in Paragraph 1. hereof, or at such other addresses as either party may have theretofore specified by written notice delivered in accordance herewith. Such address may be changed from time to time by either party by giving notice as provided herein. Notice shall be deemed given when delivered (if delivered by hand) or, whether actually received or not, when postmarked (if sent by mail). If the term "Tenant" as used in this Lease refers to more than one (1) person and/or entity, any notice given as aforesaid to any one of such persons and/or entities shall be deemed to have been duly given to Tenant.

25. LANDLORD'S MORTGAGEE. If the Building and/or Leased Premises are at any time subject to a ground lease, mortgage, deed of trust or other Lien, then in any instance in which Tenant gives notice to Landlord alleging default by Landlord hereunder, Tenant will also simultaneously give a copy of such notice to each Landlord's Mortgagee (provided Landlord or Landlord's Mortgagee shall have advised Tenant of the name and address of Landlord's Mortgagee) and each Landlord's Mortgagee shall have the right (but no obligation) to cure or remedy such default during the period that is permitted to Landlord hereunder, plus an additional period of thirty (30) days, and Tenant will accept such curative or remedial action (if any) taken by Landlord's Mortgagee with the same effect as if such action had been taken by Landlord.

26. BROKERAGE. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. The provisions of this Paragraph 26 shall survive the termination of this Lease.

27. SPRINKLERS. No sprinkler or sprinkler system shall be installed in the Leased Premises without the prior written consent of Tenant and MTSLP.

28. MISCELLANEOUS.

A. Provided Tenant complies with Tenant's covenants, duties and obligations hereunder, Tenant shall quietly have, hold and enjoy the Leased Premises subject to the terms and provisions of this Lease.

B. In any circumstance where Landlord is permitted to enter upon the Leased Premises during the Term of this Lease, whether for the purpose of curing any default of Tenant, repairing damage resulting from fire or other casualty or an eminent domain taking or is otherwise permitted hereunder or by law to go upon the Leased Premises, no such entry shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or a breach by Landlord of any of Landlord's obligations hereunder or render Landlord liable for damages for loss of business or otherwise or entitle Tenant to be relieved from any of Tenant's obligations hereunder or grant Tenant any right of setoff or recoupment or other remedy; and in connection with any such entry incident to performance of repairs, replacements, maintenance or construction, all of the aforesaid provisions shall be applicable notwithstanding that Landlord may elect to take building materials in, to or upon the Leased Premises that may be required or utilized in connection with such entry by Landlord.

C. In the event Landlord commences any proceedings against Tenant for nonpayment of rental or any other sum due and payable by Tenant hereunder, Tenant will not interpose any counterclaim or other claim against Landlord of whatever nature or description in any such proceedings; and in the event Tenant interposes any such counterclaim or other claim against Landlord in such proceedings, Landlord and Tenant

stipulate and agree that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counterclaim or other claim asserted by Tenant shall be severed out of the proceedings instituted by Landlord and the proceedings instituted by Landlord may proceed to final judgment separately and apart from and without consolidation with or reference to the status of such counterclaim or any other claim asserted by Tenant; provided, however, the provisions of this sentence shall not apply to counterclaims or any other claim asserted by Tenant; provided, however, the provisions of this sentence shall not apply to counterclaims or claims by Tenant which, under the laws of the State in which the Building is located, may only be asserted in the aforesaid proceedings brought by Landlord or be forever barred if not asserted in said proceedings.

D. Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative, and no remedy of Landlord, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other. Except as may be otherwise herein expressly provided, in all circumstances under this Lease where prior consent or permission of one (1) party ("first party") is required before the other party ("second party") is authorized to take any particular type of action, the matter of whether to grant such consent or permission shall be within the sole and exclusive judgment and discretion of the first party; and it shall not constitute any nature of breach by the first party hereunder or any defense to the performance of any covenant, duty or obligation of the second party hereunder that the first party delayed or withheld the granting of such consent or permission, whether or not the delay or withholding of such consent or permission was prudent or reasonable or based on good cause.

E. In all instances where Tenant is required to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

F. The obligation of Tenant to pay all rental and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise. Tenant waives and relinquishes all rights which Tenant might have to claim any nature of lien against or withhold, or deduct from or offset against any rental and other sums provided hereunder to be paid Landlord by Tenant. Tenant waives and relinquishes any right to assert, either as a claim or as a defense, that Landlord is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of Landlord not expressly herein set forth.

G. Under no circumstances whatsoever shall Landlord ever be liable hereunder for consequential damages or special damages.

H. Landlord retains the exclusive right to create any additional improvements to structural and/or mechanical systems, interior and exterior walls and/or glass which do not adversely affect use of the Leased Premises, which Landlord deems necessary without the prior consent of Tenant.

I. All monetary obligations of Landlord and Tenant (including, without limitation, any monetary obligation of Landlord or Tenant for damages for any breach of the respective covenants, duties or obligations of Landlord or Tenant hereunder) are performable exclusively in the county in which the Building is located.

J. The laws of the state in which the Building is located shall govern the interpretation, validity, performance and enforcement of this Lease.

K. If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during the Term of this Lease, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless such invalidity is, in the sole determination of Landlord, essential to the rights of both parties, in which event Landlord has the right to terminate this Lease on written notice to Tenant.

L. Tenant waives the benefits of all existing and future rental control legislation and statutes and similar governmental rules and regulations, whether in time of war or not, to the extent permitted by law. In the event that any law, decision, rule or regulation of any governmental body having jurisdiction shall have the effect of limiting for any period of time the amount of rental or other charges payable by Tenant to any amount less than that otherwise provided pursuant to this Lease, the following amounts shall nevertheless be payable by Tenant: (i) throughout such period of limitation, Tenant shall remain liable for the maximum amount of rental and other charges which are legally payable (without regard to any limitation to the amount thereof expressed in this Lease except that all amounts payable by reason of this Paragraph 28.L. shall not in the aggregate exceed the total of all amounts which would otherwise be payable by Tenant pursuant to the terms of this Lease for the period of limitation), (ii) at the termination of such period of limitation, Tenant shall pay to Landlord, on demand but only to the extent legally collectible by Landlord, any amounts which would have been due from Tenant during the period of limitation but which were not paid because of such limiting law, decision, rule or regulation, and (iii) for the remainder of the Term of this Lease following the period of limitation, Tenant shall pay to Landlord all amounts due for such portion of the Term of this Lease in accordance with the terms hereof calculated as though there had been no intervening period of limitation.

M. It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the

relationship of landlord and tenant, Tenant's use or occupancy of the Leased Premises, and any emergency statutory or any other statutory remedy.

N. No receipt of money by Landlord from Tenant after the expiration of the Term of this Lease, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue or extend the Term of this Lease or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

O. In the event of variation or discrepancy, Landlord's original copy of the Lease shall control.

P. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings of the Paragraphs of this Lease have been inserted for convenience only and are not to be considered in any way in the construction or interpretation of this Lease.

Q. Tenant agrees that Tenant shall from time to time upon request by Landlord execute and deliver to Landlord a statement in recordable form certifying (i) that the Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as so modified), (ii) the dates to which rental and other charges payable under this Lease have been paid, and (iii) that Landlord is not in default hereunder (or, if Landlord is in default, specifying the nature of such default). Tenant further agrees that Tenant shall from time to time upon request by Landlord execute and deliver to Landlord an instrument in recordable form acknowledging Tenant's receipt of any notice of assignment of this Lease by Landlord.

R. In no event shall Tenant have the right to create or permit there to be established any lien or encumbrance of any nature against the Leased Premises or the Building for any improvement or improvements by Tenant, and Tenant shall fully pay the cost of any improvement or improvements made or contracted for by Tenant. Any mechanic's lien filed against the Leased Premises or the Building for work claimed to have been done, or materials claimed to have been furnished to Tenant, shall be duly discharged or, if Tenant disputes such claim, bonded in accordance with applicable law, by Tenant within ten (10) days after the filing of the lien.

S. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, Landlord or Tenant, as applicable, shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, and delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord or Tenant, as applicable.

T. This Lease shall not be recorded by either party without the consent of the other.

U. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of the computation of rental, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

V. Whenever it is provided herein that a monetary sum shall be due to Landlord together with interest at the highest lawful rate, if at such time there shall be no highest rate prescribed by applicable law, interest shall be due at the rate of two percent (2%) in excess of Prime Rate as defined in Paragraph 1. hereof.

W. Tenant acknowledges that Landlord's agents and employees have made no representations or promises with respect to the Leased Premises or the Building except as herein expressly set forth, and Tenant further acknowledges that no rights, easements or licenses are acquired by Tenant by implication or otherwise, except as herein expressly set forth.

X. Tenant warrants that Tenant is, and shall remain throughout the Term of this Lease, authorized to do business and in good standing in the state in which the Building is located. Tenant agrees, upon request by Landlord, to furnish Landlord satisfactory evidence of Tenant's authority for entering into this Lease.

Y. In case it should be necessary or proper for Landlord to bring any action under this Lease, or to consult an attorney concerning this Lease (including specifically, without limitation, for the review of instruments evidencing a proposed assignment, subletting or other transfer by Tenant submitted to Landlord for consent) or the enforcement of any of Landlord's rights hereunder, Tenant agrees to pay to Landlord reasonable attorneys' fees whether suit be brought or not.

Z. Submission of this Lease for examination does not constitute an offer, right of first refusal, reservation of, or option for, the Leased Premises or any other premises in the Building. This Lease shall become effective only upon execution and delivery by both Landlord and Tenant.

AA. Landlord shall have the right at any time to change the name or street address of the Building and to install and maintain a sign or signs on the interior or exterior of the Building.

BB. If at any time during the Term of this Lease a tax or excise on rental, a sales tax or other tax however described (except any inheritance, estate, gift, income or excess profit tax imposed upon Landlord) is levied or assessed against Landlord by any

taxing authority having jurisdiction on account of Landlord's interest in this Lease, or the rentals or other charges payable hereunder, as a substitute in whole or in part for, or in addition to, the taxes described elsewhere in this Paragraph 28.BB., Tenant shall pay to Landlord as additional rental upon demand the amount of such tax or excise. In the event that any such tax or excise is levied or assessed directly against Tenant, Tenant shall pay the same at such times and in such manner as such taxing authority shall require.


29. ENTIRE AGREEMENT AND BINDING EFFECT. This Lease and any contemporaneous workletter, addenda or exhibits signed by the parties constitute the entire agreement between Landlord and Tenant; no prior written or prior contemporaneous oral promises or representations shall be binding. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties, but this provision shall in no way alter the restriction herein in connection with assignment, subletting and other transfer by Tenant.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original, on the date specified in Paragraph 1.A. hereof.

LANDLORD:

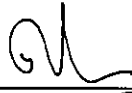
ADDISON CIRCLE ONE, LTD.,  
a Texas limited partnership

By: Columbus Realty Trust, a Texas  
real estate investment trust, general Partner

By:   
Name: THOMAS L WILKERSON  
Title: SENIOR VICE PRESIDENT - MANAGER

TENANT:

ADDISON CIRCLE ACCESS, INC.,  
a Delaware corporation

By:   
Name: THOMAS L WILKES  
Title \_\_\_\_\_

DA963100204  
082297 v11  
186:3012-96

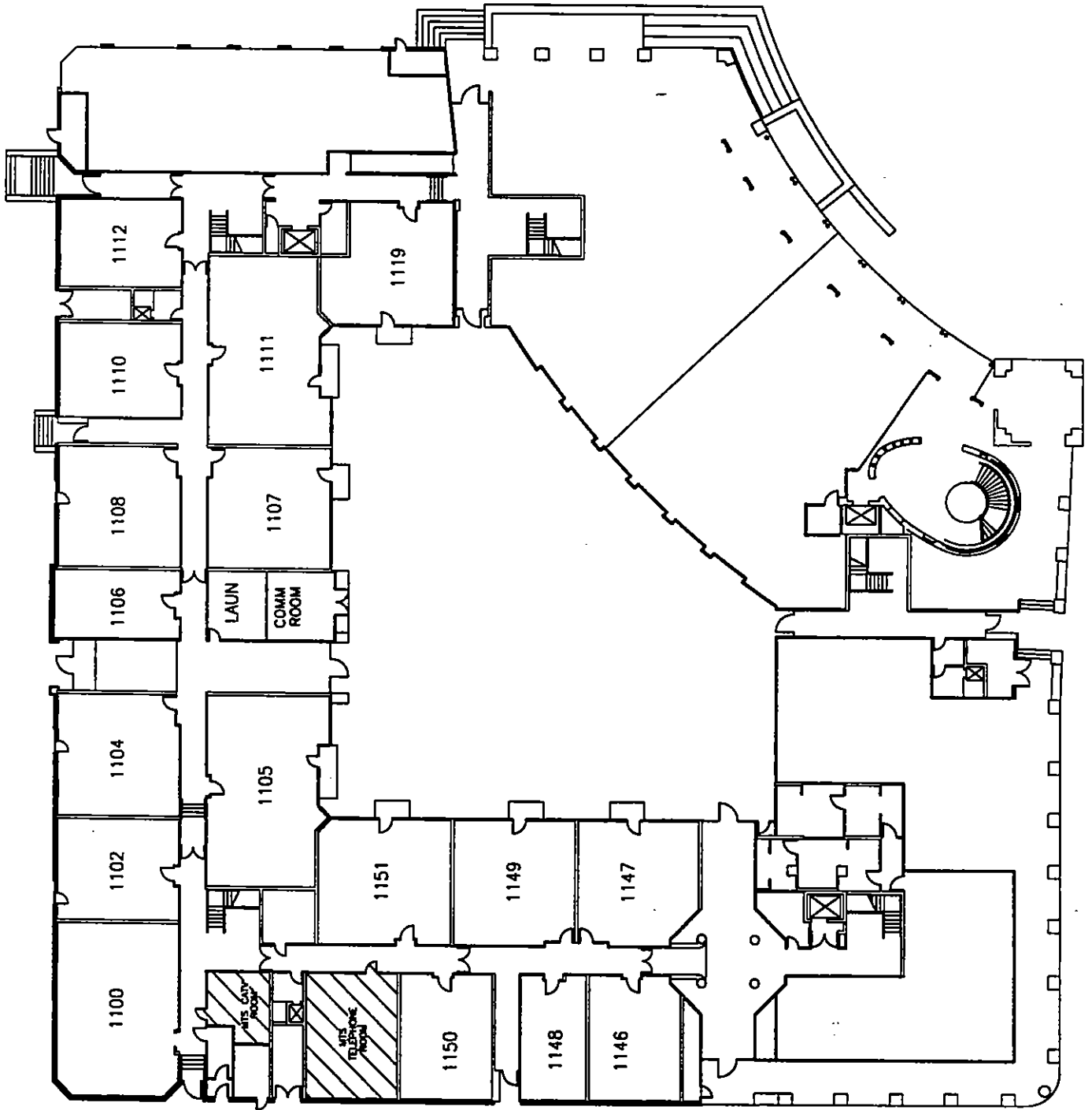


EXHIBIT A

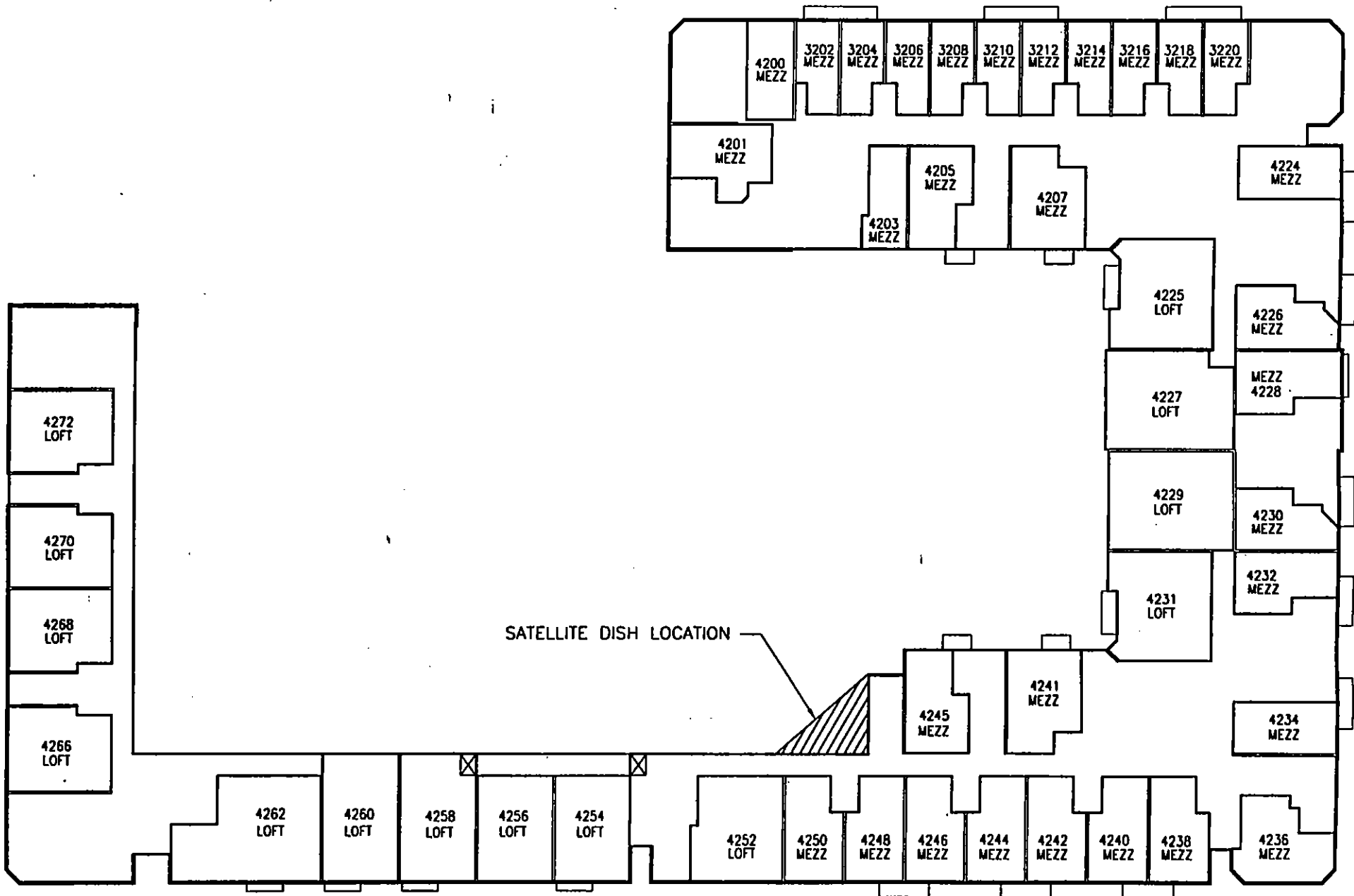
[Attach Floor Plan of the Leased Premises]

DA963100204

Exhibit A



BUILDING A (FIRST FLOOR)



BUILDING B (5th FLOOR)

EXHIBIT "B"

Lots 1, 2 and 4, Block B of Addison Circle Phase I, an addition to the Town of Addison, Dallas County, Texas, pursuant to Final Plat thereof recorded in Volume 97101, Page 5801, Map Records of Dallas County, Texas.

DA971840088  
070397 v1  
186:3012-65

6/12/97

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (the "Agreement") is entered into this 12th day of June, 1997, by and between ADDISON CIRCLE ACCESS, INC., a Texas corporation ("Access") and MULTITECHNOLOGY SERVICES, L.P., a Texas limited partnership ("MTSLP").

WITNESSETH:

WHEREAS, MTSLP is in the business of providing various technology based telecommunication and information services (the "Services") to high density properties;

WHEREAS, MTSLP desires to be able to provide the Services to tenants and residents of buildings built on the real property located in the Town of Addison, Texas ("Addison") which is described on Exhibit "A" hereto (collectively referred to as "Addison Circle");

WHEREAS, Addison Circle will be developed in a number of phases which may be owned by different owners;

WHEREAS, in order to serve Addison Circle MTSLP needs space within which to place a portion of its equipment necessary to provide Services to Addison Circle and the ability to place wires and other equipment in public rights-of-way which traverse Addison Circle;

WHEREAS, Access has entered into a Lease Agreement (the "Lease") with Addison Circle One, Ltd., a Texas limited partnership (the "Partnership") for the lease of space (the "Equipment Room") within improvements owned by the Partnership, which Lease is attached hereto as Exhibit "B" and incorporated herein by reference for all purposes;

WHEREAS, Access has entered into a Streets Use and Rental Agreement (the "Street Use Agreement") with Addison relating to the use of public rights-of-way, which Street Use Agreement is attached hereto as Exhibit "C" and incorporated herein by reference for all purposes;

WHEREAS, the Partnership and MTSLP have entered into that certain MTSLP Services Agreement (the "Services Agreement") of even date herewith; and

WHEREAS, Access has agreed to license MTSLP to use certain rights of Access pursuant to the Street Use Agreement to enable MTSLP to provide Services to Addison Circle.

NOW, THEREFORE, for an in consideration of the premises and the sum of \$10.00 paid by MTSLP to Access, and other good and valuable consideration, the parties hereby agree as follows:

1. License

Section 1.1 License. Access hereby grants to MTSLP the nonexclusive right to use the rights, privileges, duties and obligations granted to Access pursuant to the terms of the Street Use

## 1. License

Section 1.1 License. Access hereby grants to MTSLP the nonexclusive right to use the rights, privileges, duties and obligations granted to Access pursuant to the terms of the Street Use Agreement to the extent necessary to provide Services to persons in Addison Circle, subject to the terms and conditions set out herein.

Section 1.2 Compliance with Street Use Agreement. The provisions of the Street Use Agreement as they related to MTSLP's Services are fully incorporated into this Agreement. In exercising its rights hereunder, MTSLP shall in all respects comply with and be bound by the terms and conditions of the Street Use Agreement as it relates to MTSLP's Services. MTSLP hereby acknowledges that it has read and is familiar with the terms of the Street Use Agreement and this Agreement is expressly subject to all of the terms of the Street Use Agreement. Access agrees to timely comply with all of the terms and conditions of the Street Use Agreement, except to the extent of those obligations which MTSLP is required to perform hereunder.

Section 1.3 Construction Activities. MTSLP shall not commence any construction or maintenance activities in any area governed by the Street Use Agreement until construction work plans and drawings have been approved by Access and Addison, which approval Access shall diligently pursue, time being of the essence.

Section 1.4 Insurance. MTSLP shall obtain and maintain all insurance required to be obtained and maintained by Access pursuant to the Street Use Agreement, as it relates to MTSLP's Services, and all such policies shall name Access, Columbus Realty Trust ("Columbus") and Gaylord Properties, Inc. ("Gaylord") as additional insureds.

Section 1.5 Records. MTSLP shall maintain all records relating to the provision of MTSLP's Services in Addison Circle pursuant to the Street Use Agreement and shall prepare and deliver to Access all reports and certifications with respect thereto required to be provided by Access to Addison pursuant to the Street Use Agreement as it relates to MTSLP's Services.

Section 1.6 Required Payments. MTSLP shall pay to Addison all amounts required to be paid by Access to Addison pursuant to the Street Use Agreement as it relates to MTSLP's Services.

Section 1.7 Indemnity. (a) MTSLP shall indemnify Access, Columbus and Gaylord and their officers, employees and agents against, and hold Access, Columbus and Gaylord and their officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees, for any injury to or the death of any person or damage to or destruction of any property resulting from or based upon, in whole or in part, any act or omission of MTSLP, its officers, employees, agents, contractors, assignees, licensees, permittees, or subcontractors, save and except those caused by the intentional acts or gross negligence of Access, Columbus or Gaylord. The provisions of this Section shall survive the termination of this Agreement. The terms and

provisions contained in this Section are intended to be for the benefit of Access, Columbus and Gaylord and are not intended to be for the benefit of any third party.

(b) Access agrees to indemnify and hold MTSLP harmless from any claims (including reasonable attorneys' fees) for loss or damages attributable to the intentional acts or gross negligence of Access, its agents or employees. The provisions of this Section shall survive the termination of this Agreement.

## 2. Term

This Agreement shall commence on the date hereof and shall continue in full force and effect until the earlier to occur of (i) the termination of the Services Agreement, (ii) the termination of the Street Use Agreement, or (iii) the termination of this Agreement by either party pursuant to the terms hereof. Notwithstanding the termination of this Agreement, MTSLP shall be obligated to prepare and deliver to Access all reports required to be prepared by MTSLP hereunder for the period of time covered by this Agreement, and to pay to Addison all sums required pursuant to Section 1.6 hereof for the period of time covered by this Agreement.

## 3. Default and Remedies

Section 3.1 Default. Either Access or MTSLP shall be in default pursuant to this Agreement upon the occurrence of one of the following events by or with respect to such party:

- (a) The failure to pay, when due, sums due under this Agreement;
- (b) The breach of any provision of this Agreement, other than those specified in (a) above, or (c), (d) and (e) below;
- (c) The filing of a petition by or against such party under any section or chapter of the Bankruptcy Reform Act of 1986, as amended, or under any similar law or statute of the United States or any state thereof, provided the same is not discharged or denied within sixty (60) days after the filing thereof with respect to any such involuntary filing against such party;
- (d) the adjudication of such party as bankrupt or insolvent in proceedings filed against such party under any section or chapter of the Bankruptcy Reform Act of 1986, as amended, or under any similar law or statute of the United States or any state thereof;
- (e) The appointment of a receiver or trustee for all or substantially all of the assets of such party, which appointment is not discharged within sixty (60) days after such appointment, or if such party shall consent or acquiesce to such appointment.

Section 3.2 Remedies. If either Access or MTSLP continues in default of this Agreement after receiving ten (10) days written notice to cure such default with respect to a

default under Section 3.1(a), or thirty (30) days written notice with respect to a default under Section 3.1(b), or upon the occurrence of a default by either party pursuant to Section 3.1(c), (d) or (e), then the other party may terminate this Agreement and pursue any other remedies available to such party at law or in equity.

#### 4. Miscellaneous

Section 4.1 Notices. All notices, demands, or other communications of any type (herein collectively referred to as "Notices") given by the Access to MTSLP or by MTSLP to Access, whether required by this Agreement or in any way related to the transactions contracted for herein, shall be void and of no effect unless given in accordance with the provisions of this Section 4.1. All notices shall be in writing and delivered to the person to whom the notice is directed, either in person (provided that such delivery is confirmed by the courier delivery service), or by expedited delivery service with proof of delivery, or by United States Mail, postage prepaid, as a Registered or Certified item, Return Receipt Requested. Notices delivered by personal delivery shall be deemed to have been given at the time of such delivery and notices delivered by mail shall be effective two (2) days following deposited in a Post Office or other depository under the care or custody of the United States Postal Service, enclosed in a wrapper with proper postage affixed and addressed, as provided below. Notice may additionally be provided by facsimile transmission so long as a copy of such notice is simultaneously forwarded by one of the other means described above. Facsimile notice shall be effective upon receipt at the facsimile station indicated below. The proper address and facsimile number for MTSLP is:

MultiTechnology Services, L.P.  
1201 North Richardson Drive  
Suite 200  
Richardson, Texas 75080  
Attention: President  
Fax No. (972) 783-3099

The proper address and facsimile number for Access is as follows:

Addison Access, Inc.  
c/o Columbus Realty Trust  
15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248  
Attention: Chief Executive Officer  
Fax No. (972) 770-5109

Any party hereto may change the address for notice specified above by giving the other party ten (10) days' advance written notice of such change of address.



Section 4.2 Successors and Assignment. This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, and permitted successors and assigns. The rights of MTSLP under this Agreement are not assignable and may not be otherwise conveyed without the prior written consent of Access and Addison, which shall be granted pursuant to the conditions set out in Section 4.6 of the Services Agreement. For purposes of this Section 4.2, Addison shall have the same rights in considering any such assignment or other conveyance as Client (as defined in the Services Agreement) has under Section 4.6 of the Services Agreement.

Section 4.3 Governing Law. **THIS AGREEMENT SHALL BE CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS.**

Section 4.4 No Oral Modification. This Agreement may not be modified or amended, except by an agreement in writing signed by both Access and MTSLP.

Section 4.5 No Oral Waiver. The parties may waive any of the conditions contained herein or any of the obligations of the other party hereunder, but any such waiver shall be effective only if in writing and signed by the party waiving such conditions or obligations.

Section 4.6 Time of Essence. Time is of the essence of this Agreement.

Section 4.7 Attorneys' Fees. In the event it becomes necessary for either party hereto to file a suit to enforce this Agreement or any provisions contained herein, the party prevailing in such action shall be entitled to recover, in addition to all other remedies or damages, reasonable attorneys' fees and court costs incurred by such prevailing party in such suit.

Section 4.8 Headings. The descriptive headings of the various Articles and Sections contained in this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions hereof.

Section 4.9 Total Agreement. This Agreement constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the parties hereto or shall affect or be effective to interpret, change or restrict the provisions of this Agreement.

Section 4.10 Partial Invalidity. If any clause or provisions of this Agreement is or should ever be held to be illegal, invalid, or unenforceable under any present or future law applicable to the terms hereof, then and in the event, it is the intention of the parties hereto that the remainder of this Agreement shall not be affected thereby, and that in lieu of each such clause or provision of this Agreement that is illegal, invalid, or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid, and enforceable.



EXHIBIT "A"

Lots 1, 2 and 4, Block B of Addison Circle Phase I, an addition to the Town of Addison, Dallas County, Texas, pursuant to Final Plat thereof recorded in Volume 97101, Page 5801, Map Records of Dallas County, Texas.

DA971840088  
070397 v1  
186:3012-65

EXHIBIT "B"

Lease

**EQUIPMENT ROOM LEASE AGREEMENT**

between

**ADDISON CIRCLE ONE, LTD.,**

a Texas limited partnership,

as Landlord,

and

**ADDISON CIRCLE ACCESS, INC.,**

a Delaware corporation,

as Tenant

## TABLE OF CONTENTS

	<u>Page</u>
1. DEFINITIONS AND BASIC PROVISIONS .....	1
2. GRANTING CLAUSE .....	3
3. EARLY OCCUPANCY .....	3
4. RENTAL .....	3
5. USE .....	4
6. SERVICES TO BE PROVIDED BY LANDLORD .....	4
7. REPAIR AND MAINTENANCE .....	4
8. FIRE AND OTHER CASUALTY .....	4
9. COMPLIANCE WITH LAWS AND USAGE .....	5
10. LIABILITY AND INDEMNITY .....	6
11. ADDITIONS AND FIXTURES .....	7
12. ASSIGNMENT AND SUBLETTING .....	7
13. SUBORDINATION .....	9
14. EMINENT DOMAIN .....	9
15. ACCESS BY LANDLORD .....	10
16. LANDLORD'S LIEN .....	10
17. DEFAULTS .....	10
18. NONWAIVER .....	11
19. HOLDING OVER .....	11
20. COMMON AREA .....	12

TABLE OF CONTENTS  
(Continued)

	<u>Page</u>
21. TAXES .....	12
22. INSURANCE .....	12
23. PERSONAL LIABILITY .....	12
24. NOTICE .....	12
25. LANDLORD'S MORTGAGEE .....	13
26. BROKERAGE .....	13
27. SPRINKLERS .....	13
28. MISCELLANEOUS .....	13
29. ENTIRE AGREEMENT AND BINDING EFFECT .....	18

Exhibit A Leased Premises

Exhibit B Land

## LEASE AGREEMENT

### 1. DEFINITIONS AND BASIC PROVISIONS.

A. Date of Lease: June 12, 1997.

B. "Landlord": Addison Circle One, Ltd.

C. Address of Landlord:

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248

D. "Tenant": Addison Circle Access, Inc., a Delaware corporation

E. Address of Tenant:

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248

F. "Building": The structure commonly known as Buildings A and B of Addison Circle Apartments and which is located on the tract of land (the "Land") described on Exhibit B attached hereto and made a part hereof for all purposes.

G. "Leased Premises": Approximately 945 square feet of rentable area on the floor(s) of the Buildings, and approximately 220 square feet on the roof of the parking garage as outlined and cross-hatched on the floor plan attached hereto as Exhibit A and made a part hereof for all purposes.

H. "Commencement Date": June 12, 1997, or the date upon which Tenant occupies the Leased Premises with the prior written consent of Landlord, whichever shall first occur. Upon request of either party hereto, Landlord and Tenant agree to execute and deliver a written declaration in recordable form expressing the Commencement Date hereof.

I. "Term": Commencing on the Commencement Date and ending the later of (i) twenty (20) years after the Commencement Date, plus any partial calendar month following the Commencement Date, or (ii) the termination of the Services Agreement (hereinafter defined), unless sooner terminated as provided herein.



J. "Base Rental": Tenant shall pay to Landlord, as Base Rental, the sum of \$1,200 per year.

The Base Rental shall be due and payable in equal quarterly installments on the first day of each calendar quarter, quarterly in advance, without demand and without setoff or deduction whatsoever. The term "Lease Year" is defined to mean twelve (12) consecutive calendar months, the first Lease Year to commence on (i) the Commencement Date, if such date is the first day of any month, or (ii) the first day of the month following the month during which the Commencement Date occurs, if the Commencement is not the first day of any month. The portion of the Lease Term prior to the first Lease Year shall be treated for all purposes hereunder as part of the first Lease Year.

K. "Prepaid Rental": \$ 0, to be applied to the first accruing monthly installments of rental.

L. "Security Deposit": \$ 0.

M. "Services Agreement": MTSLP Services Agreement of even date herewith by and between Landlord and MultiTechnology Services, L.P. ("MTSLP").

N. "Permitted Use": The Leased Premises shall be used only for an equipment room for equipment and installation and operation of multi-feed satellite earth receive antenna(s) for providing telephone, television and related services consistent with the Services Agreement.

O. "Common Area": That part of the project designated by Landlord from time to time for the common use of all tenants, including among other facilities, sidewalks, service corridors, curbs, truckways, loading areas, private streets and alleys, lighting facilities, mechanical and electrical rooms, janitors' closets, halls, lobbies, delivery passages, elevators, drinking fountains, meeting rooms, public toilets, parking areas and garages, decks and other parking facilities, landscaping and other common rooms and common facilities.

P. "Prime Rate": The rate announced as such from time to time by Chase Manhattan Bank, N.A., or its successors, at its principal office.

Q. "Broker": None.

Each of the foregoing definitions and basic provisions shall be construed in conjunction with the references thereto contained in the other provisions of this Lease and shall be limited by such other provisions. Each reference in this Lease to any of the foregoing definitions and basic provisions shall be construed to incorporate each term set forth above under such definition or provision.

2. GRANTING CLAUSE. Landlord, in consideration of the covenants and agreements to be performed by Tenant and upon the terms and conditions hereinafter stated, does hereby lease, demise and let unto Tenant, and Tenant does hereby lease from Landlord, the Leased Premises specified in Paragraph 1. hereof to have and to hold for the Term of this Lease, as specified in Paragraph 1. hereof.

3. EARLY OCCUPANCY. Any occupancy of the Leased Premises by Tenant prior to the Commencement Date shall be subject to all of the terms and provisions of this Lease excepting only those requiring the payment of rental and other charges.

If this Lease is executed before the Leased Premises becomes vacant, or if any present tenant or occupant of the Leased Premises holds over and Landlord cannot acquire possession thereof prior to the Commencement Date, Landlord shall not be deemed in default hereunder, and Tenant agrees to accept possession of the Leased Premises at such time as Landlord is able to tender the same and, in such event, the date of such tender by Landlord shall be deemed to be the Commencement Date, and Landlord hereby waives the payment of rental and other charges covering any period prior to the date of such tender.

4. RENTAL. As rental for the lease and use of the Leased Premises, Tenant will pay Landlord or Landlord's assigns, at the address of Landlord specified in Paragraph 1. hereof, without demand and without deduction, abatement or setoff, the Base Rental in the manner specified in Paragraph 1. hereof, in lawful money of the United States. If the Term of this Lease does not commence on the first day of a calendar month, Tenant shall pay to Landlord in advance a pro rata part of such sum as rental for such first partial month. Tenant shall not pay any installment of rental more than one (1) month in advance. All past due installments of rental or other payment specified herein past due more than ten (10) days shall bear interest at the highest lawful rate per annum from the date due until paid. In addition, Tenant shall pay to Landlord upon demand a late charge in an amount equal to five percent (5%) of any installments of rental or other payments specified herein if not paid within ten (10) days after the date that such rental or other payment is due and payable.

If Tenant fails to timely pay two (2) consecutive installments of Base Rental, or other payment specified herein, or any combination thereof, Landlord may require Tenant to pay (in addition to any interest) Base Rental and other payments specified herein (as estimated by Landlord, if necessary) quarterly in advance, and, in such event, all future payments shall be made on or before the due date in cash or by cashier's check or money order, and the delivery of Tenant's personal or corporate check shall no longer constitute payment thereof. Any acceptance of Tenant's personal or corporate check thereafter by Landlord shall not be construed as a waiver of the requirement that such payments be made in cash or by cashier's check or money order. Any amount so estimated by Landlord and paid by Tenant shall be adjusted promptly after actual figures become available and paid or credited to Landlord or Tenant, as the case may be.

5. USE. Tenant shall use the Leased Premises solely for the Permitted Use specified in Paragraph 1. hereof and for no other business or purpose without the prior written consent of Landlord.

6. SERVICES TO BE PROVIDED BY LANDLORD. Subject to the rules and regulations hereinafter referred to, Landlord shall furnish Tenant, at Landlord's expense, while Tenant is occupying the Leased Premises and is not in default hereunder, any services required to be furnished to MTSLP under the Services Agreement and elevators for ingress to and egress from the Building as may in the judgment of Landlord be reasonably required. Landlord may reasonably limit the number of elevators in operation after usual and customary business hours and on Saturday afternoons, Sundays and legal holidays.

7. REPAIR AND MAINTENANCE.

A. Landlord shall, at Landlord's own cost and expense, except as may be provided elsewhere herein, make necessary repairs of damage to the Building corridors, lobby, structural members of the Building and equipment used to provide the services referred to in Paragraph 6 hereof, unless any such damage is caused in whole or in part by acts or omissions of Tenant, or Tenant's agents, employees or invitees, in which event Tenant shall bear the cost of such repairs. Tenant shall promptly give Landlord notice of any damage in the Leased Premises requiring repair by Landlord, as aforesaid.

B. Tenant shall not in any manner deface or injure the Leased Premises or the Building but shall maintain the Leased Premises, including, without limitation, all fixtures installed by Tenant and all plate glass, walls, carpeting and other floor covering placed or found therein, in a clean, attractive, first-class condition and in good repair, except as to damage required to be repaired by Landlord, as provided in Paragraph 7.A. hereof. Upon the expiration of the Term of this Lease, Tenant shall surrender and deliver up the Leased Premises with all improvements located thereon (except as provided in Paragraph 11.B. hereof) to Landlord broom-clean and in the same condition in which they existed at the commencement of the Lease, excepting only ordinary wear and tear and damage arising from any cause not required to be repaired by Tenant, failing which Landlord may restore the Leased Premises to such condition, and Tenant shall pay the cost thereof.

C. This Paragraph 7 shall not apply in the case of damage or destruction by fire or other casualty which is covered by insurance maintained by Landlord on the Building (as to which Paragraph 8 hereof shall apply), or damage resulting from an eminent domain taking (as to which Paragraph 14 hereof shall apply).

8. FIRE AND OTHER CASUALTY.

A. If at any time during the Term of this Lease, the Leased Premises or any portion of the Building shall be damaged or destroyed by fire or other casualty, then Landlord shall have the election to terminate this Lease or to repair and reconstruct the Leased Premises and the Building to substantially the same condition in which they

existed immediately prior to such damage or destruction, except that Landlord shall not be required to rebuild, repair or replace any part of the partitions, fixtures and other improvements which may have been installed by Tenant or other tenants within the Building.

B. In any of the aforesaid circumstances, rental shall abate proportionately during the period and to the extent that the Leased Premises are unfit for use by Tenant in the ordinary conduct of Tenant's business. If Landlord has elected to repair and restore the Leased Premises, this Lease shall continue in full force and effect and such repairs shall be made within ninety (90) days thereafter, subject to delays arising from shortages of labor or material, acts of God, war or other conditions beyond Landlord's reasonable control. In the event that this Lease is terminated as herein permitted or the Leased Premises are not fully repaired within ninety (90) days after the damage, Landlord shall refund to Tenant the prepaid rental (unaccrued as of the date of damage or destruction) less any sum then owing Landlord by Tenant. If Landlord has elected to repair and reconstruct the Leased Premises, then the Term of this Lease shall be extended by a period of time equal to the period of such repair and reconstruction. Any insurance which may be carried by Landlord or Tenant against loss or damage to the Building or to the Leased Premises shall be for the sole benefit of the party carrying such insurance under its control, and it is understood that Landlord shall in no event be obligated to carry insurance on Tenant's contents.

9. COMPLIANCE WITH LAWS AND USAGE. Tenant, at Tenant's own expense, (a) shall comply with all federal, state, municipal, fire underwriting and other laws, ordinances, orders, rules and regulations applicable to the Leased Premises and the business conducted therein by Tenant, (b) shall not engage in any activity which would cause Landlord's fire and extended coverage insurance to be cancelled or the rate therefor to be increased (or, at Landlord's option, Tenant shall pay any such increase to Landlord immediately upon demand as additional rental in the event of such rate increase by reason of such activity), (c) shall not commit, and shall cause Tenant's agents, employees and invitees not to commit, any act which is a nuisance or annoyance to Landlord or to other tenants, or which might, in the exclusive judgment of Landlord, damage Landlord's goodwill or reputation, or tend to injure or depreciate the Building, (d) shall not commit or permit waste in the Leased Premises or the Building, (e) shall comply with rules and regulations from time to time promulgated by Landlord applicable to the Leased Premises and/or the Building, (f) shall not paint, erect or display any sign, advertisement, placard or Lettering which is visible in the corridors or lobby of the Building or from the exterior of the Building without Landlord's prior written approval, and (g) shall not occupy or use, or permit any portion of the Leased Premises to be occupied or used, for any business or purpose other than the Permitted Use specified in Paragraph 1. hereof. If a controversy arises concerning Tenant's compliance with any federal, state, municipal or other laws, ordinances, orders, rules or regulations applicable to the Leased Premises and the business conducted therein by Tenant, Landlord may retain consultants of recognized standing to investigate Tenant's compliance. If it is determined that Tenant has not complied as required, Tenant shall reimburse Landlord on demand for all consulting and other costs incurred by Landlord in such investigation.

10. LIABILITY AND INDEMNITY.

A. Tenant agrees to indemnify and save Landlord harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from any act or omission of Tenant or Tenant's agents, employees, invitees or contractors, or arising from any injury to any person or damage to the property of any person occurring during the term of this Lease in or about the Leased Premises, save and except those caused by the intentional acts or negligence of Landlord. Tenant agrees to use and occupy the Leased Premises and other facilities of the Building at Tenant's own risk and hereby releases Landlord, Landlord's agents or employees, from all claims for any damage or injury to the full extent permitted by law, save and except those caused by the intentional acts or gross negligence of Landlord.

B. No party shall have any right or claim against Landlord, Landlord's agents or employees for property damage by way of subrogation or assignment, save and except those caused by the intentional acts or gross negligence of Landlord, Tenant hereby waiving and relinquishing any such right. Landlord agrees to indemnify and hold Tenant harmless from any claims (including reasonable attorneys' fees) for any loss or damage resulting from intentional acts or gross negligence of Landlord.

C. Tenant, to the extent permitted by law, waives all claims Tenant may have against Landlord, and against Landlord's agents and employees for injury to person or damage to or loss of property sustained by Tenant or by any occupant of the Leased Premises, or by any other person, resulting from any part of the Building or any equipment or appurtenances becoming out of repair, or resulting from any accident in or about the Building or resulting directly or indirectly from any act or neglect of any tenant or occupant of any part of the Building or of any other person, unless such damage is a result of the intentional acts or gross negligence of Landlord, or Landlord's agents or employees. If any damage results from any act or neglect of Tenant, Landlord may, at Landlord's option, repair such damage, and Tenant shall thereupon pay to Landlord the total cost of such repair. All personal property belonging to Tenant or any occupant of the Leased Premises that is in or on any part of the property belonging to Tenant or any occupant of the Leased Premises that is in or on any part of the Building shall be there at the risk of Tenant or of such other person only, and Landlord, Landlord's agents and employees shall not be liable for any damage thereto or for the theft or misappropriation thereof unless such damage, theft or misappropriation is a result of the intentional acts or gross negligence of Landlord or Landlord's agents or employees. Tenant agrees to indemnify and hold Landlord harmless from and against any and all loss, cost, claim and liability (including reasonable attorneys' fees) for injuries to all persons and for damage to or loss of property occurring in or about the Building, due to any act or negligence or default under this Lease by Tenant, Tenant's contractors, agents or employees, save and except those caused by the intentional acts or negligence of Landlord.

11. ADDITIONS AND FIXTURES.

A. Tenant will make no alteration, change, improvement, repair, replacement or physical addition in or to the Leased Premises without the prior written consent of Landlord, except for improvements provided for in the Services Agreement. If such prior written consent of Landlord is granted, the work in such connection shall be at Tenant's expense but by workmen of Landlord or by workmen and contractors approved in advance in writing by Landlord and in a manner and upon terms and conditions and at times satisfactory to and approved in advance in writing by Landlord. In any instance where Landlord grants such consent, Landlord may grant such consent contingent and conditioned upon Tenant's contractors, laborers, materialmen and others furnishing labor or materials for Tenant's job working in harmony and not interfering with any labor utilized by Landlord, Landlord's contractors or mechanics or by any other tenant or such other tenant's contractors or mechanics; and if at any time such entry by one (1) or more persons furnishing labor or materials for Tenant's work shall cause disharmony or interference for any reason whatsoever without regard to fault, the consent granted by Landlord to Tenant may be withdrawn at any time upon written notice to Tenant.

B. Tenant, if Tenant so elects, may remove Tenant's trade fixtures, office supplies and movable office furniture and equipment not attached to the Building provided (i) such removal is made prior to the expiration of the Term of this Lease, (ii) Tenant is not in default of any obligation or covenant under this Lease at the time of such removal, and (iii) Tenant promptly repairs all damage caused by such removal; provided, however, that notwithstanding the foregoing or any other provision in this Lease, MTSLP, subtenant or assignee of Tenant, shall have the rights granted under Article 3 of the Services Agreement to remove its removable equipment without limitation by any provision contained in this Lease. All other property at the Leased Premises and any alteration or addition to the Leased Premises (including wall-to-wall carpeting, paneling or other wall covering) and any other article attached or affixed to the floor, wall or ceiling of the Leased Premises shall become the property of Landlord, shall be in good condition, normal wear and tear excepted, and shall remain upon and be surrendered with the Leased Premises as part thereof at the expiration of the Term of this Lease, Tenant hereby waiving all rights to any payment or compensation therefor. If, however, Landlord so requests in writing, Tenant will, prior to the termination of this Lease, remove in a good and workmanlike manner any and all alterations, additions, fixtures, equipment and property placed or installed by Tenant in the Leased Premises and will repair any damage occasioned by such removal.

12. ASSIGNMENT AND SUBLETTING.

A. Neither Tenant nor Tenant's legal representatives or successors in interest by operation of law or otherwise shall assign this Lease or sublease the Leased Premises or any part thereof or mortgage, pledge or hypothecate its leasehold interest or grant any concession or license within the Leased Premises without the prior express written permission of Landlord, and any attempt to do any of the foregoing without the prior

express written permission of Landlord shall be void and of no effect; provided, however, that notwithstanding the foregoing or any other provision to the contrary in this Lease, Tenant is hereby granted the right to sublease or assign this Lease to MTSLP and MTSLP, as subtenant or assignee of the Tenant, shall have the right to further sublease or assign the Leased Premises to any permitted assignee of the Services Agreement.

B. Notwithstanding that the prior express written permission of Landlord to any of the aforesaid transactions may have been obtained, the following shall apply:

(1) In the event of an assignment, contemporaneously with the granting of Landlord's aforesaid consent, Tenant shall cause the assignee to expressly assume in writing and agree to perform all of the covenants, duties and obligations of Tenant hereunder, and such assignee shall be jointly and severally liable therefor along with Tenant; provided, however, MTSLP, as assignee or subtenant of Tenant, shall be released from liability hereunder and under its sublease or assignment with Tenant if MTSLP is released from liability under the Services Agreement pursuant to its terms in connection with MTSLP's assignment of the Services Agreement to a permitted assignee thereunder.

(2) A signed counterpart of all instruments relative thereto (executed by all parties to such transactions with the exception of Landlord) shall be submitted by Tenant to Landlord prior to or contemporaneously with the request for Landlord's prior express written permission thereto (it being understood that no such instrument shall be effective without the prior express written permission of Landlord);

(3) Tenant shall subordinate to Landlord's statutory lien and Landlord's aforesaid contract Lien and security interest any liens or other rights which Tenant may claim with respect to any fixtures, equipment, goods, wares, merchandise or other property owned by or leased to the proposed assignee or sublessee or other party intending to occupy the Leased Premises;

(4) No usage of the Leased Premises different from the usage herein provided to be made by Tenant shall be permitted, and all other terms and provisions of this Lease continue to apply after any such transaction;

(5) In any case where Landlord consents to an assignment, sublease, grant of a concession or license or mortgage, pledge or hypothecation of the leasehold, the undersigned Tenant will nevertheless remain directly and primarily liable for the performance of all of the covenants, duties and obligations of Tenant hereunder (including, without limitation, the obligation to pay all rental and other sums herein provided to be paid), and Landlord shall be permitted to enforce the provisions of this Lease against the undersigned Tenant and/or any assignee, sublessee, concessionaire, licensee or other transferee without demand upon or proceeding in any way against any other person; and

(6) In the event that the rental due and payable by a sublessee under any such permitted sublease (or a combination of the rental payable under such sublease plus any bonus or other consideration therefor or incident thereto) exceeds the hereinabove provided rental payable under this Lease or if with respect to a permitted assignment, permitted license or other transfer by Tenant permitted by Landlord, the consideration payable to Tenant by the assignee, licensee or other transferee exceeds the rental payable under this Lease, then Tenant shall be bound and obligated to pay Landlord all such excess rental and other excess consideration within ten (10) days following receipt thereof by Tenant from such sublessee, assignee, licensee or other transferee, as the case might be.

13. **SUBORDINATION.** Tenant accepts this Lease subject and subordinate to any easement, mortgage, deed of trust or other lien presently existing or hereafter placed upon the Leased Premises or upon the Building or any part thereof, and to any renewals, modifications, extensions and refinancings thereof, which might now or hereafter constitute a lien upon the Building or any part thereof, and to zoning ordinances and other building and fire ordinances and governmental regulations relating to the use of the Leased Premises, but Tenant agrees that any such ground Lessor, mortgagee and/or beneficiary of any deed of trust or other lien ("Landlord's Mortgagee") and/or Landlord shall have the right at any time to subordinate such ground lease, mortgage, deed of trust or other lien to this Lease on such terms and subject to such conditions as such Landlord's Mortgagee may deem appropriate in its discretion. Upon demand Tenant agrees to execute such further instruments subordinating this Lease, as Landlord may request, and such nondisturbance and attornment agreements, as any such Landlord's Mortgagee shall request, in form satisfactory to Landlord's Mortgagee. In the event that Tenant shall fail to execute any such instrument within ten (10) days after requested, Tenant hereby irrevocably constitutes Landlord as Tenant's attorney-in-fact to execute such instrument in Tenant's name, place and stead, it being stipulated by Landlord and Tenant that such agency is coupled with an interest in Landlord and is, accordingly, irrevocable. Upon foreclosure of the Building or upon acceptance of a deed in lieu of such foreclosure, Tenant hereby agrees to attorn to the new owner of such property after such foreclosure or acceptance of a deed in Lieu of foreclosure, if so requested by such new owner of the Building. Landlord shall use reasonable efforts to attempt to obtain for the benefit of Tenant from any lender or other holder of such mortgage or deed of trust an agreement acknowledging the existence of this Lease for the full term hereof, and agreeing that any transfer of the Building or underlying realty, voluntarily or involuntarily, shall be subject to the continuation of this Lease for the full term hereof, as long as Tenant and/or MTSLP (as assignee or subtenant of Tenant) shall not be in default under this Lease.

14. **EMINENT DOMAIN.** If there shall be taken by exercise of the power of eminent domain during the Term of this Lease any part of the Leased Premises or the Building, Landlord may elect to terminate this Lease or to continue same in effect. If Landlord elects to continue this Lease, the rental shall be reduced in proportion to the area of the Leased Premises so taken, and Landlord shall, within ninety (90) days, repair any damage to the Leased Premises or the Building resulting from such taking. All sums awarded or agreed upon between Landlord and the condemning authority for the taking of the interest of Landlord or Tenant, whether as



damages or as compensation, will be the property of Landlord without prejudice, however, to claims of Tenant against the condemning authority on account of the unamortized cost of leasehold improvements paid for by Tenant taken by the condemning authority. If this Lease should be terminated under any provision of this Paragraph 14, rental shall be payable up to the date that possession is taken by the condemning authority, and Landlord will refund to Tenant any prepaid unaccrued rental less any sum then owing by Tenant to Landlord.

15. ACCESS BY LANDLORD. Landlord, Landlord's agents and employees shall have access to and the right to enter upon any and all parts of the Leased Premises at any reasonable time during normal business hours upon not less than 24 hours notice to MTSLP and if accompanied by a representative of MTSLP (except in cases of emergency, defined to be any situation in which Landlord perceives imminent danger of injury to person and/or damage to or loss of property, in which case Landlord may enter upon any and all parts of the Leased Premises at any time) to examine the condition thereof, to clean, to make any repairs, alterations or additions required to be made by Landlord hereunder, to show the Leased Premises to prospective purchasers or tenants or mortgage tenders (prospective or current) and for any other purpose deemed reasonable by Landlord, and Tenant shall not be entitled to any abatement or reduction of rental by reason thereof.

16. LANDLORD'S LIEN. Landlord hereby waives the statutory landlord's Lien, and agrees that Tenant and/or MTSLP, as assignee or subtenant of Tenant, shall have all of the rights to deal with MTSLP's System (as defined in the Services Agreement) and MTSLP's removable and non-removable equipment as are granted to MTSLP in the Services Agreement without limitation by any provision contained in this Lease.

17. DEFAULTS.

A. Each of the following acts or omissions of Tenant or occurrences shall constitute an "Event of Default":

(1) Failure or refusal by Tenant to timely pay rental or other payments hereunder upon the expiration of a period of ten (10) days following written notice to Tenant and MTSLP of such failure.

(2) Failure to perform or observe any covenant or condition of this Lease by Tenant to be performed or observed, except as provided in (1) above upon the expiration of a period of thirty (30) days following written notice to Tenant and MTSLP of such failure.

Landlord hereby agrees that upon the occurrence of an Event of Default, if Tenant does not timely cure the default, MTSLP shall have an additional fifteen (15) days following Tenant's cure period to cure such default and Tenant shall be responsible for reimbursing MTSLP for any amounts expended by MTSLP in curing Tenant's default.

B. This Lease and the Term and estate hereby granted and the demise hereby made are subject to the limitation that if and whenever any Event of Default shall occur, Landlord may, at Landlord's option, in addition to all other rights and remedies given hereunder or by law or equity, do any one (1) or more of the following:

(1) Terminate this Lease, in which event Tenant shall immediately surrender possession of the Leased Premises to Landlord.

(2) Enter upon and take possession of the Leased Premises and expel or remove Tenant and any other occupant therefrom, with or without having terminated the Lease.

(3) Alter locks and other security devices at the Leased Premises; provided, however, that notwithstanding the foregoing provisions or any other provisions of this Lease, to the contrary, under no circumstances shall Landlord take any action which would conflict with or limit any rights which MTSLP has in the event of a default by MTSLP under the Services Agreement.

C. Exercise by Landlord of any one (1) or more remedies hereunder granted or otherwise available shall not be deemed to be an acceptance of surrender of the Leased Premises by Tenant, whether by agreement or by operation of Law, it being understood that such surrender can be effected only by the written agreement of Landlord and Tenant. All claims for damages by reason of such re-entry and/or possession and/or alteration of locks or other security devices are hereby waived, as are all claims for damages by reason of any distress warrant, forcible detainer proceedings, sequestration proceedings or other Legal process. Tenant agrees that any re-entry by Landlord may be pursuant to judgment obtained in forcible detainer proceedings or other legal proceedings or without the necessity for any legal proceedings, as Landlord may elect, and Landlord shall not be liable in trespass or otherwise.

D. In the event that Landlord elects to terminate this Lease by reason of an Event of Default, then, Landlord shall be entitled to pursue any remedy available at law or in equity.

18. **NONWAIVER.** Neither acceptance of rental or other payments by Landlord nor failure by Landlord to complain of any action, nonaction or default of Tenant shall constitute a waiver of any of Landlord's rights hereunder. Waiver by Landlord of any right for any default of Tenant shall not constitute a waiver of any right for either a subsequent default of the same obligation or any other default. Receipt by Landlord of Tenant's keys to the Leased Premises shall not constitute an acceptance of surrender of the Leased Premises.

19. **HOLDING OVER.** If Tenant should remain in possession of the Leased Premises after the expiration of the Term of this Lease, without the execution by Landlord and Tenant of a new lease or an extension of this Lease, then Tenant shall be deemed to be occupying the Leased Premises as a tenant-at-sufferance, subject to all the covenants and obligations of this

Lease and at a daily rental of twice the per day rental provided for the last month of the Term of this Lease, computed on the basis of a thirty (30) day month. The inclusion of the preceding sentence shall not be construed as Landlord's consent for Tenant to hold over.

20. COMMON AREA. The Common Area, as defined in Paragraph 1. hereof, shall be subject to Landlord's sole management and control and shall be operated and maintained in such manner as Landlord in Landlord's discretion shall determine. Landlord reserves the right to change from time to time the dimensions and location of the Common Area, to construct additional Stories on the Building and to place, construct or erect new structures or other improvements on any part of the Land without the consent of Tenant. Tenant, and Tenant's employees and invitees shall have the nonexclusive right to use the Common Area as constituted from time to time, such use to be in common with Landlord, other tenants of the Building and other persons entitled to use the same, and subject to such reasonable rules and regulations governing use as Landlord may from time to time prescribe. Landlord may temporarily close any part of the Common Area for such periods of time as may be necessary to prevent the public from obtaining prescriptive rights or to make repairs or alterations.

21. TAXES. Tenant shall be liable for the timely payment of all taxes levied or assessed against personal property, furniture or fixtures or equipment placed by Tenant in the Leased Premises. If any such taxes for which Tenant is liable are levied or assessed against Landlord or Landlord's property and if Landlord elects to pay the same, Tenant shall pay to Landlord upon demand that part of such taxes for which Tenant is liable hereunder.

22. INSURANCE. Tenant shall, at Tenant's expense, procure and maintain throughout the Term of this Lease insurance consistent with that required by the Services Agreement.

23. PERSONAL LIABILITY. The liability of Landlord to Tenant for any default by Landlord under the terms of this Lease shall be limited to the proceeds of sale on execution of the interest of Landlord in the Building and in the Land, and neither Landlord, nor any party comprising Landlord, shall be personally liable for any deficiency. This clause shall not be deemed to limit or deny any remedies which Tenant may have in the event of default by Landlord hereunder which do not involve the personal liability of Landlord.

24. NOTICE. Any notice which may or shall be given under the terms of this Lease shall be in writing and shall be either delivered by hand (including commercially recognized messenger and express mail service) or sent by United States Mail, registered or certified, return receipt requested, postage prepaid, if for Landlord, to the Building office and at the address specified in Paragraph 1. hereof, or if for Tenant, to the Leased Premises or, if prior to the Commencement Date, at the address specified in Paragraph 1. hereof, or at such other addresses as either party may have theretofore specified by written notice delivered in accordance herewith. Such address may be changed from time to time by either party by giving notice as provided herein. Notice shall be deemed given when delivered (if delivered by hand) or, whether actually received or not, when postmarked (if sent by mail). If the term "Tenant" as used in this Lease refers to more than one (1) person and/or entity, any notice given as aforesaid to any one of such persons and/or entities shall be deemed to have been duly given to Tenant.

25. LANDLORD'S MORTGAGEE. If the Building and/or Leased Premises are at any time subject to a ground lease, mortgage, deed of trust or other Lien, then in any instance in which Tenant gives notice to Landlord alleging default by Landlord hereunder, Tenant will also simultaneously give a copy of such notice to each Landlord's Mortgagee (provided Landlord or Landlord's Mortgagee shall have advised Tenant of the name and address of Landlord's Mortgagee) and each Landlord's Mortgagee shall have the right (but no obligation) to cure or remedy such default during the period that is permitted to Landlord hereunder, plus an additional period of thirty (30) days, and Tenant will accept such curative or remedial action (if any) taken by Landlord's Mortgagee with the same effect as if such action had been taken by Landlord.

26. BROKERAGE. Tenant represents and warrants that it has dealt with no broker, agent or other person in connection with this transaction and that no broker, agent or other person brought about this transaction, and Tenant agrees to indemnify and hold Landlord harmless from and against any claims by any other broker, agent or other person claiming a commission or other form of compensation by virtue of having dealt with Tenant with regard to this leasing transaction. The provisions of this Paragraph 26 shall survive the termination of this Lease.

27. SPRINKLERS. No sprinkler or sprinkler system shall be installed in the Leased Premises without the prior written consent of Tenant and MTSLP.

28. MISCELLANEOUS.

A. Provided Tenant complies with Tenant's covenants, duties and obligations hereunder, Tenant shall quietly have, hold and enjoy the Leased Premises subject to the terms and provisions of this Lease.

B. In any circumstance where Landlord is permitted to enter upon the Leased Premises during the Term of this Lease, whether for the purpose of curing any default of Tenant, repairing damage resulting from fire or other casualty or an eminent domain taking or is otherwise permitted hereunder or by law to go upon the Leased Premises, no such entry shall constitute an eviction or disturbance of Tenant's use and possession of the Leased Premises or a breach by Landlord of any of Landlord's obligations hereunder or render Landlord liable for damages for loss of business or otherwise or entitle Tenant to be relieved from any of Tenant's obligations hereunder or grant Tenant any right of setoff or recoupment or other remedy; and in connection with any such entry incident to performance of repairs, replacements, maintenance or construction, all of the aforesaid provisions shall be applicable notwithstanding that Landlord may elect to take building materials in, to or upon the Leased Premises that may be required or utilized in connection with such entry by Landlord.

C. In the event Landlord commences any proceedings against Tenant for nonpayment of rental or any other sum due and payable by Tenant hereunder, Tenant will not interpose any counterclaim or other claim against Landlord of whatever nature or description in any such proceedings; and in the event Tenant interposes any such counterclaim or other claim against Landlord in such proceedings, Landlord and Tenant

stipulate and agree that, in addition to any other lawful remedy of Landlord, upon motion of Landlord, such counterclaim or other claim asserted by Tenant shall be severed out of the proceedings instituted by Landlord and the proceedings instituted by Landlord may proceed to final judgment separately and apart from and without consolidation with or reference to the status of such counterclaim or any other claim asserted by Tenant; provided, however, the provisions of this sentence shall not apply to counterclaims or any other claim asserted by Tenant; provided, however, the provisions of this sentence shall not apply to counterclaims or claims by Tenant which, under the laws of the State in which the Building is located, may only be asserted in the aforesaid proceedings brought by Landlord or be forever barred if not asserted in said proceedings.

D. Landlord may restrain or enjoin any breach or threatened breach of any covenant, duty or obligation of Tenant herein contained without the necessity of proving the inadequacy of any legal remedy or irreparable harm. The remedies of Landlord hereunder shall be deemed cumulative, and no remedy of Landlord, whether exercised by Landlord or not, shall be deemed to be in exclusion of any other. Except as may be otherwise herein expressly provided, in all circumstances under this Lease where prior consent or permission of one (1) party ("first party") is required before the other party ("second party") is authorized to take any particular type of action, the matter of whether to grant such consent or permission shall be within the sole and exclusive judgment and discretion of the first party; and it shall not constitute any nature of breach by the first party hereunder or any defense to the performance of any covenant, duty or obligation of the second party hereunder that the first party delayed or withheld the granting of such consent or permission, whether or not the delay or withholding of such consent or permission was prudent or reasonable or based on good cause.

E. In all instances where Tenant is required to pay any sum or do any act at a particular indicated time or within an indicated period, it is understood that time is of the essence.

F. The obligation of Tenant to pay all rental and other sums hereunder provided to be paid by Tenant and the obligation of Tenant to perform Tenant's other covenants and duties hereunder constitute independent, unconditional obligations to be performed at all times provided for hereunder, save and except only when an abatement thereof or reduction therein is hereinabove expressly provided for and not otherwise. Tenant waives and relinquishes all rights which Tenant might have to claim any nature of lien against or withhold, or deduct from or offset against any rental and other sums provided hereunder to be paid Landlord by Tenant. Tenant waives and relinquishes any right to assert, either as a claim or as a defense, that Landlord is bound to perform or is liable for the nonperformance of any implied covenant or implied duty of Landlord not expressly herein set forth.

G. Under no circumstances whatsoever shall Landlord ever be liable hereunder for consequential damages or special damages.

H. Landlord retains the exclusive right to create any additional improvements to structural and/or mechanical systems, interior and exterior walls and/or glass which do not adversely affect use of the Leased Premises, which Landlord deems necessary without the prior consent of Tenant.

I. All monetary obligations of Landlord and Tenant (including, without limitation, any monetary obligation of Landlord or Tenant for damages for any breach of the respective covenants, duties or obligations of Landlord or Tenant hereunder) are performable exclusively in the county in which the Building is located.

J. The laws of the state in which the Building is located shall govern the interpretation, validity, performance and enforcement of this Lease.

K. If any clause or provision of this Lease is or becomes illegal, invalid, or unenforceable because of present or future laws or any rule or regulation of any governmental body or entity, effective during the Term of this Lease, the intention of the parties hereto is that the remaining parts of this Lease shall not be affected thereby unless such invalidity is, in the sole determination of Landlord, essential to the rights of both parties, in which event Landlord has the right to terminate this Lease on written notice to Tenant.

L. Tenant waives the benefits of all existing and future rental control legislation and statutes and similar governmental rules and regulations, whether in time of war or not, to the extent permitted by law. In the event that any law, decision, rule or regulation of any governmental body having jurisdiction shall have the effect of limiting for any period of time the amount of rental or other charges payable by Tenant to any amount less than that otherwise provided pursuant to this Lease, the following amounts shall nevertheless be payable by Tenant: (i) throughout such period of limitation, Tenant shall remain liable for the maximum amount of rental and other charges which are legally payable (without regard to any limitation to the amount thereof expressed in this Lease except that all amounts payable by reason of this Paragraph 28.L. shall not in the aggregate exceed the total of all amounts which would otherwise be payable by Tenant pursuant to the terms of this Lease for the period of limitation), (ii) at the termination of such period of limitation, Tenant shall pay to Landlord, on demand but only to the extent legally collectible by Landlord, any amounts which would have been due from Tenant during the period of limitation but which were not paid because of such limiting law, decision, rule or regulation, and (iii) for the remainder of the Term of this Lease following the period of limitation, Tenant shall pay to Landlord all amounts due for such portion of the Term of this Lease in accordance with the terms hereof calculated as though there had been no intervening period of limitation.

M. It is mutually agreed by and between Landlord and Tenant that the respective parties hereto shall and they hereby do waive trial by jury in any action, proceeding or counterclaim brought by either of the parties hereto against the other on any matters whatsoever arising out of or in any way connected with this Lease, the

relationship of landlord and tenant, Tenant's use or occupancy of the Leased Premises, and any emergency statutory or any other statutory remedy.

N. No receipt of money by Landlord from Tenant after the expiration of the Term of this Lease, or after the service of any notice, or after the commencement of any suit, or after final judgment for possession of the Leased Premises, shall reinstate, continue or extend the Term of this Lease or affect any such notice, demand or suit or imply consent for any action for which Landlord's consent is required.

O. In the event of variation or discrepancy, Landlord's original copy of the Lease shall control.

P. Words of any gender used in this Lease shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, unless the context otherwise requires. The headings of the Paragraphs of this Lease have been inserted for convenience only and are not to be considered in any way in the construction or interpretation of this Lease.

Q. Tenant agrees that Tenant shall from time to time upon request by Landlord execute and deliver to Landlord a statement in recordable form certifying (i) that the Lease is unmodified and in full force and effect (or, if there have been modifications, that the same is in full force and effect as so modified), (ii) the dates to which rental and other charges payable under this Lease have been paid, and (iii) that Landlord is not in default hereunder (or, if Landlord is in default, specifying the nature of such default). Tenant further agrees that Tenant shall from time to time upon request by Landlord execute and deliver to Landlord an instrument in recordable form acknowledging Tenant's receipt of any notice of assignment of this Lease by Landlord.

R. In no event shall Tenant have the right to create or permit there to be established any lien or encumbrance of any nature against the Leased Premises or the Building for any improvement or improvements by Tenant, and Tenant shall fully pay the cost of any improvement or improvements made or contracted for by Tenant. Any mechanic's lien filed against the Leased Premises or the Building for work claimed to have been done, or materials claimed to have been furnished to Tenant, shall be duly discharged or, if Tenant disputes such claim, bonded in accordance with applicable law, by Tenant within ten (10) days after the filing of the lien.

S. Whenever a period of time is herein prescribed for action to be taken by Landlord or Tenant, Landlord or Tenant, as applicable, shall not be liable or responsible for, and there shall be excluded from the computation for any such period of time, and delays due to strikes, riots, acts of God, shortages of labor or materials, war, governmental laws, regulations or restrictions, or any other causes of any kind whatsoever which are beyond the reasonable control of Landlord or Tenant, as applicable.

T. This Lease shall not be recorded by either party without the consent of the other.

U. Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as creating the relationship of principal and agent, or of partnership or of joint venture between the parties hereto, it being understood and agreed that neither the method of the computation of rental, nor any other provision contained herein, nor any acts of the parties hereto, shall be deemed to create any relationship between the parties hereto other than the relationship of landlord and tenant.

V. Whenever it is provided herein that a monetary sum shall be due to Landlord together with interest at the highest lawful rate, if at such time there shall be no highest rate prescribed by applicable law, interest shall be due at the rate of two percent (2%) in excess of Prime Rate as defined in Paragraph 1. hereof.

W. Tenant acknowledges that Landlord's agents and employees have made no representations or promises with respect to the Leased Premises or the Building except as herein expressly set forth, and Tenant further acknowledges that no rights, easements or licenses are acquired by Tenant by implication or otherwise, except as herein expressly set forth.

X. Tenant warrants that Tenant is, and shall remain throughout the Term of this Lease, authorized to do business and in good standing in the state in which the Building is located. Tenant agrees, upon request by Landlord, to furnish Landlord satisfactory evidence of Tenant's authority for entering into this Lease.

Y. In case it should be necessary or proper for Landlord to bring any action under this Lease, or to consult an attorney concerning this Lease (including specifically, without limitation, for the review of instruments evidencing a proposed assignment, subletting or other transfer by Tenant submitted to Landlord for consent) or the enforcement of any of Landlord's rights hereunder, Tenant agrees to pay to Landlord reasonable attorneys' fees whether suit be brought or not.

Z. Submission of this Lease for examination does not constitute an offer, right of first refusal, reservation of, or option for, the Leased Premises or any other premises in the Building. This Lease shall become effective only upon execution and delivery by both Landlord and Tenant.

AA. Landlord shall have the right at any time to change the name or street address of the Building and to install and maintain a sign or signs on the interior or exterior of the Building.

BB. If at any time during the Term of this Lease a tax or excise on rental, a sales tax or other tax however described (except any inheritance, estate, gift, income or excess profit tax imposed upon Landlord) is levied or assessed against Landlord by any



taxing authority having jurisdiction on account of Landlord's interest in this Lease, or the rentals or other charges payable hereunder, as a substitute in whole or in part for, or in addition to, the taxes described elsewhere in this Paragraph 28.BB., Tenant shall pay to Landlord as additional rental upon demand the amount of such tax or excise. In the event that any such tax or excise is levied or assessed directly against Tenant, Tenant shall pay the same at such times and in such manner as such taxing authority shall require.

29. ENTIRE AGREEMENT AND BINDING EFFECT. This Lease and any contemporaneous workletter, addenda or exhibits signed by the parties constitute the entire agreement between Landlord and Tenant; no prior written or prior contemporaneous oral promises or representations shall be binding. This Lease shall not be amended, changed or extended except by written instrument signed by both parties hereto. The provisions of this Lease shall be binding upon and inure to the benefit of the heirs, personal representatives, successors and assigns of the parties, but this provision shall in no way alter the restriction herein in connection with assignment, subletting and other transfer by Tenant.

EXECUTED in multiple counterparts, each of which shall have the force and effect of an original, on the date specified in Paragraph 1.A. hereof.

LANDLORD:

ADDISON CIRCLE ONE, LTD.,  
a Texas limited partnership

By: Columbus Realty Trust, a Texas  
real estate investment trust, general Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

TENANT:

ADDISON CIRCLE ACCESS, INC.,  
a Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title \_\_\_\_\_

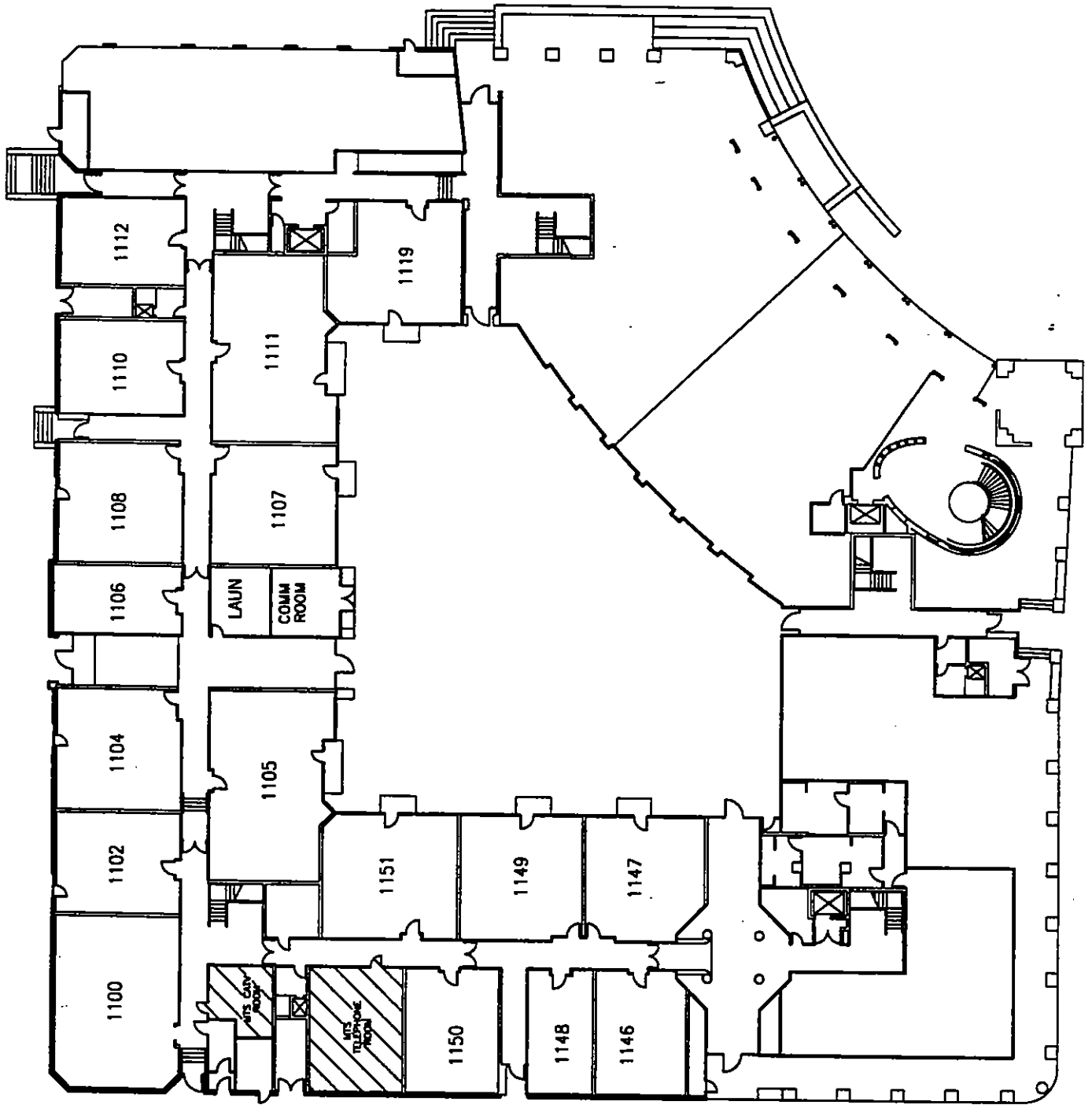
DA963100204  
082297 v11  
186:3012-96

EXHIBIT A

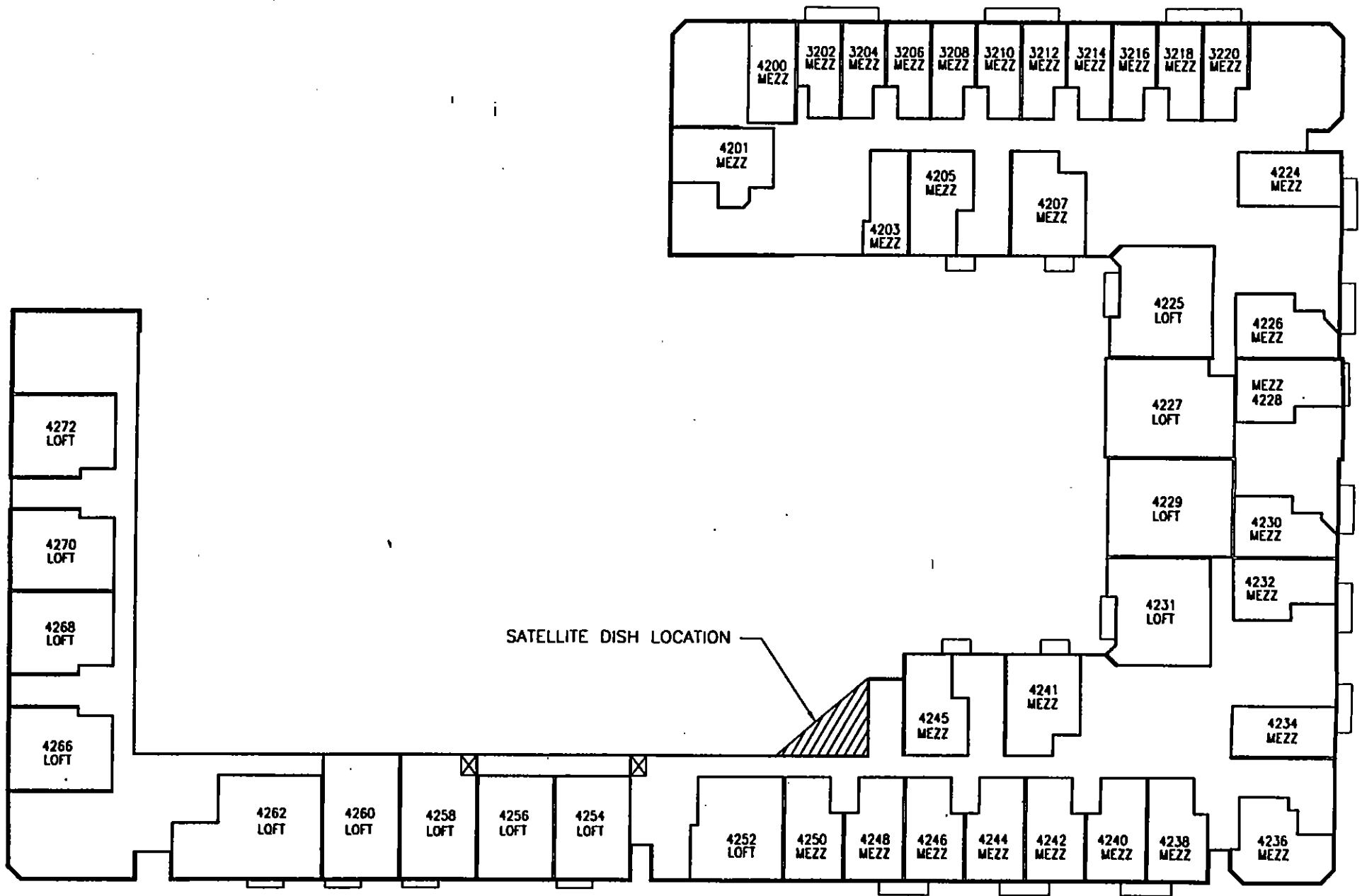
[Attach Floor Plan of the Leased Premises]

DA963100204

Exhibit A



BUILDING A (FIRST FLOOR)



BUILDING B (5th FLOOR)

EXHIBIT "B"

Lots 1, 2 and 4, Block B of Addison Circle Phase I, an addition to the Town of Addison, Dallas County, Texas, pursuant to Final Plat thereof recorded in Volume 97101, Page 5801, Map Records of Dallas County, Texas.

DA971840088  
070397 v1  
186:3012-65

EXHIBIT "C"

Street Use and Rental Agreement

840599

04/30/97 445109 163.00  
Book

63

STATE OF TEXAS §  
§  
COUNTY OF DALLAS §

**STREETS USE AND RENTAL AGREEMENT**

This Streets Use and Rental Agreement is entered into this 23<sup>rd</sup> day of July, 1996 by and between the Town of Addison, Texas (the "City") and Addison Circle Access, Inc., a Texas corporation ("Grantee").

**RECITALS**

WHEREAS, Addison Circle One, Ltd., a Texas limited partnership (the "Partnership"), is the owner of certain real property described in Exhibit A attached hereto and incorporated herein ("Phase I"), and Gaylord Properties, Inc., a Texas corporation ("Gaylord") is the owner of certain real property adjacent to Phase I described in Exhibit B attached hereto and incorporated herein (the "Gaylord Property"; Phase I and the Gaylord Property are hereinafter collectively referred to together as the "Property"); and

WHEREAS, Columbus Realty Trust, a Texas real estate investment trust ("Columbus") and Gaylord are the partners in the Partnership and have previously worked with the City in regard to zoning for and the development of the Property, which development is to include a mix of uses including multi-family residential, retail, office and civic uses within an urban framework; and

WHEREAS, Columbus and Gaylord are the sole shareholders of Grantee; and

WHEREAS, in conjunction with the development of the Property, Columbus and Gaylord desire to permit certain utility services to the Property to be provided through a privately-owned utility system, such services including, but not being limited to, the transmission of electricity, natural gas, steam, video signals, audio signals, telephone signals and data; and

WHEREAS, Grantee will not be directly providing utility service but will, in accordance with the terms of this Agreement, be assigning its rights, duties and obligations hereunder to private utility providers.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City and Grantee do hereby contract and agree as follows:

Section 1. Incorporation of premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

Section 2. Definitions. For the purpose of this Agreement, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

4/30/97



- A. "Affiliate" means a corporate parent of either Gaylord or Columbus owning more than 50% of the shares of Gaylord or Columbus, a partnership or joint venture in which Gaylord or Columbus owns an interest of more than 50%, or a subsidiary entity of Gaylord or Columbus in which Gaylord or Columbus own a more than 50% interest.
- B. "Agreement Date" means the 23<sup>rd</sup> day of July, 1996.
- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of Gross Revenues received by Grantee or any private utility provider during the year from the operation of the System.
- D. "Cable television system" means a system of antennae, cables, wires, lines, towers, satellites, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the Property.
- E. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- F. "Company" or "Grantee" shall mean Access and its successors and assigns.
- G. "Compensation Year" means each calendar year during the term of this Agreement in which General Compensation is paid by Grantee to the City.
- H. "Day or days" shall mean a calendar day or days.
- I. "General Compensation" means the amount Grantee is required to pay City under Section 9.B. of this Agreement.
- J. "Gross Revenue" shall mean all receipts collected and revenue received by the Grantee and any private utility provider for all utility operations and services within the Property as well as any other revenue arising from the operation or possession of this Agreement. By way of example:
- (1) With respect to telephone utility service and without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to Grantee by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties;
  - (2) With respect to cable television service and without limitation, "Gross Revenue" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Grantee, arising from or

attributable to operation within the Property of the cable television system, including not limited to:

- (a) revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including leased access fees);
- (b) revenue from all charges for the insertion of commercial advertisements upon the cable television system;
- (c) revenue from all charges for the leased use of studios located on the Property;
- (d) revenues from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable television system and the provision of subscriber and other services;
- (e) the sale, exchange or use or cablecast of any programming developed for community use or institutional users; and
- (f) revenue from any and all data transmission and telecommunication.

Gross Revenue does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursement.

- K. "Private utility provider" means the holder of a license or right from Grantee to provide utility service as set forth in Section 16.A. hereof.
- L. "Property" means Phase I and the Gaylord Property, as described in the premises above.
- M. "System" means the utility system installed or acquired and maintained by the Grantee or a private utility provider as described in Section 3 of this Agreement.

**Section 3. Grant of Certain Rights.** The City hereby grants to Grantee the non-exclusive right and privilege to construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under those public streets, alleys and rights-of-way within the Property, a System for certain utility services including, but not limited to, the transmission of electricity, natural gas, steam, video signals, (e.g. cable television system), audio signals, telephone signals and data. Grantee shall not provide services directly regulated by the Texas Public Utility Commission ("PUC"), the Texas Natural Resources Conservation Commission ("TNRCC"), or any other applicable state or federal commission or agency, unless authorized by the PUC, the TNRCC, other state or federal commission or agency, state or federal law. This grant is made to Grantee solely for the purpose of directly serving its end-user customers.

**Section 4. Construction, maintenance, expansion, reconstruction, and excavation.**

A. The construction, expansion, reconstruction, excavation, use, maintenance and operation of the System and other property used in connection therewith shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, at least thirty (30) days prior to the commencement of construction or maintenance within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

B. Upon request of the City, Grantee shall remove and abate any portion of the System that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the System.

C. Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this Agreement. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

D. Within thirty (30) days of completion of each segment of the System, Grantee shall supply the City with a complete set of "as built" drawings for that segment, shall keep a copy of all "as built" drawings at a location within the Property and shall notify the City of that location. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall obtain the City's approval before any system changes are made.

**Section 5. Term of Agreement.** Upon the filing with the City by the Grantee of the acceptance required herein, this Agreement shall be in full force and effect for a term and period of twenty (20) years, beginning on the Agreement Date. This Agreement shall be automatically renewed for one subsequent twenty (20) year period unless either party shall file at least ninety (90) day prior written notice of cancellation to the other.

**Section 6. Construction work regulation by City and underground conduit used by City.**

A. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the System shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place the System facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such future requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

B. Subject to reasonable availability and agreement between the parties concerning maintenance, access and security, Grantee may be required by the City to construct portions of the System, or all of the System, underground, or to share duct trench space owned and maintained by any other person or entity upon reasonable, non-discriminatory terms and at fair market value. The intent of this section is to encourage shared use of the infrastructure and decrease excavation of the City's rights-of-way.

C. Any facilities of other persons or entities that are attached to or within the System facilities shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the System or other persons or entities using the System. Grantee shall not be required to share trench space with any other person or entity franchised by the City, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

Provided, however, nothing herein shall modify or abrogate the power of the City to require the Grantee or any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise or street rental agreement pursuant to the City Charter.

**Section 7. Work by others, construction by abutting owners, alteration to conform with public improvement.**

A. The City reserves the right to lay and permit to be laid, sewer, gas, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk

or the grade of any street or other public right-of-way. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully or directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's System. All work performed will be in accordance with the City manual for Utility Location and Coordination.

B. In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of the System, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

C. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of the System thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its System facilities entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its System facilities, or to alter, relocate or change its System facilities to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its System facilities, or in any way or manner to alter, relocate or change its System facilities to enable any other entity or person, except for the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which may be caused by, or arise out of such change, alteration or relocation of the System facilities; provided, however, that the City shall never be liable for such reimbursement.

D. In the event that Grantee has not relocated those of its affected System facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction or reconstruction, the City shall have the right to relocate or cause to be relocated the affected portion of the System, and the Grantee shall reimburse the City for all costs of relocation.

E. During the term of this Agreement, Grantee shall be liable to the City for the acts or omissions of any entity used by Grantee (including an Affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operation of the System as if the acts or omissions of such entity were the acts or omissions of Grantee.

**Section 8. Compliance with City Charter.**

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this Agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

**Section 9. Compensation to the City.**

A. *Acceptance Fee.* Upon the issuance of a certificate of occupancy for any phase or subphase of the Property, the Grantee agrees to pay a one time acceptance fee to the City in the sum of Two Dollars (\$2.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing; provided, however, that this acceptance fee shall not apply to any public street crossing occurring as a part of the initial construction of infrastructure in the development of such phase or subphase.

B. *General Compensation.* For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of the System within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the reservation to the Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as general compensation during each year of this Agreement and for each type of utility service (including but not limited to electric, gas, telephone and cable television) provided through and by the System facilities, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee shall be \$5,000.00.

C. *Calculation and Payment on a Quarterly Basis.* For each type of utility service provided by the Grantee by and through the System, Grantee shall pay to the City for each calendar quarter an amount equal to the greater of:

- (i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or
- (ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorrations shall be made.

D. *Recalculation at end of Compensation Year.* At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said

amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. In addition to the definition of "Gross Revenues" set forth in Section 2 above, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of utilities provided by and through the System installed pursuant to this Agreement, and any related services (as may be applicable) provided by the Grantee within the Property including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis;
- (ii) all telecommunications services charged on a usage sensitive or mileage basis;
- (iii) all revenues from installation service charges;
- (iv) all revenues from connection or disconnection fees;
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
- (vi) all revenues from equipment sold or rented to customer upon customer premises;
- (vii) all revenues from local service;
- (viii) all revenues from authorized rental of conduit space;
- (ix) all revenues from authorized rentals of any portion of the System, including plant, facilities, or capacity leased to others;
- (x) unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this Agreement or otherwise.

Grantee shall file annually with the City's Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) for each type of utility service provided attributable to the operations of the System pursuant to this Agreement. This statement shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by a certified public accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

**Section 10. Accounts and other records and reports and investigations.**

A. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of the System, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

B. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 9.

In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 9, it will file with the City Secretary a sworn copy of a report in a form to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 9. The City may, if it sees fit, have the books and records of Grantee examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.

C. Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

D. Grantee shall provide the City with access at reasonable times and for reasonable purposes to examine, audit, and review Grantee's books, accounts, documents, maps, plans and other records pertaining to this Agreement. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

E. The City may, at any time, make inquiries pertaining to the operation of the System, and Grantee shall respond to such inquiries on a timely basis.

F. Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission, Texas Public Utility Commission, Texas Natural Resources Conservation Commission, other relevant commission or agency, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or



the utility operations authorized pursuant to this Agreement. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

**Section 11. Rules and regulations.**

A. The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operation of the System.

B. In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

C. - The City reserves the right to regulate the rates, charges and fees of Grantee as the City may be now or hereafter authorized or empowered to so regulate after notice and hearing to Grantee.

**Section 12. Insurance.**

A. Grantee shall obtain and maintain in full force and effect throughout the term of this Agreement, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of the execution of this Agreement. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof, and to adjust insurance coverage and their limits when reasonably deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

B. Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

TYPE	AMOUNT
(1) Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
(2) Commercial General (public) Liability, - to include coverage for the following where the exposure exists:	

- |     |   |   |
|-----|---|---|
| (a) | Premises operations                                 | Combined single limit for bodily injury and property damages \$3,000,000 per occurrence or its equivalent |
| (b) | Independent contractors                             |   |
| (c) | Products/completed                                  |   |
| (d) | Personal injury                                     |   |
| (e) | Contractual liability                               |   |
| (f) | Explosion, collapse and underground property damage |   |
- (3) Comprehensive automobile insurance coverage for loading and unloading hazards, for:
- |     |                          |  |
|-----|--------------------------|--|
| (a) | Owned/leased automobiles | Combined single limit for bodily injury and property damage \$1,000,000 per occurrence or its equivalent |
| (b) | Non-owned automobiles    |  |
| (c) | Hired automobiles        |  |

C. The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

D. Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

- (1) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
- (2) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
- (3) Provide for notice to the Director of Finance by certified mail; and
- (4) Provide that all provisions of the Agreement, as amended, concerning liability, duty, and standard of care, including the Indemnity of this Agreement, shall be

underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this Agreement, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

F. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

G. The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.

H. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

Section 13. Indemnity by Grantee. Grantee shall indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees, for any injury to or the death of any person or damage to or destruction of any property resulting from or based upon, in whole or in part, any act or omission of Grantee, its officers, employees, agents, contractors, assignees, licensees, permittees, or subcontractors under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

Section 14. Violations. If the City has reason to believe that Grantee is in violation of this Agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within thirty (30) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this Agreement, any City Charter provisions, or any ordinances lawfully regulating Grantee in the construction and operation of its System is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this Agreement and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including (a) forfeiture of this Agreement in the event of a substantial breach

under Section 15, and (b) a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

#### Section 15. Termination.

A. In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to terminate this Agreement, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure provided in Section 14, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

- (1) Grantee's violation of any material provision of the Agreement or any material rule, order, regulation or determination of the City made pursuant to this Agreement;
- (2) Grantee's failure to properly compensate the City as required in this Agreement;
- (3) Grantee's attempt to evade any material provision of the Agreement or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;
- (4) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this Agreement without City Council approval, except as may be permitted by this Agreement;
- (5) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner; or
- (6) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the Agreement to Grantee.

B. This Agreement and the easements created hereunder may be terminated in the event Grantee abandons the use of the public rights-of-way for the purposes set forth herein. Such abandonment may be evidenced by notice from Grantee stating that Grantee is abandoning, as of the date set forth in the notice, this Agreement and the easements created hereunder.

Section 16. Miscellaneous.

A. *Assignment; successors.*

(1) Grantee shall have the right to license or otherwise permit private utility providers use of the rights, privileges, duties and obligations granted to and assumed by Grantee pursuant to this Agreement, provided that issuance of any such license or permit or other method of conveyance of any rights or obligations hereunder shall not release or relieve Grantee of its obligations to the City pursuant to this Agreement and shall be subject to the following:

(a) No such license, permit, or other method of conveyance of any of the rights and obligations hereunder shall be effective until such time as the same has been approved by the City Council or the City Manager, which approval shall not be unreasonably withheld.

(b) Any such license, permit, or other method of conveyance shall provide that the holder thereof shall comply with and be subject to all terms and conditions of this Agreement.

(2) Except as provided in paragraph A(1) of this Section 16, neither this Agreement, the assets held by Grantee for use under this Agreement, any rights or privileges of Grantee under this Agreement, Grantee's capacity in the System, or allowance of access to the System, either separately or collectively, shall be sold, resold, assigned, transferred or otherwise conveyed by Grantee to any other person or firm, except an Affiliate, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this Agreement or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this Agreement, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the City. Grantee may assign this Agreement to an Affiliate during the term of this Agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement, the agreement purchased shall be canceled and merged into one or the other agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this Agreement, or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material or substantial breach and, in accordance with Section 15, revoke this Agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

B. *Force Majeure.* In the event either the City or Grantee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hinderance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall

promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

C. *Notices.* Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested, and addressed to:

To the City:

Town of Addison, Texas  
P.O. Box 144  
Addison, Texas 75001

Attn: City Manager

To Grantee:

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248

Attn: President

D. *Governing Law; Venue.* This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this agreement are performable in Dallas County, Texas. Venue for any action under this Agreement shall be in Dallas County, Texas.

E. *Legal Construction.* In case any one or more of the provisions contained in this Street License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

F. *Entire Agreement.* This Assignment Agreement represents the entire and integrated agreement between the City and Grantee relative to encroachments into the public rights-of-way as described herein supersedes all prior negotiations, representations and/or agreements, either written or oral.

G. *Amendment.* This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and Grantee.

H. *Authority to execute.* The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Street License Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

ADDISON CIRCLE ACCESS INC.

By: Ron Whitehead  
Ron Whitehead, City Manager

By: [Signature]  
Its: General Partner

ATTEST:

By: C Moran  
Carmen Moran, City Secretary

EXHIBIT "A"

Property Description

TRACT:

BEING a tract of land situated in the G.W. Fisher Survey, Abstract No. 482, in the Town of Addison, Dallas County, Texas, and being a portion of Lots 5, 6, 7, and 8 of Block D, of Julian's Addition, an addition to the Town of Addison as recorded in Volume 1, Page 538 of the Map Records of Dallas County, Texas, and being a portion of a tract of land as recorded in Volume 84151, Page 3619 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found at the intersection of the north right-of-way line of the St. Louis and Southwestern Railroad a 100' right-of-way with the west right-of-way line of Quorum Drive as established by instrument to the Town of Addison as recorded in Volume 82093, Page 1073 of the Deed Records of Dallas County, Texas.

THENCE, S 66 degrees 45 minutes 00 seconds West along the north right-of-way line of the St. Louis and Southwestern Railroad a distance of 14.16 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap:

THENCE, North 00 degrees 08 minutes 00 seconds East a distance of 136.90 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap at the beginning of a curve to the right having a radius of 1,485.39 feet:

THENCE, along said curve to the right in a northerly direction through a central angle of 04 degrees 59 minutes 05 seconds, an arc distance of 129.23 feet, being subtended by a chord bearing North 02 degrees 37 minutes 33 seconds East, and is 129.19 feet in length to a 1/2 inch iron rod set with "Huit-Zollars" cap at the end of said curve;

THENCE, North 89 degrees 58 minutes 21 seconds West a distance of 412.81 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap in the east line of a 20 foot alley in Block D in said Julian's Addition:

THENCE, North 00 degrees 01 minutes 39 seconds East along the East line of said 20 foot alley a distance of 298.45 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap in the south right-of-way line of Mildred Street as established by instrument to the Town of Addison, Texas as recorded in Volume 91118, Page 1567 of the Deed Records of Dallas County, Texas;

THENCE, South 89 degrees 49 minutes 12 seconds East along the south right-of-way line of Mildred Street a distance of 209.14 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap at the beginning of a curve to the right having a radius of 776.03 feet;

THENCE, continuing along said south right-of-way line in a easterly direction and along said curve to the right through a central angle of 07 degrees 00 minutes 45 seconds, an arc distance



THENCE, South 89 degrees 57 minutes 01 seconds West along a north line of said Addison Conference Center plat a distance of 80.89 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap;

THENCE, North 00 degrees 06 minutes 05 seconds West along an east line of said plat a distance of 202.59 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap at the most northerly northeast corner of said plat;

THENCE, South 89 degrees 53 minutes 55 seconds West along the north line of said plat a distance of 25.00 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap;

THENCE North 00 degrees 06 minutes 05 seconds West a distance of 61.46 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap;

THENCE South 89 degrees 04 minutes 47 seconds East a distance of 171.11 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap;

THENCE North 00 degrees 55 minutes 13 seconds East a distance of 235.00 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap;

THENCE North 89 degrees 04 minutes 47 seconds West a distance of 64.50 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap;

THENCE North 00 degrees 55 minutes 13 seconds East a distance of 61.00 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap;

THENCE South 89 degrees 04 minutes 47 seconds East a distance of 484.50 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap on the west right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1073 of the Deed Records of Dallas County, Texas;

THENCE South 00 degrees 55 minutes 13 seconds West along the west right-of-way line of Quorum Drive a distance of 601.16 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap at the beginning of a curve to the right having a radius of 1,392.39 feet;

THENCE continuing along said west right-of-way line and along said curve to the right through a central angle of 06 degrees 05 minutes 10 seconds, an arc distance of 147.90 feet, being subtended by a chord which bears South 03 degrees 57 minutes 48 seconds West, and is 147.83 feet in length to a 1/2 inch iron rod found with "Huit-Zollars" cap;

THENCE South 07 degrees 00 minutes 23 seconds West continuing along the west right-of-way line of Quorum Drive a distance of 12.27 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap in the said north right-of-way line of Mildred Street;

THENCE North 82 degrees 48 minutes 27 seconds West along the North right-of-way line of Mildred Street a distance of 155.53 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap at the beginning of a curve to the left having a radius of 856.03 feet;

THENCE, in a westerly direction along said curve to the left through a central angle of 07 degrees 00 minutes 45 seconds, an arc distance of 104.77 feet, being subtended by a chord which bears North 86 degrees 18 minutes 50 seconds West, and is 104.71 feet in length to a 1/2 inch iron rod found with "Huit-Zollars" cap;

THENCE, North 89 degrees 49 minutes 12 seconds West continuing along the north right-of-way line of Mildred Street a distance of 209.35 feet to the POINT OF BEGINNING and CONTAINING 8.413 acres of land, more or less.

TRACT 3:

BEING a tract of land situated in the G.W. Fisher Survey, Abstract No. 482, in the Town of Addison, Dallas County, Texas, and being a portion of a tract of land as recorded in Volume 84151, Page 3619 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

COMMENCING at a 1/2 inch iron rod found with "Huit-Zollars" cap at the intersection of the north right-of-way line of the St. Louis and Southwestern Railroad, a 100 foot wide right-of-way, with east right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1077 of the Deed Records of Dallas County, Texas;

THENCE North 00 degrees 08 minutes 00 seconds East along the east right-of-way line of Quorum Drive a distance of 96.69 feet to a 1/2 inch iron rod found with "Huit-Zollars" cap at the beginning of a curve to the right having a radius of 1392.39 feet;

THENCE continuing along said east right-of-way line of Quorum Drive and along said curve to the right through a central angle of 06 degrees 52 minutes 23 seconds, an arc distance of 167.03 feet, being subtended by a chord which bears North 03 degrees 34 minutes 12 seconds East, and is 166.93 feet in length to a 1/2 inch iron rod found with "Huit-Zollars" cap;

THENCE North 07 degrees 00 minutes 23 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 143.16 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap at the POINT OF BEGINNING;

THENCE North 07 degrees 00 minutes 23 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 176.10 feet to a 1/2 inch iron rod set with "Huit-Zollars" cap at the beginning of a curve to the left having a radius of 1,472.39 feet;

THENCE continuing along said east right-of-way line of Quorum Drive and along said curve to the left through a central angle of 02 degrees 47 minutes 48 seconds, an arc distance of 71.87 feet, being subtended by a chord which bears North 05 degrees 36 minutes 29 seconds East, and is 71.87 feet in length to a 1/2 inch iron rod set with "Huit-Zollars" cap, said rod being the beginning of a non-tangent curve to the right having a radius of 130.00 feet;

THENCE departing said east right-of-way line in a southerly direction along said curve to the right through a central angle of 144 degrees 58 minutes 13 seconds, an arc distance of 328.93 feet, being subtended by a chord which bears South 06 degrees 36 minutes 04 seconds West, and is 247.95 feet in length to the POINT OF BEGINNING and CONTAINING 0.3754 acres of land, more or less.

DA953420283  
121195661  
188 3012-37

of 94.98 feet, being subtended by a chord which bears South 86 degrees 18 minutes 50 seconds East, and is 94.92 feet in length to a 1/2 inch iron rod found with "Huitt-Zollars" cap;

THENCE, South 82 degrees 48 minutes 27 seconds East continuing along said right-of-way line a distance of 155.79 feet to a 1/2 inch iron rod found with "Huitt-Zollars" cap in the said west right-of-way line of Quorum Drive;

THENCE, South 07 degrees 00 minutes 23 seconds West along the said west right-of-way line of Quorum Drive a distance of 226.99 feet to a 1/2 inch iron rod found with "Huitt-Zollars" cap at the beginning of a curve to the left having a radius of 1,472.39 feet;

THENCE, continuing along said west right-of-way line and along said curve to the left through a central angle of 06 degrees 52 minutes 23 seconds, an arc distance of 176.62 feet, being subtended by a chord which bears South 03 degrees 34 minutes 11 seconds West, and is 176.52 feet in length to a 1/2 inch iron rod found with "Huitt-Zollars" cap;

THENCE, South 00 degrees 08 minutes 00 seconds West continuing along said west right-of-way line a distance of 131.28 feet to the POINT OF BEGINNING and CONTAINING 3.051 acres of land, more or less.

TRACT 2:

BEING a tract of land situated in the G.W. Fisher Survey, Abstract No. 482, in the Town of Addison, Dallas County, Texas, and being a portion of Lots 2 and 3 of Block F, of Julian's Addition, an addition to the Town of Addison as recorded in Volume 1, Page 538 of the Map Records of Dallas County, Texas, and being a portion of three tracts of land as recorded in Volume 82020, Page 0688 and Volume 84151, Page 3619 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found with "Huitt-Zollars" cap at the intersection of the east line of a 20 foot alley in Block F of said addition with the north right-of-way line of Mildred Street as established by instrument to the Town of Addison, Texas as recorded in Volume 91118, Page 1567 of the Deed Records of Dallas County, Texas, said point also being on a platted east line of Addison Conference Center - Addison Conference Theater plat as recorded in Volume 90241, Page 2807 of the Deed Records of Dallas County, Texas;

THENCE, North 00 degrees 01 minute 39 seconds East along the east line of said 20 foot alley and the east line of said Addison Conference Center plat a distance of 183.48 feet to a one-inch iron rod found at the most southerly northeast corner of said Addison Conference Center plat;

EXHIBIT "B"

Tract 2

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 452, in the Town of Addison, Dallas County, Texas, and being part of two tracts of land standing in the name of Opubco Properties, Inc. as evidenced by instruments recorded in Volume 82020, Page 0684, and Volume 82020, Page 0688, all of the Deed Records of Dallas County, Texas and being more particularly described as follows:

COMMENCING at a one-half inch iron rod found with "Huit-Zollars" cap at the intersection of the east line of a 20 foot alley in Block F of Julian's Addition, an addition to the Town of Addison, as recorded in Volume 1, Page 338 of the Map Records of Dallas County, Texas, with the north right-of-way line of Mildred Street as established by instrument to the Town of Addison, Texas as recorded in Volume 91118, Page 1567 of the Deed Records of Dallas County, Texas, said point also being in a platted east line of Addison Conference Center - Addison Centre Theater plat as recorded in Volume 90241, Page 2307 of the Deed Records of Dallas County, Texas;

THENCE, North 00 degrees 01 minute 39 seconds East along the east line of said 20 foot alley and the east line of said Addison Conference Center plat a distance of 183.48 feet to a one-inch iron rod found at the most southerly northeast corner of said Addison Conference Center plat;

THENCE, South 89 degrees 57 minutes 01 seconds West along a north line of said Addison Conference Center plat a distance of 80.89 feet to a one-half inch iron rod found with "Huit-Zollars" cap;

THENCE, North 00 degrees 06 minutes 05 seconds West along an east line of said plat a distance of 202.59 feet to a P.K. nail found in concrete base of fence post at the most northerly northeast corner said plat;

THENCE, South 89 degrees 53 minutes 55 seconds West along the north line of said plat a distance of 25.00 feet to a one-half inch iron rod found with "Huit-Zollars" cap for the POINT OF BEGINNING;

THENCE, continuing South 89 degrees 53 minutes 55 seconds West along the north line of said plat a distance of 259.57 feet to a one-half inch iron rod found with "Huit-Zollars" cap in the west line of said Opubco Properties, Inc. as recorded in Volume 82020, Page 0688;

THENCE, North 00 degrees 12 minutes 25 seconds East along the west line of said Opubco tract a distance of 850.70 feet to a P.K. nail found in concrete base of fence post at the northwest corner of said Opubco tract;

THENCE, South 89 degrees 05 minutes 45 seconds East along the north line of the last mentioned Opubco tract and the north line of the Opubco tract as recorded in Volume 82020, Page 0684 a distance of 860.14 feet to a one-half inch iron rod found with "Huit-Zollars" cap on the west right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1073 of the Deed Records of Dallas County, Texas;

THENCE, South 00 degrees 55 minutes 13 seconds West along the west right-of-way line of Quorum Drive a distance of 488.80 feet to a one-half inch iron rod found with "Huit-Zollars" cap for a corner;

THENCE, North 89 degrees 04 minutes 47 seconds West a distance of 484.20 feet to a one-half inch iron rod found with "Huit-Zollars" cap;

EXHIBIT "B"

Tract 1

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 482, in the Town of Addison, Dallas County, Texas, and being all of Lots 11, 12, and 13, of Block B, and a portion of Lot 5 of Block D, in Julian's Addition, an addition to the Town of Addison, as recorded in Volume 1, Page 338 of the Map Records of Dallas County, Texas, also being a portion of Clara Street as abandoned by the Town of Addison as evidenced by instrument recorded in Volume 91118, Page 1571 of the Deed Records of Dallas County, Texas, and being part of a tract of land standing in the name of Opubco Properties, Inc. as evidenced by instrument recorded in Volume 84151, Page 3619 of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a one-half inch iron rod found at the intersection of the north right-of-way line of the Dallas Area Rapid Transit Property Acquisition Corporation as evidenced by instrument recorded in Volume 91008, Page 1390 of the Deed Records of Dallas County, Texas, formerly the St. Louis and Southwestern Railroad right-of-way, a 100 foot wide right-of-way, with the east line of a 20 foot alley in Block B of said addition;

THENCE, North 00 degrees 01 minute 39 seconds East along the east line of said 20 foot alley a distance of 440.92 feet to a one-half inch iron rod found with "Huit-Zollars" cap for a corner;

THENCE, South 89 degrees 58 minutes 21 seconds East a distance of 412.81 feet to a one-half inch iron rod found with "Huit-Zollars" cap at the beginning of a non-tangent curve to the left having a radius of 1,485.39 feet;

THENCE, along said curve to the left through a central angle of 04 degrees 39 minutes 05 seconds, an arc distance of 129.23 feet, being subtended by a chord which bears South 02 degrees 37 minutes 33 seconds West, and is 129.19 feet in length to a one-half inch iron rod found with "Huit-Zollars" cap;

THENCE, South 00 degrees 08 minutes 00 seconds West a distance of 136.90 feet to a one-half inch iron rod found with "Huit-Zollars" cap on the north right-of-way line of said Dallas Area Rapid Transit tract (formerly the St. Louis and Southwestern Railroad right-of-way);

THENCE, South 66 degrees 45 minutes 00 seconds West along north right-of-way line of said Dallas Area Rapid Transit tract (formerly the St. Louis and Southwestern Railroad right-of-way) a distance of 442.74 feet to the POINT OF BEGINNING and CONTAINING 3.307 acres of land more or less.

Basis of bearing is the bearing of North 89 degrees 49 minutes 12 seconds West along the north right-of-way line of Mildred Street as recorded in Volume 95249, Page 1591 of the Deed Records of Collin County, Texas.

THENCE, South 00 degrees 55 minutes 13 seconds West a distance of 61.00 feet to a one-half inch iron rod found with "Hain-Zollars" cap;

THENCE, South 89 degrees 04 minutes 47 seconds East a distance of 64.50 feet to a one-half inch iron rod found with "Hain-Zollars" cap;

THENCE, South 00 degrees 55 minutes 13 seconds West a distance of 235.00 feet to a one-half inch iron rod found with "Hain-Zollars" cap;

THENCE, North 89 degrees 04 minutes 47 seconds West a distance of 171.11 feet to a one-half inch iron rod found with "Hain-Zollars" cap;

THENCE, South 00 degrees 06 minutes 03 seconds East a distance of 61.46 feet to the POINT OF BEGINNING and CONTAINING 12.842 acres of land more or less.

Basis of bearing is the bearing of North 89 degrees 49 minutes 12 seconds West along the north right-of-way line of Mildred Street as recorded in Volume 95249, Page 1591 of the Deed Records of Collin County, Texas.

EXHIBIT "B"

Tract 3

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 482, in the Town of Addison, Dallas County, Texas, and being part of two tracts of land standing in the name of Opubco Properties, Inc. as evidenced by instruments recorded in Volume 84131, Page 3619, and Volume 82020, Page 0684 all of the Deed Records of Dallas County, Texas and being more particularly described as follows:

BEGINNING at a one-half inch iron rod set with "Huit-Zollars" cap at the intersection of the north right-of-way line of the Dallas Area Rapid Transit Property Acquisition Corporation as evidenced by instrument recorded in Volume 91002, Page 1590 of the Deed Records of Dallas County, Texas, formerly the St. Louis and Southwestern Railroad right-of-way, a 100 foot wide right-of-way, with east right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1077 of the Deed Records of Dallas County, Texas;

THENCE, North 00 degrees 08 minutes 00 seconds East along the east right-of-way line of Quorum Drive a distance of 96.69 feet to a one-half inch iron rod set with "Huit-Zollars" cap at the beginning of a curve to the right having a radius of 1,392.39 feet;

THENCE, continuing along said east right-of-way line of Quorum Drive and along said curve to the right through a central angle of 06 degrees 52 minutes 23 seconds, an arc distance of 167.03 feet, being subtended by a chord which bears North 03 degrees 34 minutes 12 seconds East, and is 166.93 feet in length to a one-half inch iron rod set with "Huit-Zollars" cap;

THENCE, North 07 degrees 00 minutes 23 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 147.16 feet to a one-half inch iron rod set with "Huit-Zollars" cap at the beginning of a non-tangent curve to the left having a radius of 130.00 feet;

THENCE, departing said east right-of-way line of Quorum Drive and along said curve to the left through a central angle of 144 degrees 58 minutes 13 seconds, an arc distance of 378.93 feet, being subtended by a chord which bears North 06 degrees 36 minutes 04 seconds East, and is 247.93 feet in length to a one-half inch iron rod set with "Huit-Zollars" cap on said east right-of-way line of Quorum Drive, said point being the beginning of a non-tangent curve to the left having a radius of 1,472.39 feet;

THENCE, continuing along said east right-of-way line of Quorum Drive and along said curve to the left through a central angle of 03 degrees 17 minutes 22 seconds, an arc distance of 84.53 feet, being subtended by a chord which bears North 02 degrees 33 minutes 34 seconds East and is 84.32 feet in length to a one-half inch iron rod set with "Huit-Zollars" cap for the point of tangency of said curve;

THENCE, North 00 degrees 35 minutes 13 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 1,089.99 feet to a one-half inch iron rod found with "Huit-Zollars" cap in the north line of said Opubco tract as recorded in Volume 82020, Page 0684;

THENCE, South 89 degrees 05 minutes 45 seconds East along the north line of said Opubco tract a distance of 343.33 feet to a 18" hackberry tree, from which a one-half inch iron rod found with "random" cap bears North 89 degrees 05 minutes 45 seconds West a distance of 2.00 feet;



THENCE, South 00 degrees 55 minutes 13 seconds West a distance of 763.98 feet to a point for a corner;

THENCE, South 89 degrees 04 minutes 47 seconds East a distance of 34.50 feet to a one-half inch iron rod set with "Huin-Zollars" cap for a corner;

THENCE, South 00 degrees 55 minutes 13 seconds West a distance of 218.98 feet to a one-half inch iron rod set with "Huin-Zollars" cap for a corner;

THENCE, North 72 degrees 58 minutes 59 seconds East a distance of 84.75 feet to a one-half inch iron rod set for the beginning of a curve to the right having a radius of 101.50 feet;

THENCE, along said curve to the right through a central angle of 57 degrees 31 minutes 27 seconds, an arc distance of 101.90 feet, being subtended by a chord which bears South 78 degrees 15 minutes 17 seconds East and is 97.68 feet in length to a one-half inch iron rod set with "Huin-Zollars" cap;

THENCE, North 72 degrees 58 minutes 59 seconds East a distance of 400.69 feet to a one-half inch iron rod set with "Huin-Zollars" cap on the east line of said Opubco tract recorded in Volume 82020, Page 0684 and the west right-of-way line of Dallas Parkway;

THENCE, South 00 degrees 29 minutes 00 seconds East continuing along the east line of said Opubco tract and the west right-of-way line of Dallas Parkway a distance of 187.22 feet to a one-half inch iron rod found at the southeast corner of last mentioned Opubco tract, said corner also being on the north line of the Opubco tract as recorded in Volume 84151, Page 3619;

THENCE, South 89 degrees 59 minutes 39 seconds East continuing along the west right-of-way line of Dallas Parkway and along the north line of last mentioned Opubco tract a distance of 48.08 feet to a one-half inch iron rod found with a "Huin-Zollars" cap at the northeast corner of said Opubco tract, said corner being the beginning of non-tangent curve to the left having a radius of 2,964.79 feet;

THENCE, continuing along the east line of said Opubco tract and along the west line of Dallas Parkway through a central angle of 01 degree 54 minutes 29 seconds, an arc distance of 98.74 feet, and being subtended by a chord bearing South 12 degrees 05 minutes 47 seconds East a distance of 98.73 feet to a one-half inch iron rod found with a "Huin-Zollars" cap;

THENCE, South 13 degrees 03 minutes 02 seconds East continuing along the east line of said Opubco tract and along the west line of Dallas Parkway a distance of 118.29 feet to a one-half inch iron rod found with "Huin-Zollars" cap for the southeast corner of said Opubco tract recorded in Volume 84151, Page 3619, said corner being the intersection of the west right-of-way line of Dallas Parkway with the northwesterly right-of-way line of Dallas Area Rapid Transit Property Acquisition Corporation as evidenced by instrument recorded in Volume 91008, Page 1390 of the Deed Records of Dallas County, Texas;

THENCE, South 66 degrees 45 minutes 00 seconds West along the southeasterly line of said Opubco tract and along the northwesterly right-of-way line of Dallas Area Rapid Transit tract a distance of 1,411.55 feet to the POINT OF BEGINNING and CONTAINING 28.461 acres of land, more or less.

Basis of bearing is the bearing of North 89 degrees 49 minutes 12 seconds West along the north right-of-way line of Mildred Street as recorded in Volume 55249, Page 1591 of the Deed Records of Collin County, Texas.

EXHIBIT "C"

BEING a tract of land situated in the G. W. Fisher Survey, Abstract No. 4KZ, in Town of Addison, Dallas County, Texas, and being a portion of a two tracts of land conveyed to Opusco Properties, Inc. as evidenced by two instruments recorded in Volume 82020, Page 0684 and Volume 84151, Page 3619 of the Deed Records of Dallas County, Texas, and being more particularly described as follows:

BEGINNING at a one-half inch iron rod set with "Huitz-Zollars" cap at the intersection of the north right-of-way line of the Dallas Area Rapid Transit Property Acquisition Corporation as evidenced by instrument recorded in Volume 91008, Page 1390 of the Deed Records of Dallas County, Texas, formerly St. Louis and Southwestern Railroad right-of-way, a 100 foot wide right-of-way, with east right-of-way line of Quorum Drive as established by instrument to the Town of Addison, Texas as recorded in Volume 82093, Page 1077 of the Deed Records of Dallas County, Texas;

THENCE, North 00 degrees 08 minutes 00 seconds East along the east right-of-way line of Quorum Drive a distance of 96.69 feet to a one-half inch iron rod set with "Huitz-Zollars" cap at the beginning of a curve to the right having a radius of 1,392.39 feet;

THENCE, continuing along said east right-of-way line of Quorum Drive and along said curve to the right through a central angle of 06 degrees 52 minutes 23 seconds, an arc distance of 167.03 feet, being subtended by a chord which bears North 03 degrees 34 minutes 12 seconds East, and is 166.93 feet in length to a one-half inch iron rod set with "Huitz-Zollars" cap;

THENCE, North 07 degrees 00 minutes 23 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 143.16 feet to a one-half inch iron rod set with "Huitz-Zollars" cap at the beginning of a non-tangent curve to the left having a radius of 130.00 feet;

THENCE, departing said east right-of-way line of Quorum Drive and along said curve to the left through a central angle of 144 degrees 58 minutes 13 seconds, an arc distance of 328.93 feet, being subtended by a chord which bears North 06 degrees 36 minutes 04 seconds East, and is 247.95 feet in length to a one-half inch iron rod set with "Huitz-Zollars" cap on said east right-of-way line of Quorum Drive, said point being the beginning of a non-tangent curve to the left having a radius of 1,472.39 feet;

THENCE, continuing along said east right-of-way line of Quorum Drive and along said curve to the left through a central angle of 03 degrees 17 minutes 22 seconds, an arc distance of 84.53 feet, being subtended by a chord which bears North 02 degrees 33 minutes 34 seconds East and is 84.52 feet in length to a one-half inch iron rod set with "Huitz-Zollars" cap for the point of tangency of said curve;

THENCE, North 00 degrees 55 minutes 13 seconds East continuing along the east right-of-way line of Quorum Drive a distance of 339.66 feet to a one-half inch iron rod set with "Huitz-Zollars" cap for a corner;

THENCE, South 89 degrees 04 minutes 47 seconds East departing said east right-of-way line of Quorum Drive a distance of 13.00 feet to a one-half inch iron rod set with "Huitz-Zollars" cap for a corner;

THENCE, South 00 degrees 55 minutes 13 seconds West a distance of 34.50 feet to a one-half inch iron rod set with "Huitz-Zollars" cap for a corner;

THENCE, South 89 degrees 04 minutes 47 seconds East a distance of 496.03 feet to a one-half inch iron rod set with "Huit-Zollars" cap for a corner;

THENCE, North 00 degrees 53 minutes 13 seconds East a distance of 21.00 feet to a one-half inch iron rod set with "Huit-Zollars" cap for a corner;

THENCE, South 89 degrees 04 minutes 47 seconds East a distance of 69.00 feet to a one-half inch iron rod set with "Huit-Zollars" cap for a corner;

THENCE, South 00 degrees 53 minutes 13 seconds West a distance of 218.98 feet to a one-half inch iron rod set with "Huit-Zollars" cap for a corner;

THENCE, North 72 degrees 58 minutes 59 seconds East a distance of 84.73 feet to a one-half inch iron rod set for the beginning of a curve to the right having a radius of 101.50 feet;

THENCE, along said curve to the right through a central angle of 57 degrees 31 minutes 27 seconds, an arc distance of 101.90 feet, being subtended by a chord which bears South 78 degrees 15 minutes 17 seconds East and is 97.68 feet in length to a one-half inch iron rod set with "Huit-Zollars" cap;

THENCE, North 72 degrees 58 minutes 59 seconds East a distance of 400.69 feet to a one-half inch iron rod set with "Huit-Zollars" cap on the east line of said Opubco tract recorded in Volume 82020, Page 0684 and the west right-of-way line of Dallas Parkway;

THENCE, South 00 degrees 29 minutes 00 seconds East continuing along the east line of said Opubco tract and the west right-of-way line of Dallas Parkway a distance of 187.22 feet to a one-half inch iron rod found at the southeast corner of last mentioned Opubco tract, said corner also being on the north line of the Opubco tract as recorded in Volume 84151, Page 3619;

THENCE, South 89 degrees 59 minutes 39 seconds East continuing along the west right-of-way line of Dallas Parkway and along the north line of last mentioned Opubco tract a distance of 48.08 feet to a one-half inch iron rod found with a "Huit-Zollars" cap at the northeast corner of said Opubco tract, said corner being the beginning of non-cantant curve to the left having a radius of 2,964.79 feet;

THENCE, continuing along the east line of said Opubco tract and along the west line of Dallas Parkway through a central angle of 01 degree 54 minutes 29 seconds, an arc distance of 98.74 feet, and being subtended by a chord bearing South 12 degrees 05 minutes 47 seconds East a distance of 98.73 feet to a one-half inch iron rod found with a "Huit-Zollars" cap;

THENCE, South 13 degrees 03 minutes 02 seconds East continuing along the east line of said Opubco tract and along the west line of Dallas Parkway a distance of 118.29 feet to a one-half inch iron rod found with "Huit-Zollars" cap for the southeast corner of said Opubco tract recorded in Volume 84151, Page 3619, said corner being the intersection of the west right-of-way line of Dallas Parkway with the northwesterly right-of-way line of Dallas Area Rapid Transit Property Acquisition Corporation as evidenced by instrument recorded in Volume 91008, Page 1390 of the Deed Records of Dallas County, Texas;

THENCE, South 66 degrees 45 minutes 00 seconds West along the southeasterly line of said Opubco tract and along the northwesterly right-of-way line of Dallas Area Rapid Transit tract a distance of 1,411.55 feet to the POINT OF BEGINNING and CONTAINING 18.695 acres of land, more or less.

Basis of bearing is the bearing of North 89 degrees 49 minutes 12 seconds West along the north right-of-way line of Mildred Street as recorded in Volume 95249, Page 1591 of the Deed Records of Dallas County, Texas.

RETURN TO: Andrew Leeds  
NAME: Town of Addison  
ADDRESS: P.O. Box 144  
CITY: Addison Tx 75201

FILED  
97 APR 30 AM 10:06  
E. J. JULLOCK  
COUNTY CLERK  
DALLAS COUNTY

APR 30 1997  
COUNTY OF DALLAS  
CLERK  
E. J. JULLOCK  
COUNTY CLERK  
DALLAS COUNTY

97084 02923

7/23/96

**ORDINANCE NO. 096-037**

**AN ORDINANCE OF THE TOWN OF ADDISON, TEXAS APPROVING A STREET USE AND RENTAL AGREEMENT BY AND BETWEEN THE CITY AND ADDISON CIRCLE ACCESS, INC. IN ORDER TO PERMIT CERTAIN UTILITY SERVICES TO BE PROVIDED THROUGH A PRIVATELY-OWNED UTILITY SYSTEM.**

**WHEREAS**, in conjunction with the development of the property contained in the area known as Addison Circle, Columbus Realty Trust and Gaylord Properties, Inc. are the partners in the Partnership and have previously worked with the City in regard to zoning for and the development of the Property, which development is to include a mix of uses including multi-family residential, retail, office and civic uses within an urban framework; and

**WHEREAS**, Gaylord and Columbus, through Addison Circle One, Ltd. desire to permit certain utility services to the Property to be provided through a privately-owned utility system, such services including, but not being limited to, the transmission of electricity, natural gas, steam, video signals, audio signals, telephone signal and data; and

**WHEREAS**, Addison Circle Access will not be directly providing utility service but will, in accordance with the terms of this agreement, be assigning its rights, duties and obligations hereunder to private utility providers; and

**WHEREAS**, Section 16-39 of the City's Code of Ordinances provides that a person desiring to use a public street for a private utility use must first obtain a license from the City authorizing such use; and

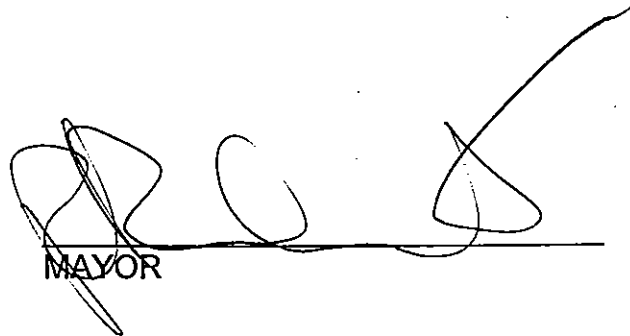
WHEREAS, Section 16-41 of the Code provides that such a license must be granted by ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE TOWN OF ADDISON, TEXAS:

Section 1. The License Agreement by and between the City and the Company, a true and correct copy of which is attached hereto as Exhibit A and incorporated herein, is hereby approved, subject to the final approval of the City Attorney. The City Manager is authorized to execute the Agreement on behalf of the City.

Section 2. This Ordinance shall take effect from and after its date of adoption.

PASSED AND APPROVED by the City Council of the Town of Addison, Texas this 23rd day of July, 1996.



MAYOR

ATTEST:



CITY SECRETARY

PUBLISHED ON:  
OFFICE OF THE CITY SECRETARY

ORDINANCE NO. 096-037

STATE OF TEXAS

§

**EXHIBIT A**

§

**STREETS USE AND RENTAL AGREEMENT**

COUNTY OF DALLAS

§

This Streets Use and Rental Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1996 by and between the Town of Addison, Texas (the "City") and Addison Circle Access, Inc., a Texas corporation ("Grantee").

**RECITALS**

**WHEREAS**, Addison Circle One, Ltd., a Texas limited partnership (the "Partnership"), is the owner of certain real property described in Exhibit A attached hereto and incorporated herein ("Phase I"), and Gaylord Properties, Inc., a Texas corporation ("Gaylord") is the owner of certain real property adjacent to Phase I described in Exhibit B attached hereto and incorporated herein (the "Gaylord Property"; Phase I and the Gaylord Property are hereinafter collectively referred to together as the "Property"); and

**WHEREAS**, Columbus Realty Trust, a Texas real estate investment trust ("Columbus") and Gaylord are the partners in the Partnership and have previously worked with the City in regard to zoning for and the development of the Property, which development is to include a mix of uses including multi-family residential, retail, office and civic uses within an urban framework; and

**WHEREAS**, Columbus and Gaylord are the sole shareholders of Grantee; and

**WHEREAS**, in conjunction with the development of the Property, Columbus and Gaylord desire to permit certain utility services to the Property to be provided through a privately-owned utility system, such services including, but not being limited to, the transmission of electricity, natural gas, steam, video signals, audio signals, telephone signals and data; and

**WHEREAS**, Grantee will not be directly providing utility service but will, in accordance with the terms of this Agreement, be assigning its rights, duties and obligations hereunder to private utility providers.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City and Grantee do hereby contract and agree as follows:

**Section 1. Incorporation of premises.** The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**Section 2. Definitions.** For the purpose of this Agreement, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- A. "Affiliate" means a corporate parent of either Gaylord or Columbus owning more than 50% of the shares of Gaylord or Columbus, a partnership or joint venture in which Gaylord or Columbus owns an interest of more than 50%, or a subsidiary entity of Gaylord or Columbus in which Gaylord or Columbus own a more than 50% interest.
- B. "Agreement Date" means the \_\_\_\_ day of \_\_\_\_\_, 1996.
- C. "Annual Gross Revenue Based Fee" means an amount equal to five percent (5%) of Gross Revenues received by Grantee or any private utility provider during the year from the operation of the System.
- D. "Cable television system" means a system of antennae, cables, wires, lines, towers, satellites, waveguides, or other conductors, converters, amplifiers, headend equipment, master controls, earth stations, equipment and facilities designed and constructed for the purpose of producing, receiving, transmitting, amplifying and distributing audio, video and other forms of electronic or electrical signals within the Property.
- E. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- F. "Company" or "Grantee" shall mean Access and its successors and assigns.
- G. "Compensation Year" means each calendar year during the term of this Agreement in which General Compensation is paid by Grantee to the City.
- H. "Day or days" shall mean a calendar day or days.
- I. "General Compensation" means the amount Grantee is required to pay City under Section 9.B. of this Agreement.
- J. "Gross Revenue" shall mean all receipts collected and revenue received by the Grantee and any private utility provider for all utility operations and services within the Property as well as any other revenue arising from the operation or possession of this Agreement. By way of example:
- (1) With respect to telephone utility service and without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to Grantee by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties;
  - (2) With respect to cable television service and without limitation, "Gross Revenue" means all cash, credits, property of any kind or nature or other consideration derived directly or indirectly by Grantee, arising from or



attributable to operation within the Property of the cable television system, including not limited to:

- (a) revenue from all charges for services provided to subscribers of entertainment and non-entertainment services (including leased access fees);
- (b) revenue from all charges for the insertion of commercial advertisements upon the cable television system;
- (c) revenue from all charges for the leased use of studios located on the Property;
- (d) revenues from all charges for the installation, connection and reinstatement of equipment necessary for the utilization of the cable television system and the provision of subscriber and other services;
- (e) the sale, exchange or use or cablecast of any programming developed for community use or institutional users; and
- (f) revenue from any and all data transmission and telecommunication.

Gross Revenue does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursement.

- K. "Private utility provider" means the holder of a license or right from Grantee to provide utility service as set forth in Section 16.A. hereof.
- L. "Property" means Phase I and the Gaylord Property, as described in the premises above.
- M. "System" means the utility system installed or acquired and maintained by the Grantee or a private utility provider as described in Section 3 of this Agreement.

**Section 3. Grant of Certain Rights.** The City hereby grants to Grantee the non-exclusive right and privilege to construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under those public streets, alleys and rights-of-way within the Property, a System for certain utility services including, but not limited to, the transmission of electricity, natural gas, steam, video signals (e.g. cable television system), audio signals, telephone signals and data. Grantee shall not provide services directly regulated by the Texas Public Utility Commission ("PUC"), the Texas Natural Resources Conservation Commission ("TNRCC"), or any other applicable state or federal commission or agency, unless authorized by the PUC, the TNRCC, other state or federal commission or agency, state or federal law. This grant is made to Grantee solely for the purpose of directly serving its end-user customers.

#### **Section 4. Construction, maintenance, expansion, reconstruction, and excavation.**

A. The construction, expansion, reconstruction, excavation, use, maintenance and operation of the System and other property used in connection therewith shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, at least thirty (30) days prior to the commencement of construction or maintenance within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

B. Upon request of the City, Grantee shall remove and abate any portion of the System that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the System.

C. Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this Agreement. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

D. Within thirty (30) days of completion of each segment of the System, Grantee shall supply the City with a complete set of "as built" drawings for that segment, shall keep a copy of all "as built" drawings at a location within the Property and shall notify the City of that location. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. Grantee shall obtain the City's approval before any system changes are made.

**Section 5. Term of Agreement.** Upon the filing with the City by the Grantee of the acceptance required herein, this Agreement shall be in full force and effect for a term and period of twenty (20) years, beginning on the Agreement Date. This Agreement shall be automatically renewed for one subsequent twenty (20) year period unless either party shall file at least ninety (90) day prior written notice of cancellation to the other.

**Section 6. Construction work regulation by City and underground conduit used by City.**

A. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the System shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place the System facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such future requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

All excavations and other construction in the public streets, alleys; and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

B. Subject to reasonable availability and agreement between the parties concerning maintenance, access and security, Grantee may be required by the City to construct portions of the System, or all of the System, underground, or to share duct trench space owned and maintained by any other person or entity upon reasonable, non-discriminatory terms and at fair market value. The intent of this section is to encourage shared use of the infrastructure and decrease excavation of the City's rights-of-way.

C. Any facilities of other persons or entities that are attached to or within the System facilities shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the System or other persons or entities using the System. Grantee shall not be required to share trench space with any other person or entity franchised by the City, if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.

Provided, however, nothing herein shall modify or abrogate the power of the City to require the Grantee or any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise or street rental agreement pursuant to the City Charter.

**Section 7. Work by others, construction by abutting owners, alteration to conform with public improvement.**

A. The City reserves the right to lay and permit to be laid, sewer, gas, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk

or the grade of any street or other public right-of-way. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully or directly caused by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's System. All work performed will be in accordance with the City manual for Utility Location and Coordination.

B. In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of the System, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

C. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of the System thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its System facilities entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its System facilities, or to alter, relocate or change its System facilities to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its System facilities, or in any way or manner to alter, relocate or change its System facilities to enable any other entity or person, except for the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which may be caused by, or arise out of such change, alteration or relocation of the System facilities; provided, however, that the City shall never be liable for such reimbursement.

D. In the event that Grantee has not relocated those of its affected System facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction or reconstruction, the City shall have the right to relocate or cause to be relocated the affected portion of the System, and the Grantee shall reimburse the City for all costs of relocation.

E. During the term of this Agreement, Grantee shall be liable to the City for the acts or omissions of any entity used by Grantee (including an Affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operation of the System as if the acts or omissions of such entity were the acts or omissions of Grantee.

## Section 8. Compliance with City Charter.

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this Agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

## Section 9. Compensation to the City.

A. *Acceptance Fee.* Upon the issuance of a certificate of occupancy for any phase or subphase of the Property, the Grantee agrees to pay a one time acceptance fee to the City in the sum of Two Dollars (\$2.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing; provided, however, that this acceptance fee shall not apply to any public street crossing occurring as a part of the initial construction of infrastructure in the development of such phase or subphase.

B. *General Compensation.* For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of the System within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the reservation to the Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as general compensation during each year of this Agreement and for each type of utility service (including but not limited to electric, gas, telephone and cable television) provided through and by the System facilities, a sum equal to the greater of the Minimum Annual Fee or Annual Gross Revenue Based Fee. The Minimum Annual Fee shall be \$5,000.00.

C. *Calculation and Payment on a Quarterly Basis.* For each type of utility service provided by the Grantee by and through the System, Grantee shall pay to the City for each calendar quarter an amount equal to the greater of:

- (i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or
- (ii) 5% of Gross Revenues for such quarter.

The greater of (i) or (ii) above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

D. *Recalculation at end of Compensation Year.* At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said

amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. In addition to the definition of "Gross Revenues" set forth in Section 2 above, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of utilities provided by and through the System installed pursuant to this Agreement, and any related services (as may be applicable) provided by the Grantee within the Property including but not limited to:

- (i) all telecommunications service revenue charges on a flat rate basis;
- (ii) all telecommunications services charged on a usage sensitive or mileage basis;
- (iii) all revenues from installation service charges;
- (iv) all revenues from connection or disconnection fees;
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
- (vi) all revenues from equipment sold or rented to customer upon customer premises;
- (vii) all revenues from local service;
- (viii) all revenues from authorized rental of conduit space;
- (ix) all revenues from authorized rentals of any portion of the System, including plant, facilities, or capacity leased to others;
- (x) unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this Agreement or otherwise.

Grantee shall file annually with the City's Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) for each type of utility service provided attributable to the operations of the System pursuant to this Agreement. This statement shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by a certified public accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

**Section 10. Accounts and other records and reports and investigations.**

A. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of the System, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

B. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 9.

In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 9, it will file with the City Secretary a sworn copy of a report in a form to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 9. The City may, if it sees fit, have the books and records of Grantee examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.

C. Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

D. Grantee shall provide the City with access at reasonable times and for reasonable purposes to examine, audit, and review Grantee's books, accounts, documents, maps, plans and other records pertaining to this Agreement. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

E. The City may, at any time, make inquiries pertaining to the operation of the System, and Grantee shall respond to such inquiries on a timely basis.

F. Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Grantee to the FCC, Securities and Exchange Commission, Texas Public Utility Commission, Texas Natural Resources Conservation Commission, other relevant commission or agency, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or

the utility operations authorized pursuant to this Agreement. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

### Section 11. Rules and regulations.

A. The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operation of the System.

B. In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

C. The City reserves the right to regulate the rates, charges and fees of Grantee as the City may be now or hereafter authorized or empowered to so regulate after notice and hearing to Grantee.

### Section 12. Insurance.

A. Grantee shall obtain and maintain in full force and effect throughout the term of this Agreement, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of the execution of this Agreement. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof, and to adjust insurance coverage and their limits when reasonably deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

B. Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

	TYPE	AMOUNT
(1)	Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
(2)	Commercial General (public) Liability - to include coverage for the following where the exposure exists:	



- |     |  |  |
|-----|--|--|
| (a) | Premises operations                                    | Combined single<br>limit for bodily<br>injury and property<br>damages \$3,000,000<br>per occurrence or<br>its equivalent |
| (b) | Independent contractors                                |  |
| (c) | Products/completed                                     |  |
| (d) | Personal injury  |  |
| (e) | Contractual liability                                  |  |
| (f) | Explosion, collapse and underground<br>property damage |  |
- (3) Comprehensive automobile insurance coverage for loading and unloading hazards, for:
- |     |                          |   |
|-----|--------------------------|---|
| (a) | Owned/leased automobiles | Combined single<br>limit for bodily<br>injury and property<br>damage \$1,000,000<br>per occurrence or<br>its equivalent |
| (b) | Non-owed automobiles     |   |
| (c) | Hired automobiles        |   |

C. The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

D. Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

- (1) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
- (2) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
- (3) Provide for notice to the Director of Finance by certified mail; and
- (4) Provide that all provisions of the Agreement, as amended, concerning liability, duty, and standard of care, including the Indemnity of this Agreement, shall be

underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this Agreement, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

F. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

G. The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.

H. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

**Section 13. Indemnity by Grantee.** Grantee shall indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees, for any injury to or the death of any person or damage to or destruction of any property resulting from or based upon, in whole or in part, any act or omission of Grantee, its officers, employees, agents, contractors, assignees, licensees, permittees, or subcontractors under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

**Section 14. Violations.** If the City has reason to believe that Grantee is in violation of this Agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within thirty (30) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this Agreement, any City Charter provisions, or any ordinances lawfully regulating Grantee in the construction and operation of its System is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this Agreement and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including (a) forfeiture of this Agreement in the event of a substantial breach

under Section 15, and (b) a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

### **Section 15. Termination.**

A. In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to terminate this Agreement, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure provided in Section 14, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

- (1) Grantee's violation of any material provision of the Agreement or any material rule, order, regulation or determination of the City made pursuant to this Agreement;
- (2) Grantee's failure to properly compensate the City as required in this Agreement;
- (3) Grantee's attempt to evade any material provision of the Agreement or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;
- (4) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this Agreement without City Council approval, except as may be permitted by this Agreement;
- (5) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner; or
- (6) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the Agreement to Grantee.

B. This Agreement and the easements created hereunder may be terminated in the event Grantee abandons the use of the public rights-of-way for the purposes set forth herein. Such abandonment may be evidenced by notice from Grantee stating that Grantee is abandoning, as of the date set forth in the notice, this Agreement and the easements created hereunder.

## Section 16. Miscellaneous.

### A. *Assignment; successors.*

(1) Grantee shall have the right to license or otherwise permit private utility providers use of the rights, privileges, duties and obligations granted to and assumed by Grantee pursuant to this Agreement, provided that issuance of any such license or permit or other method of conveyance of any rights or obligations hereunder shall not release or relieve Grantee of its obligations to the City pursuant to this Agreement and shall be subject to the following:

(a) No such license, permit, or other method of conveyance of any of the rights and obligations hereunder shall be effective until such time as the same has been approved by the City Council or the City Manager, which approval shall not be unreasonably withheld.

(b) Any such license, permit, or other method of conveyance shall provide that the holder thereof shall comply with and be subject to all terms and conditions of this Agreement.

(2) Except as provided in paragraph A(1) of this Section 16, neither this Agreement, the assets held by Grantee for use under this Agreement, any rights or privileges of Grantee under this Agreement, Grantee's capacity in the System, or allowance of access to the System, either separately or collectively, shall be sold, resold, assigned, transferred or otherwise conveyed by Grantee to any other person or firm, except an Affiliate, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this Agreement or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this Agreement, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the City. Grantee may assign this Agreement to an Affiliate during the term of this Agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement, the agreement purchased shall be canceled and merged into one or the other agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this Agreement, or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material or substantial breach and, in accordance with Section 15, revoke this Agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

B. *Force Majeure.* In the event either the City or Grantee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hinderance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall

promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

C. *Notices.* Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested, and addressed to:

To the City:

Town of Addison, Texas  
P.O. Box 144  
Addison, Texas 75001

Attn: City Manager

To Grantee:

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248

Attn: President

D. *Governing Law; Venue.* This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this agreement are performable in Dallas County, Texas. Venue for any action under this Agreement shall be in Dallas County, Texas.

E. *Legal Construction.* In case any one or more of the provisions contained in this Street License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

F. *Entire Agreement.* This Assignment Agreement represents the entire and integrated agreement between the City and Grantee relative to encroachments into the public rights-of-way as described herein supersedes all prior negotiations, representations and/or agreements, either written or oral.

G. *Amendment.* This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and Grantee.

H. *Authority to execute.* The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Street License Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

**EXECUTED** at Dallas County, Texas on the day and year first written above.

**TOWN OF ADDISON, TEXAS**

**ADDISON CIRCLE ACCESS INC.**

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_

Its: \_\_\_\_\_

**ATTEST:**

By: \_\_\_\_\_  
Carmen Moran, City Secretary

**EXHIBIT A**

**LEGAL DESCRIPTION OF  
ADDISON CIRCLE PHASE I**

WEST SIDE ELEVATION (REAR)

13'-4 1/2"

SOUTH SIDE ELEVATION

13'-4 1/2"

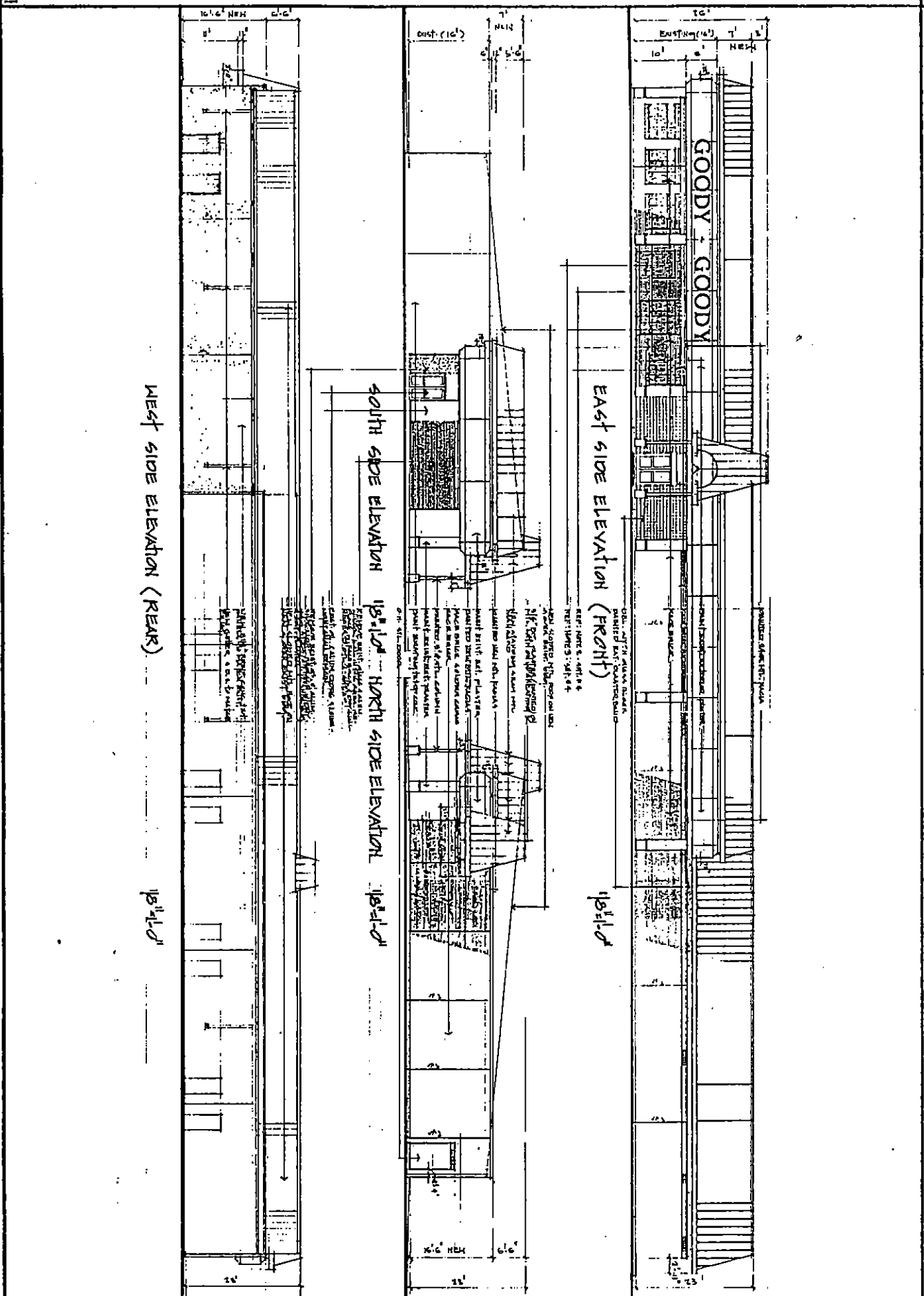
NORTH SIDE ELEVATION

13'-4 1/2"

EAST SIDE ELEVATION (FRONT)

13'-4 1/2"

GOODY - GOODY





**EXHIBIT B**

**LEGAL DESCRIPTION OF  
ADDISON CIRCLE PHASE I**

## MEMORANDUM

**To:** Ron Whitehead  
**From:** Bryant Nail *(RBN)*  
**Date:** May 24, 1996  
**Re:** Addison Circle - Streets Use and Rental Agreement

---

Attached is the form of Streets Use and Rental Agreement prepared by John Hill on which we have interlineated suggested changes. I would like to provide you with our reasoning for the major changes:

1. We have suggested that the "Grantee" be Addison Circle Access, Inc., a Texas corporation ("Access"), which will be owned by Columbus Realty Trust ("Columbus") and Gaylord Properties, Inc. ("Gaylord"). Since Columbus and Gaylord may have varying degrees of ownership in different phases of the development, we propose to establish Access, the sole purpose of which would be to control the license rights within Addison Circle. Access would not provide any utility services, but would, in effect sublicense its rights to other private utility companies. This would allow the owners of the phases to select and manage their private utility providers while allowing a continuity of relationship and communication with the City of Addison. If required by the City, Columbus and Gaylord would guarantee the obligations of Access to the City.

2. We have suggested that the term of the Agreement be perpetual. Section 6(B)(5) on page 7 of the Master Facilities Agreement provides that streets will be dedicated by the phase owner "free from any liens or encumbrances thereon except for any private utility easements..." If the phase owner reserved a private utility easement, it would be, like virtually all easements, perpetual. If we agree to the Streets Use and Rental Agreement rather than an easement, as called for in the Master Facilities Agreement, we should receive a perpetual right.

3. We have proposed a 2% fee rather than a 5% fee. First, the provision in the Master Facilities Agreement referred to above, does not call for the payment of any fee to the City. Second, if we were developing a normal garden style apartment project rather than the new high density model, which the City is desirous of promoting, we would not need the license rights and we would not be required to pay any fee at all, and the added cost of such a fee puts us at a competitive disadvantage with operators of garden style projects. We need to reduce the fee as much as possible to reduce the competitive burden. Additionally, some of the utilities

provided may come from franchise providers so you may be, in effect, collecting a fee twice. For example, if we offer telephone service through a private switch, we will still purchase trunk lines from Southwestern Bell. If we do that Southwestern Bell will pay a franchise fee on the amount we pay for the trunk lines and we will pay a franchise fee on the resale of this services, resulting in a double-dip.

DA961440339  
052496 v2  
186:3012-65

STATE OF TEXAS §  
COUNTY OF DALLAS §

**STREETS USE AND RENTAL AGREEMENT**

This ~~Utility Agreement~~ is entered into this \_\_\_\_ day of \_\_\_\_\_, 1996 by and between the Town of Addison, Texas (the "City"), ~~Gaylord Properties, Inc., a Texas corporation ("Gaylord"), and Columbus Realty Trust, a Texas real estate investment trust ("Columbus").~~

**RECITALS**

**WHEREAS**, Addison Circle One, Ltd., a Texas limited partnership (the "Partnership"), is the owner of certain real property described in Exhibit A attached hereto and incorporated herein ("Phase I"), and Gaylord is the owner of certain real property adjacent to Phase I described in Exhibit B attached hereto and incorporated herein (the "Gaylord Property"; Phase I and the Gaylord Property are hereinafter collectively referred to together as the "Property"); and

Realty Trust, a Texas real estate investment trust  
~~("Columbus")~~

**WHEREAS**, Columbus ~~and Gaylord~~ are the partners in the Partnership and have previously worked with the City in regard to zoning for and the development of the Property, ~~(Columbus and Gaylord being hereinafter referred to as the "Grantee")~~, which development is to include a mix of uses including multi-family residential, retail, office and civic uses within an urban framework; and

Columbus and Gaylord

conjunction with

permit

**WHEREAS**, in ~~the~~ development of the Property, ~~Grantee desires to provide~~ certain utility services to the Property through a privately-owned utility system, such services including, but not being limited to, the transmission of water, electricity, natural gas, steam, video signals, audio signals, telephone signals and data.

~~to be provided~~

**NOW, THEREFORE**, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, the City, ~~Gaylord and Columbus~~ <sup>and Grantee</sup> do hereby contract and agree as follows:

**Section 1. Incorporation of premises.** The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

**Section 2. Definitions.** For the purpose of this Agreement, the following terms, phrases, words, abbreviations and their derivations shall have the meaning given herein unless more specifically defined within other sections of this Agreement. When not inconsistent with the context, words used in the present tense include the future tense, words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

A. ~~"Addison Circle Area" shall mean all of that area depicted on Exhibit \_\_\_\_ attached hereto and incorporated herein for all purposes.~~

**WHEREAS**, Columbus and Gaylord are the shareholders of Grantee; and

- B. "Affiliate" means a corporate parent of either Gaylord or Columbus owning more than 50% of the shares of Gaylord or Columbus, a partnership or joint venture in which Gaylord or Columbus owns an interest of more than 50%, or a subsidiary entity of Gaylord or Columbus in which Gaylord or Columbus own a more than 50% interest.
- C. "Agreement Date" means the \_\_\_\_ day of \_\_\_\_\_, 1996.  
two (2%)
- D. "Annual Gross Revenue Based Fee" means an amount equal to ~~five percent (5%)~~ of ~~Grantee's~~ Gross Revenues received by Grantee ~~during the year for~~ the operation of the System. from
- E. "City" shall mean the Town of Addison, a home-rule municipal corporation.
- F. "~~Company~~" or "Grantee" shall mean, <sup>Access and its</sup> ~~together, the Partnership, Columbus and Gaylord,~~ their successors and assigns.
- G. "Compensation Year" means each calendar year during the term of this Agreement in which General Compensation is paid by Grantee to the City.
- H. "Day or days" shall mean a calendar day or days.
- I. "General Compensation" means the amount Grantee is required to pay City under Section 3.
- J. "Gross Revenue" shall mean all receipts collected by the Grantee for all communications and related operations and services within the ~~corporate limits of the City~~ as well as any other revenue arising from the operation or possession of this Agreement. By way of example, but without limitation, "Gross Revenue" includes the sale or lease of customer premise equipment, installation charges, access charges paid to the ~~Company~~ by other carriers, street use and rental fees and occupation taxes surcharged to customer, and the lease or resale of lines or circuit paths to third parties. "Gross Revenue" does not include revenue uncollectible from customers (bad debts) or payments received for construction reimbursement.
- K. "System" means the utility system installed and maintained by the Grantee as described in Section 3 of this Agreement.

Grantee

Property

**Section 3. Grant of Certain Rights.** The City hereby grants to Grantee, the non-exclusive right and privilege to construct, expand, reconstruct, maintain, use and operate in, along, across, on, over, through, above and under those public streets, alleys and rights-of-way of the City which are contained entirely within the Addison Circle Area, a utility system (the "System") for certain utility services including, but not limited to, the transmission of water, electricity, natural gas, steam, video signals, audio signals, telephone signals and data. Grantee

shall not provide services directly regulated by the Texas Public Utility Commission ("PUC"), the Texas Natural Resources Conservation Commission ("TNRCC"), or any other applicable state commission or agency, unless authorized by the PUC, the TNRCC, other state commission or agency, state or federal law. This grant is made to Grantee solely for the purpose of directly serving its end-user customers.

**Section 4. Construction, maintenance, expansion, reconstruction, and excavation.**

A. The construction, expansion, reconstruction, excavation, use, maintenance and operation of the System and other property used in connection therewith shall be subject to all lawful police regulations of the City and performed in accordance with the City's regulations for utility location and coordination. In addition to any other City regulations or requirements, at least thirty (30) days prior to the commencement of construction or maintenance within the City's rights-of-way, Grantee shall provide the City Engineer (or such other officials as the City may designate from time to time) each with a copy of the construction work plans and drawings. Grantee shall not proceed with construction within the City's rights-of-way until the plans and drawings have been approved in writing by the proper City officials.

B. Upon request of the City, Grantee shall remove and abate any portion of the System that is dangerous to life or property, and in case Grantee, after notice, fails or refuses to act, the City may remove or abate the same, at the sole cost and expense of Grantee, all without compensation or liability for damages to Grantee. Grantee shall promptly restore the public streets, alleys and rights-of-way to their condition prior to Grantee's construction, maintenance, or excavation, to the reasonable satisfaction of the City Engineer. Grantee shall excavate only for the construction, installation, expansion, repair, removal, and maintenance of all or a portion of the System.

C. Except in an emergency, Grantee shall not excavate any pavement in any public alley or street or significant amounts of any unpaved public right-of-way without first securing permission of the City Engineer, but such permission shall be given if the proposed excavation is in accordance with the terms of this Agreement. The City Engineer shall be notified as soon as practicable regarding work performed under emergency conditions; and Grantee shall comply with the City Engineer's reasonable requirements for restoration of any disturbed public property.

D. Within thirty (30) days of completion of each segment of the System, Grantee shall supply the City with a complete set of "as built" drawings for that segment, shall keep a copy of all "as built" drawings at a location within the Property and shall notify the City of that location. Further, after each replacement, relocation, reconstruction, or removal, Grantee shall promptly notify the City of the exact changes made and shall provide a new set of "as built" drawings of each modification to the City Engineer. ~~Grantee shall provide annually a complete set of "as built" drawings incorporating these changes.~~ Grantee shall obtain the City's approval before any system changes are made.

**Section 5. Term of Agreement.** Upon the filing with the City by the Grantee of the acceptance required herein, this Agreement shall be in full force and effect ~~for a term and period~~ perpetually, subject to termination by Grantee upon thirty (30) days notice to City, or termination pursuant to the terms of this Agreement.

~~of ten (10) years, beginning on the Agreement Date. This Agreement shall be automatically renewed for one subsequent ten (10) year period unless either party shall file ninety (90) day prior written notice of cancellation to the other and the other shall have responded their acknowledgement in a similar form.~~

**Section 6. Construction work regulation by City and underground conduit used by City.**

A. All work done in connection with the construction, expansion, reconstruction, maintenance or repair of the System shall be subject to and governed by all laws, rules, and regulations of the City, and Grantee shall place the System facilities underground according to reasonable requirements that may be adopted from time to time by the City; provided, however, Grantee shall be given due notice and shall be entitled, upon request, to a hearing before the City Council of the Town of Addison prior to the adoption of any such future requirements, and further provided that Grantee may present evidence to demonstrate that such requirements will substantially impair its ability to recover its operation expenses.

All excavations and other construction in the public streets, alleys, and rights-of-way shall be carried on to interfere as little as practicable with the use of public and private property and in accordance with any direction given by the City under the police and regulatory powers of the City.

B. Subject to reasonable availability and agreement between the parties concerning maintenance, access and security, Grantee may be required by the City to construct portions of the System, or all of the System, underground, ~~or to share duct trench space owned and maintained by any other person or entity upon reasonable, non-discriminatory terms and at fair market value.~~ The intent of this section is to encourage shared use of the infrastructure and decrease excavation of the City's rights-of-way.

C. Any facilities of other persons or entities that are attached to or within the System facilities shall be placed, replaced, maintained and removed in a safe manner so that the attachment does not interfere unnecessarily with the erection, replacement operation, repair or maintenance of the System or other persons or entities using the System. Grantee shall not be required to share trench space with any other person or entity franchised by the City, ~~if it can be satisfactorily shown that thereby Grantee will be subjected to increased risks of interruption to its service or to increased liability for accidents, or if the facilities of such other person or entity are not of the character, design and construction required by, or are not being maintained in accordance with current practice.~~

~~Provided, however, nothing herein shall modify or abrogate the power of the City to require the Grantee or any holder of a franchise or any street use and rental agreement or similar agreement from the City to allow use of its facilities by any other holder of a City franchise or street rental agreement, pursuant to the City Charter.~~

**Section 7. Work by others, construction by abutting owners, alteration to conform with public improvement.**

A. The City reserves the right to lay and permit to be laid, sewer, gas, water, and other pipe lines or cables and conduits, and to do and permit to be done, any underground and overhead work that may be deemed necessary or proper by the City in, across, along, over or under any public street, alley, or right-of-way occupied by Grantee, and to change any curb or sidewalk or the grade of any street or other public right-of-way. In permitting such work to be done, the City shall not be liable to Grantee for any damages not willfully and directly caused or by the sole negligence of the City; provided, however, nothing herein shall relieve any other person or entity from liability for damage to Grantee's System. All work performed will be in accordance with the City manual for Utility Location and Coordination.

B. In the event that the City authorizes abutting landowners to occupy space under the surface of any public street, alley, or right-of-way, such grant to an abutting landowner shall be subject to the rights herein granted to Grantee. In the event that the City shall close or abandon any public street, alley, or right-of-way which contains any portion of the System, any conveyance of land contained in such closed or abandoned public street, alley, highway, or right-of-way shall be subject to the rights herein granted.

C. Whenever by reason of the changes in the grade of any street or in the location or the manner of constructing any water pipes, gas pipes, sewers, or any other underground or overhead structure for any City purpose whatever, it shall be deemed necessary by the City to alter, change, adapt or conform a portion of the System thereto, such alterations or changes shall be promptly made by Grantee when ordered in writing by the City. If such requirements impose a financial hardship, Grantee may present alternative proposals to the City, and the City shall give due consideration to such alternative proposals. The City shall not require Grantee to remove its System facilities entirely from such public right-of-way. The City shall have the right to require Grantee to adapt or conform its System facilities, or to alter, relocate or change its System facilities to enable the City to use, or to use with greater convenience, any public street, alley or right-of-way. If the City requires Grantee to adapt or conform its System facilities, or in any way or manner to alter, relocate or change its System facilities to enable any other entity or person, except for the City, to use, or to use with greater convenience, any public street, alley or right-of-way, Grantee shall not be required to make any such changes until such other entity or person shall have undertaken, with solvent bond satisfactory to Grantee, to reimburse Grantee for any loss or expense which may be caused by, or arise out of such change, alteration or relocation of the System facilities; provided, however, that the City shall never be liable for such reimbursement.

D. In the event that Grantee has not relocated those of its affected System facilities which are located in a public street, alley, or right-of-way within a reasonable length of time (as determined by the City's Engineer) prior to the City's commencement date for public street, alley, or right-of-way construction or reconstruction, the City shall have the right to relocate or cause to be relocated the affected portion of the System, and the Grantee shall reimburse the City for all costs of relocation.



E. During the term of this Agreement, Grantee shall be liable to the City for the acts or omissions of any entity used by Grantee (including an Affiliate) when such entity is involved directly or indirectly in the construction, installation, maintenance or operation of the System as if the acts or omissions of such entity were the acts or omissions of Grantee.

### Section 8. Compliance with City Charter.

Grantee recognizes, accepts and agrees that the terms, conditions, and provisions of this Agreement are subject to the applicable provisions of the Town of Addison Charter. Any request by Grantee for a modification to this Agreement shall be subject to review by the City Attorney for compliance with the applicable provisions of the City Charter.

### Section 9. Compensation to the City.

~~A. *Acceptance Fee.* Upon the issuance of a certificate of occupancy for Phase I of development of the Property, the Grantee agrees to pay a one time acceptance fee to the City in the sum of Two Dollars (\$2.00) per linear foot of the City's streets traversed and a fee of One Thousand Dollars (\$1,000) per public street crossing.~~

A. ~~B.~~ *General Compensation.* For the reason that the public streets, alleys and rights-of-way to be used by Grantee in the operation of the System within the boundaries of the City are valuable public properties, acquired and maintained by the City at a great expense to its taxpayers, and that the reservation to the Grantee of the use of said public streets, alleys and rights-of-way is a valuable property right without which Grantee would be required to invest substantial capital in right-of-way costs and acquisitions, the Grantee agrees to pay to the City as general compensation during each year of this Agreement and for ~~each type of~~ utility service (including but not limited to electric, gas, telephone, water and cable television) provided through and by the System facilities, a sum equal to the ~~greater of the Minimum Annual Fee or~~ Annual Gross Revenue Based Fee. ~~The Minimum Annual Fee for the first year of operation shall be \$ \_\_\_\_\_.~~

B. ~~C.~~ *Calculation and Payment on a Quarterly Basis.* For ~~each type of~~ utility service provided by the Grantee by and through the System, Grantee shall pay to the City for each calendar quarter an amount equal to ~~the greater of:~~

~~(i) one fourth (1/4) of the Minimum Annual Fee, calculated on the basis of a twelve month Compensation Year, or~~

~~(ii) 5% of Gross Revenues for such quarter.~~

The <sup>payment</sup> ~~greater of (i) or (ii)~~ above shall be referred to as the "Quarterly Payment." Grantee shall forward a check or money order in an amount equal to the Quarterly Payment by the fifteenth (15th) day of the calendar month immediately following the close of the calendar quarter for which the payment is calculated. Any necessary prorations shall be made.

C. D. *Recalculation at end of Compensation Year.* At the end of each Compensation Year, Grantee shall recalculate the total General Compensation actually due. If additional amounts are due the City by Grantee, said amounts shall be paid by the fifteenth (15th) day of the second month of the Compensation Year following the Compensation Year during which such amounts were originally due. If amounts are found to be due the Grantee by the City, said amounts shall be ~~credited~~ <sup>paid</sup> by the fifteenth (15th) day of the second month of the Compensation Year, during which such amounts were originally due. Any necessary prorations shall be made. The compensation set forth in this Section shall be exclusive of and in addition to all special assessments and taxes of whatever nature, including, but not limited to, ad valorem taxes. In the event any Quarterly Payment is made after noon on the date due, Grantee shall pay a late payment penalty of the greater of: (i) \$100 or (ii) simple interest at ten percent (10%) per annum of the total sum due. As used in this Section, Gross Revenues shall mean all revenues (exclusive of sales tax) collected by Grantee from operation of ~~each type of utility~~ provided by and through the System installed pursuant to this Agreement, and any related services (as may be applicable) provided by the Grantee within the ~~corporate limits of the City~~ including but not limited to:

Property

- (i) all telecommunications service revenue charges on a flat rate basis;
- (ii) all telecommunications services charged on a usage sensitive or mileage basis;
- (iii) all revenues from installation service charges;
- (iv) all revenues from connection or disconnection fees;
- (v) all revenues from penalties or charges to customers for checks returned from banks, net of bank costs paid;
- (vi) all revenues from equipment sold or rented to customer upon customer premises;
- (vii) all revenues from local service;
- (viii) all revenues from authorized rental of conduit space;
- (ix) all revenues from authorized rentals of any portion of the System, including plant, facilities, or capacity leased to others;
- (x) unrecovered bad debts charged off after diligent, unsuccessful efforts to collect are excluded from Gross Revenues.

Payment of money under this Section shall not in any way limit or inhibit any of the privileges or rights of the City, whether under this Agreement or otherwise.

Grantee shall file annually with the City's Director of Finance no later than ninety (90) days after the end of the Grantee's fiscal year, a statement of revenues (for that year) for each type of utility service provided attributable to the operations of the System pursuant to this

certified as true and correct to the best of the knowledge of an officer of Grantee.

Agreement. This statement shall present a detailed breakdown of Gross Revenues and uncollectible accounts for the year. This statement shall be prepared by an Independent Certified Public Accountant whose report shall accompany the statement.

Any transactions which have the effect of circumventing payment of required agreement fees and/or evasion of payment of agreement fees by non-collection or non-reporting of Gross Revenues, bartering, or any other means which evade the actual collection of revenues for business pursued by Grantee are prohibited.

#### **Section 10. Accounts and other records and reports and investigations.**

A. Grantee shall keep the City fully informed as to all matters in connection with or affecting the construction, reconstruction, removal, maintenance, operation, and repair of the System, Grantee's account methods and procedures in connection therewith, and the recording and reporting by Grantee of all revenues and uncollectibles.

B. Grantee shall keep complete and accurate books of account and records of its business and operations pursuant to this Agreement in accordance with generally accepted accounting principles. If required by the FCC, Grantee shall use the system of accounts and the forms of books, accounts, records, and memoranda prescribed by the FCC in 47 CFR Part 32 or its successor and as may be further described herein. The City may require the keeping of additional records or accounts which are reasonably necessary for purposes of identifying, accounting for, and reporting gross revenues and uncollectibles for purposes of Section 9.

In order to determine the Gross Revenues received by the Grantee, Grantee agrees that on the same date that payment is made, as provided in Section 9, it will file with the City Secretary a sworn copy of a report in a form to be prescribed and acceptable to the City in sufficient detail to itemize revenues from each of the categories identified in Section 9. The City may, if it sees fit, have the books and records of Grantee examined by a representative of the City to ascertain the correctness of the reports agreed to be filed herein.

C. Grantee shall report to the City such other reasonably related information relating to Grantee and the City as the City may consider useful and reasonably necessary and shall comply with the City's determination of forms for reports, the time for reports, the frequency with which any reports are to be made, and if reports are to be made under oath.

D. Grantee shall provide the City with access at reasonable times and for reasonable purposes to examine, audit, and review Grantee's books, accounts, documents, maps, plans and other records pertaining to this Agreement. Grantee shall fully cooperate in making available its records and otherwise assisting in these activities.

E. The City may, at any time, make inquiries pertaining to Grantee's operation of the System, and Grantee shall respond to such inquiries on a timely basis.

F. Grantee shall provide the City with notices of all petitions, applications, communications and reports submitted by Owner to the FCC, Securities and Exchange

Grantee

Commission and the Texas Public Utility Commission, or their successor agencies, specifically relating to any matters affecting the use of City streets, alleys, and public rights-of-way and/or the utility operations authorized pursuant to this Agreement. Upon written request from City, Grantee shall provide the City with copies of all such documentation.

**Section 11. Rules and regulations.**

A. The City may establish, after reasonable notice and hearing, such rules and regulations as may be in the public interest regarding Grantee operation of the System.

B. In order to ascertain relevant facts, the City shall have full power and authority from Grantee to (i) inspect, or cause to be inspected, the books and records of Grantee, (ii) inventory and appraise, or cause to be inventoried or appraised, the property of Grantee within the Town of Addison, and (iii) obtain access to relevant books and records.

**Section 12. Insurance.**

A. Grantee shall obtain and maintain in full force and effect throughout the term of this Agreement, and any extension or renewal thereof, insurance with an insurance company licensed to do business in the State of Texas, approved by the State of Texas and acceptable to the City. All companies will be required to be rated A-VI or better by A.M. Best or A or better by Standard and Poors. The insurance shall be issued in the standard form approved by the State Board of Insurance. Grantee shall provide City with proof of such insurance so required at the time of the execution of this Agreement. The City reserves the right to review these insurance requirements during the effective period of the Agreement and any extension or renewal thereof, and to adjust insurance coverage and their limits when deemed necessary and prudent by the City Manager, based upon changes in statutory law, court decisions, or the claims history of the industry or the Grantee.

reasonably

B. Subject to the Grantee's right to maintain reasonable deductibles in such amounts as are approved by the City, Grantee shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension or renewal thereof, at Grantee's sole expense, insurance policy coverage in the following type and minimum amounts:

	<b>TYPE</b>	<b>AMOUNT</b>
(1)	Worker's Compensation and Employer's Liability	Statutory \$500,000/500,000/100,000
(2)	Commercial General (public) Liability - to include coverage for the following where the exposure exists:	

- |     |  |  |
|-----|--|--|
| (a) | Premises operations                                    | Combined single<br>limit for bodily<br>injury and property<br>damages \$3,000,000<br>per occurrence or<br>its equivalent |
| (b) | Independent contractors                                |  |
| (c) | Products/completed                                     |  |
| (d) | Personal injury  |  |
| (e) | Contractual liability                                  |  |
| (f) | Explosion, collapse and underground<br>property damage |  |
- (3) Comprehensive automobile insurance coverage for loading and unloading hazards, for:
- |     |                          |   |
|-----|--------------------------|---|
| (a) | Owned/leased automobiles | Combined single<br>limit for bodily<br>injury and property<br>damage \$1,000,000<br>per occurrence or<br>its equivalent |
| (b) | Non-owned automobiles    |   |
| (c) | Hired automobiles        |   |

C. The City shall be entitled, upon request and without expense, to review copies of the policies and all endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Grantee or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Grantee shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

D. Grantee agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

- (1) Name the Town of Addison and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
- (2) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
- (3) Provide for notice to the Director of Finance by certified mail; and
- (4) Provide that all provisions of the Agreement, as amended, concerning liability, duty, and standard of care, including the Indemnity of this Agreement, shall be

underwritten by contractual coverage sufficient to include such obligations within applicable policies.

E. The insurance policies obtained by Grantee in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this Agreement, or any extension or renewal thereof, and may be changed from time to time to reflect changing liability limits, as required by the City. Grantee shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

F. Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Grantee and the City and shall be primary coverage for all losses covered by the policies.

G. The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.

H. Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Grantee.

**Section 13. Indemnity by Grantee.** Grantee shall indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees, for any injury to or the death of any person or damage to or destruction of any property resulting from or based upon, in whole or in part, any act or omission of Grantee, its officers, employees, agents, contractors or subcontractors under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement. The terms and provisions contained in this Section are intended to be for the benefit of City and Grantee and are not intended to be for the benefit of any third party.

**Section 14. Violations.** If the City has reason to believe that Grantee is in violation of this Agreement, the City shall notify Grantee in writing of the violation setting forth the nature of such violation. Within thirty (30) days of receipt of such notice, Grantee shall respond in writing to provide explanation or documentation to support that the violation did not occur. Grantee shall be allowed thirty (30) days to cure violations after written notice is received from the City.

Upon evidence being received by the City that any violation of this Agreement, any City Charter provisions, or any ordinances lawfully regulating Grantee in the construction and operation of its System is occurring, or has occurred, the City shall cause an investigation to be made. If the City finds that such a violation exists or has occurred, the Grantee shall take appropriate steps to comply with the terms of this Agreement and any lawful regulation. Should Grantee fail to comply, after notice and opportunity to cure, then the City may take any action authorized by law, including forfeiture of this Agreement in the event of a substantial breach

under Section 15 and a suit in court to compel compliance. If, in any such proceeding, default is finally established, Grantee shall be required to pay to the City the reasonable expenses incurred in the prosecution of such suit and all the City's damages and costs (including attorneys' fees), but Grantee shall be allowed either by the court in the judgment of forfeiture or by order of the City Council, a reasonable time thereafter, as fixed by such judgment or order, to correct the default and pay such expenses, damages and costs as it may be adjudged to pay, and if Grantee does so correct and so pay within such time, forfeiture shall not become effective nor be enforced.

### Section 15. Termination.

~~A.~~ In addition to all other rights and powers retained by the City under this Agreement or otherwise, the City reserves the right to terminate this Agreement, and all rights and privileges of Grantee hereunder shall cease in the event of substantial breach, subject to reasonable notice and opportunity to cure, of its terms and conditions. A substantial breach by Grantee shall include, but shall not be limited to, the following:

- (1) Grantee's violation of any material provision of the Agreement or any material rule, order, regulation or determination of the City made pursuant to this Agreement;
- (2) Grantee's failure to properly compensate the City as required in this Agreement;
- (3) Grantee's attempt to evade any material provision of the Agreement or to practice any fraud or deceit upon the City or upon Grantee's customers or interexchange carriers;
- ~~(4) Grantee's failure to complete its construction and provide utility service;~~
- (5) Grantee's attempt to sell, transfer, convey or assign any of the rights and privileges granted pursuant to this Agreement, without City Council approval;
- (6) Grantee's failure to respond to or comply with City requested reports, audits, statements and other information in a timely manner; or
- (7) Grantee's material misrepresentation of fact in its application or negotiations during the agreement process; or the conviction of any director, officer, employee or agent of Grantee for the offense of bribery or fraud connected with or resulting from the award of the Agreement to Grantee.

~~B. This Agreement and the easements created hereunder may be terminated in the event Grantee abandons the use of the public rights-of-way for the purposes set forth herein.~~

Grantee shall have the right to license or otherwise permit private utility providers use of the rights and privileges granted to Grantee pursuant to this Agreement, provided that such action will not release or relieve Grantee of its obligations to the City pursuant to this Agreement. Except as provided in the preceding sentence,

## Section 16. Miscellaneous.

A. *Assignment; successors.* Neither this Agreement, the assets held by Grantee for use under this Agreement, any rights or privileges of Grantee under this Agreement, Grantee's capacity in the System, or allowance of access to the System, either separately or collectively, shall be sold, resold, assigned, transferred or otherwise conveyed by Grantee to any other person or firm, except an Affiliate, without the prior written consent of the City by ordinance or resolution unless otherwise permitted in this Agreement or by the City Council. No such sale, assignment, transfer or conveyance by Grantee shall be approved by the City Council for one year after the passage of this Agreement, unless such sale, assignment, transfer or conveyance is to another City franchisee or licensee and the City Council determines such sale, assignment, transfer or conveyance is in the best interest of the City. Grantee may assign this Agreement to an Affiliate during the term of this Agreement with notice and consent of City, which consent shall not be unreasonably withheld. In the event that the purchaser or seller is the holder of a like agreement, the agreement purchased shall be canceled and merged into one or the other agreement held by the purchaser upon such reasonable terms and conditions as may be set out by the City Council when permission for merger is granted. Should the Grantee sell, assign, transfer, convey or otherwise dispose of any of its rights or its interests under this Agreement, or attempt to do so, in violation of this requirement to obtain prior consent, the City may, after notice and reasonable opportunity to cure, deem such transfer as a material or substantial breach and, in accordance with Section 15, revoke this Agreement for default, in which event all rights and interest of the Grantee shall cease and no purported sale, assignment, transfer or conveyance shall be effective.

~~The System facilities located within public property shall never be leased or subleased to a provider or reseller of similar services unless such provider or seller has a similar franchise or is otherwise authorized to conduct business in Addison under state or federal law.~~

B. *Force Majeure.* In the event either the City or Grantee shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hinderance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

C. *Notices.* Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested, and addressed to:



To the City:

Town of Addison, Texas  
P.O. Box 144  
Addison, Texas 75001

Attn: City Manager

Grantee

To ~~Gaylord Properties, Inc.:~~

~~1011 N. Central Expressway  
Dallas, Texas 75231~~

~~Attn: Glenn Stinchcomb~~

To ~~Columbus Realty Trust:~~

15851 Dallas Parkway  
Suite 855  
Dallas, Texas 75248

Attn: ~~Bryant Nail~~  
President

D. *Governing Law; Venue.* This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this agreement are performable in Dallas County, Texas. Venue for any action under this Agreement shall be in Dallas County, Texas.

E. *Legal Construction.* In case any one or more of the provisions contained in this Street License Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

F. *Entire Agreement.* This Assignment Agreement represents the entire and integrated agreement between the City and Grantee relative to encroachments into the public rights-of-way as described herein supersedes all prior negotiations, representations and/or agreements, either written or oral.

G. *Amendment.* This License may not be altered, waived, amended or extended except by an instrument in writing signed by the City and Grantee.

H. *Authority to execute.* The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Street License Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

**EXECUTED** at Dallas County, Texas on the day and year first written above.

TOWN OF ADDISON, TEXAS

ACCESS, INC.  
ADDISON CIRCLE ONE, LTD.

By: \_\_\_\_\_  
Ron Whitehead, City Manager

By: \_\_\_\_\_

ATTEST:

~~GAYLORD PROPERTIES, INC.~~

By: \_\_\_\_\_  
Carmen Moran, City Secretary

By: \_\_\_\_\_

~~COLUMBUS REALTY TRUST~~

By: \_\_\_\_\_

**ACKNOWLEDGMENTS**

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_\_, 1996 by Ron Whitehead, City Manager of the Town of Addison, Texas, a Texas municipal corporation, on behalf of the said municipal corporation.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_\_, 1995 by \_\_\_\_\_ of Gaylord Properties, Inc., a Texas corporation, on behalf of the said corporation.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was acknowledged before me on \_\_\_\_\_, 1995 by \_\_\_\_\_ of Columbus Realty Trust, a Texas real estate investment trust, on behalf of the said real estate investment trust.

\_\_\_\_\_  
NOTARY PUBLIC, State of Texas

1/96

STATE OF TEXAS           §  
                                  §  
COUNTY OF DALLAS       §                                   RESERVATION AGREEMENT

This Reservation Agreement (the "Agreement") is entered into this \_\_\_\_ day of January, 1996 by and between the Town of Addison, Texas (the "City") and Addison Circle One, Ltd., a Texas limited partnership (the "Partnership") and Gaylord Properties, Inc., a Texas corporation ("Gaylord").

**RECITALS**

WHEREAS, the Partnership is the owner of certain real property located in the City, which real property is described in Exhibit A attached hereto and incorporated herein ("Phase I"); and

WHEREAS, Gaylord is the owner of certain real property located in the City, which real property is described on Exhibit B (the "Gaylord Property", Phase I and the Gaylord Property being collectively referred to as the "Property");

WHEREAS, Columbus Realty Trust, a Texas real estate investment trust ("Columbus") and Gaylord are the partners in the Partnership and have previously worked with the City in regard to zoning for the Property; and

WHEREAS, the Property is zoned UC Urban Center District pursuant to Ordinance No. 095-032 of the City, which zoning allows the Property to be developed with a mix of uses including multi-family residential, retail, office and civic uses within an urban framework which is compatible with adjacent developments as an appropriate and desired land use; and

WHEREAS, in accordance with the UC Urban Center District regulations set forth in the City's Comprehensive Zoning Ordinance, a Concept Plan depicting the development of the Property was submitted by Gaylord and Columbus and approved by the City Council simultaneous with the approval of Ordinance No. 095-032, which Concept Plan is attached to and made a part of Ordinance No. 095-032; and

WHEREAS, the Concept Plan provides that the Property is to be developed in three separate phases, and the Partnership desires to begin the first phase of the development (the "Phase I Development"); and

WHEREAS, prior to the issuance of a building permit for development of any portion of the Property, the UC Urban Center District regulations set forth in the Comprehensive Zoning Ordinance require the approval by the City Council of a Final Development Plan for that portion of the Property; and

WHEREAS, Gaylord and Columbus heretofore submitted to the City a Final Development Plan for Phase I, which, as conditioned, was approved by the City Council on \_\_\_\_\_, 199\_\_ pursuant to Ordinance No. 9\_\_ - \_\_\_\_\_ (the Final Development Plan for Phase I as the same may be modified or amended being referred to herein as the "Final Development Plan"); and

WHEREAS, in addition to the approval of the Final Development Plan, the Partnership has, simultaneous with the execution of this Agreement, received approval of the Final Plat for Phase I (the "Final Plat") which is incorporated herein and made a part hereof by this reference, which Final Plat reflects that the streets and alleys shown thereon are dedicated to the public subject to the rights reserved herein and the terms and conditions of this Reservation Agreement; and

WHEREAS, in order to achieve an urban framework for Phase I, the Final Development Plan, together with the Final Plat, provides for narrow streets and sidewalks and the placement of buildings immediately adjacent thereto, certain above-ground projections, including awnings, balconies, cornices, shutters, roofs, porte cocheres, lights, ornamental projections and storm drainage lines and other similar building attachments and fixtures, may extend and encroach into the adjacent rights-of-way; and

WHEREAS, by this Agreement the parties desire to define the extent of the encroachments rights reserved herein.

NOW, THEREFORE, for and in consideration of the mutual covenants and obligations set forth herein, the benefits flowing to each of the parties hereto, and other good and valuable consideration, Partnership, the City and Gaylord do hereby contract and agree as follows:

1. Incorporation of Premises. The above and foregoing premises are true and correct and are incorporated herein and made a part hereof for all purposes.

2. Reservation of Easement for Encroachments. The dedication of the public streets and rights-of-way as shown on the Final Plat is subject to the following private easements reserved to the Partnership, as the owner of Phase I, and intended for the private use and enjoyment of the owner of Phase I; provided, however, that the reservation is and shall be subject to the conditions contained in this Reservation Agreement. Partnership hereby reserves an easement over and under the public streets, for the placement of awnings, balconies, cornices, shutters, roofs, porte cocheres, lights, ornamental projections and storm drainage lines (such items being hereinafter referred to together as an "Encroachment") in accordance with and subject to the following:

A. Except as otherwise approved by the City staff, no Encroachment shall be located, placed, erected or constructed below a height of 10 feet above a public right-of-way; and

B. Except as otherwise approved by the City staff, no Encroachment located, placed, erected or constructed between a height of 10 feet and 20 feet above the public right-of-way shall extend more than 12 inches into the public right-of-way; and

C. Encroachments located, placed, erected or constructed more than 20 feet above the public right-of-way may extend more than 12 inches into the public right-of-way.

Any exception to the terms and conditions of the easement reserved for Encroachments herein may be approved by the City Manager or the City staff.

3. Parking Rights. Partnership hereby reserves the right for public parking within the public streets shown on the Final Plat without charges imposed by the City and the City agrees that it will not install parking meters or otherwise impose charges for parking on such rights-of-way; provided, however that the rights reserved by this Section are subject to the authority of the City to regulate the manner in which parking on the public streets is conducted, subject to the qualifications stated in the paragraph.

4. Non-exclusive Easement. The easement reserved herein is not exclusive, and is subject and subordinate to: (a) the right of the City to use the easement area for any purpose; provided, however, that the City may not interfere or disturb any Encroachment constructed or placed in accordance with this Agreement; (b) any existing street utility, drainage or communication facility located in, on, under or upon Phase I; (c) all vested rights presently owned by any utility or communication company; and (d) any existing license, lease, easement, or other interest heretofore granted by the City.

5. Term. The term of this Agreement and the easements reserved herein shall be perpetual, subject to termination as set forth in Section 10 hereof.

6. Design, construction, maintenance and replacement.

(a) All design, construction, reconstruction, replacement, removal, operation and maintenance by Partnership of any Encroachment shall be done in such a manner so as not to interfere with or create a hazard to the operation, maintenance, and use of a public right-of-way. Partnership shall obtain building permits from the City for Encroachments prior to their construction or placement.

(b) All Encroachments shall be reasonably maintained by Partnership at all times in a safe, neat and good physical condition. Prior to instituting any such maintenance, Partnership shall secure from the City any necessary permits, including building permits. Upon written notice from the City, by and through the City's Building Official or his designee, stating in general terms how and in what manner the maintenance is required, Partnership shall reasonably perform such required maintenance. If Partnership fails to do so, the City shall have the right (in addition to any other rights of the City provided for herein) to perform such maintenance, the cost of which shall be borne by Partnership.

**7. Insurance.**

(a) Partnership shall purchase and maintain during the term of this Agreement commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under the indemnification provisions of this Agreement, with limits of liability for bodily injury, death and property damage of not less than \$3,000,000, with reasonable deductibles in amounts approved by City.

(b) Such insurance shall be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas. Certified copies of all of such policies shall be delivered to the City upon the execution of this Agreement; provided, however, that the City, in its sole discretion and in lieu of certified copies of such policies, may permit the delivery of certificates of insurance together with the declaration page of such policies.

(c) The City shall be entitled, upon request and without expense, to review copies of the policies and endorsements thereto. The City may make any reasonable requests for deletion, revision or modification of particular policy terms, conditions, limitations or exclusions, except where policy provisions are established by law or regulation binding upon either City or Partnership or upon the underwriter for any of such policies. Upon request for deletion, revision or modification by the City, Partnership shall exercise reasonable efforts to accomplish the changes in policy coverage, and shall pay the cost thereof.

(d) Partnership agrees that with respect to the above-required insurance, all insurance contracts will contain the following required provisions:

- (1) Name the City and its officers, employees, board members and elected representatives as additional insured (as the interests of each insured may appear) as to all applicable coverage;
- (2) Provide for forty-five (45) days notice to the City for cancellation, non-renewal, or material change;
- (3) Provide for notice to the Director of Finance by certified mail; and
- (4) Provide that all provisions of this Agreement, as amended, concerning liability, duty, and standard of care, including the Indemnity of this Agreement, shall be underwritten by contractual coverage sufficient to include such obligations within applicable policies.

(e) The insurance policies obtained by Partnership in compliance with this Section shall be subject to approval by the City, and such proof of insurance, along with written evidence of payment of required premiums, shall be filed and maintained with the Director of Finance during the term of this Agreement, or any extension or renewal thereof, and may be changed

from time to time to reflect changing liability limits, as required by the City; provided that increases in coverage required by the City shall not exceed, on a percentage basis, the percentage increase in the Consumer Price Index in effect on the date an increase in the amount of insurance coverage is requested over the Consumer Price Index in effect on the date of this Agreement. Partnership shall immediately advise the City Attorney of any actual or potential litigation that may develop that would affect this insurance.

(f) Insurers shall have no right of recovery against the City, it being the intention that the insurance policies shall protect Partnership and the City and shall be primary coverage for all losses covered by the policies.

(g) The policy clause "Other Insurance" shall not apply to the City where the City is an insured on the policy.

(h) Companies issuing the insurance policies shall have no recourse against the City for payment of any premiums or assessments which all are set at the sole risk of the Partnership.

8. Indemnity by Partnership. Partnership shall indemnify the City, its officials, officers, employees and agents against, and hold the City, its officials, officers, employees and agents harmless from, any and all liability, actions, causes of action, lawsuits, judgments, claims, damages, costs or fees, including reasonable attorney's fees, for any injury to or the death of any person or damage to or destruction of any property resulting from or based upon, in whole or in part, any act or omission of Partnership, its officers, employees and agents under this Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

9. Indemnity by City. City shall indemnify Partnership and Partnership's successors and assigns for damage to any Encroachments constructed in accordance with the terms of this Agreement caused by any act or omission by the City or its officials, employees or agents.

10. Termination. This Agreement and the easements created hereunder may be terminated in the event Partnership abandons the use of the public rights-of-way for the purposes set forth herein.

11. Future Agreements with Respect to Property. The City acknowledges and agrees that it is contemplated that the Gaylord Property will be developed in a manner consistent with the urban framework used in Phase I and the City agrees, subject to approval of Final Development Plans for subsequent Phases, to permit encroachments into public rights of way pursuant to agreements between the City and the owners of subsequent Phases in form and content similar to this Agreement.



12. Miscellaneous.

(a) Successors. The rights and obligations of Partnership pursuant to this Agreement, except for Section 11, shall be a covenant running with Phase I and shall inure to the benefit of each subsequent owner of Phase I, provided that a sale or transfer of Phase I by Partnership or any subsequent owner of Phase I (the "Phase I Owner") shall not relieve the Phase I Owner of liability pursuant to this Agreement until such obligations have been assumed by a transferee approved in writing by the City.

(b) Force Majeure. In the event the City or Partnership shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of fire, casualty, strikes, lockouts, labor trouble, inability to procure materials or supplies, failure of power, governmental authority, riots, insurrections, war or other reason of like nature, where such delay, hinderance or prevention of performance shall not be within the reasonable control of the party obligated to perform and not be avoidable by diligence, the party so delayed shall promptly give notice to the other party, and thereupon performance of such act shall be excused for such period of delay.

(c) Notices. Any notice provided for herein shall be given by written instrument, personally delivered or sent by certified mail, return receipt requested and addressed to :

To the City:

Town of Addison, Texas  
P.O. Box 144  
Addison, Texas 75001  
Attn: City Manager

To Partnership:

Addison Circle One, Ltd.  
c/o Columbus Realty Trust  
15851 Dallas Parkway, Suite 855  
Dallas, Texas 75248

Any party may change the address for notice specified above by giving the other party ten (10) days' advance written notice of such change of address.

(d) Governing Law: Venue. This Agreement shall be construed under, and in accordance with, the laws of the State of Texas, and all obligations of the parties created by this agreement are performable in Dallas County, Texas. Venue for any action under this Agreement shall be in Dallas County, Texas.

(e) Legal Construction. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of the Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement.

(f) Entire Agreement. This Agreement represents the entire and integrated agreement between the City and Partnership relative to Encroachments into the public rights-of-way as

described herein supersedes all prior negotiations, representations and/or agreements, either written or oral.

(g) Amendment. This Agreement may not be altered, waived, amended or extended except by an instrument in writing signed by the City and Partnership.

(h) Authority to execute. The undersigned officers and/or agents of the parties hereto are the properly authorized officials and have the necessary authority to execute this Agreement on behalf of the parties hereto, and each party hereby certifies to the other that any necessary resolutions or other act extending such authority have been duly passed and are now in full force and effect.

EXECUTED at Dallas County, Texas on the day and year first written above.

**PARTNERSHIP:**

**ADDISON CIRCLE ONE, LTD., a Texas limited partnership**

**By: Columbus Realty Trust,  
General Partner**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GAYLORD:**

**GAYLORD PROPERTIES, INC.,  
a Texas corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

CITY:

TOWN OF ADDISON, TEXAS

By: \_\_\_\_\_  
Ron Whitehead, City Manager

ATTEST:

By: \_\_\_\_\_  
Carmen Moran, City Secretary

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was ACKNOWLEDGED before me on \_\_\_\_\_, 19\_\_\_\_, by  
\_\_\_\_\_  
of Columbus Realty Trust, General Partner of Addison Circle One, Ltd, a Texas limited  
partnership, on behalf of said limited partnership.

[S E A L]

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public - State of Texas

\_\_\_\_\_  
Printed Name of Notary Public

STATE OF \_\_\_\_\_ §

§

COUNTY OF \_\_\_\_\_ §

This instrument was ACKNOWLEDGED before me on \_\_\_\_\_, 19\_\_\_\_, by \_\_\_\_\_ of Gaylord Properties, Inc. a Texas corporation, on behalf of said corporation.

[S E A L]

\_\_\_\_\_  
Notary Public - State of Texas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

STATE OF TEXAS §

§

COUNTY OF DALLAS §

This instrument was ACKNOWLEDGED before me on \_\_\_\_\_, 19\_\_\_\_, by Ron Whitehead, City Manager of the Town of Addison, Texas, on behalf of said Town.

[S E A L]

\_\_\_\_\_  
Notary Public - State of Texas

My Commission Expires:

\_\_\_\_\_  
Printed Name of Notary Public

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

This instrument was ACKNOWLEDGED before me on \_\_\_\_\_, 19\_\_\_\_, by  
Carmen Moran, City Secretary of the Town of Addison, Texas, on behalf of said Town.

[S E A L]

My Commission Expires:

\_\_\_\_\_

\_\_\_\_\_  
Notary Public - State of Texas

\_\_\_\_\_  
Printed Name of Notary Public

DA953620180  
022996 v14  
186:3012-65

**EXHIBIT B**

**Remaining Gaylord Property**

**EXHIBIT A**

**Phase I**



CITY OF DALLAS

# PROPERTY MANAGEMENT

## FASCIMILE COVER PAGE

Date: 10-17-95

TO: John Baumgartner

Fax#: 931-1643

FROM: Gladys Bowens

Fax #: (214)948-4083 or (214)948-4118

Direct dial #: (214)948-4112

COMMENTS: License information

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

This transmission consists of \_\_\_\_\_ pages plus the cover page.

If there are any problems with any transmission, call the sender directly at the number above or at (214)948-4100.



**SEC. 43-108. DIRECTIONAL SIGNS WITHIN BUILDING COMPLEXES.**

(a) In a building complex composed of multiple structures which contains internal vehicular accesses, if each official building number is not discernible from the public street, the owner of the building complex shall post directional signs at each entrance to the complex and at each intersection of vehicular accesses, other than public streets, within the complex.

(b) For the purpose of this section, an "entrance" to a complex is a point at which vehicular access to the complex, other than a public street, intersects with a public street.

(c) The directional signs must indicate the direction to buildings and units by number, must be legible from the vehicular access, and must be painted with a color which is in contrast to the background. Directional signs required by this section are not required to comply with Chapter 41 of this Code. (Code 1941, Art. 68-5; Ord. 15072)

**SEC. 43-108. DIAGRAM OF MALL AREAS.**

The owner of a building complex which contains a mall area shall submit to the police and fire departments a diagram of the complex, indicating the location of each business. When a change in a business location is made, the owner shall advise the police and fire departments in writing of the change. (Code 1941, Art. 68-9; Ord. 15072)

**SECS. 43-107 THRU 43-111. RESERVED.**

(Repealed by Ord. No. 15072)

**ARTICLE VI.**

**LICENSE FOR THE USE OF PUBLIC RIGHT-OF-WAY.**

**Division 1. Licenses for Other than Bicycle Parking Devices.**

(Division title created by Ord. 18838)

**SEC. 43-112. APPLICATION; FEE.**

If a person, or governmental entity operating a utility, desires to make use of any portion of the public right-of-way for a private or governmental

utility use, the person, or governmental entity operating a utility, must apply in writing to the director. The application must be accompanied by plans or drawings showing the area to be used, a statement of the purpose for which the right-of-way is to be used, and a nonrefundable application fee of \$350; except that the application fee shall not be required for:

(1) existing encroachments previously licensed; or

(2) a license to place and maintain the facilities of a utility operated by a governmental entity on public right-of-way, where the governmental entity has previously contracted with the city to provide mutual granting of rights-of-way for utility purposes. (Ord. Nos. 18119; 18962)

**SEC. 43-113. GRANT BY CITY COUNCIL.**

If, in the judgment of the city council, the requested use is not inconsistent with and does not unreasonably impair the public use of the right-of-way, the council may by ordinance grant the license. (Ord. 18119)

**SEC. 43-114. TERMS AND CONDITIONS; DURATION; RIGHT OF TERMINATION RESERVED BY CITY.**

(a) The ordinance shall contain the terms and conditions of the license and shall state the time for which the license exists. Whether or not stated in the ordinance the city council retains the right to terminate a license whenever in its judgment the purpose or use of the license is inconsistent with the public use of the right-of-way or whenever the purpose or use of the license is likely to become a nuisance.

(b) If a private license does not state the time for expiration, it will expire 10 years from the date of the passage of the ordinance granting the license.

(c) If a license to place and maintain the facilities of a utility operated by a governmental entity on public right-of-way does not state the time for expiration, it will expire upon expiration of the governmental entity's contract with the city providing for mutual granting of rights-of-way. (Ord. Nos. 18119; 18962)

## § 43-115

## Streets and Sidewalks

## § 43-117

**SEC. 43-115. ANNUAL FEE FOR USE OF PUBLIC RIGHT-OF-WAY.**

(a) The annual fee for a license to use a public right-of-way for the following uses is:

(1) Fee for railroad crossing: not less than \$50 per track crossing the public right-of-way or an amount determined by the director and established in the ordinance granting the license. The fee will not be assessed for a railroad crossing where the railroad existed before the public right-of-way was established.

(2) Fee for encroachment of historically significant structures into public right-of-way: \$350.

(3) Fee for newspaper racks placed in public right-of-way: \$9 each.

(4) Fee for landscaping and appurtenant irrigation systems: \$350.

(5) Fee for sidewalk cafes, awnings, and other uses determined to be in the best interest of the public: established by the city council.

(6) Fee for placement and maintenance of facilities of a utility operated by a governmental entity on public right-of-way pursuant to a contract with the city providing for mutual grant of rights-of-way: None.

(b) The annual fee for a license to use a public right-of-way for uses other than those listed in Subsection (a) is \$390 or is calculated in accordance with one of the following formulas, whichever is greater:

(1) Fee for use of public right-of-way:  $\text{area X market value X } 85\% \text{ X } 12\%$ .

(2) Fee for subsurface use only:  $\text{area X market value X } 30\% \text{ X } 12\%$ .

(3) Fee for air rights use only:  $\text{area X market value X } 85\% \text{ X } 85\% \text{ X } 12\%$ .

(4) Fee for commercial parking operation use: 50% of gross receipts.

(c) The application fee required by Section 43-112 will be applied to the first year's fee if a license is granted.

(d) Whether or not stated in the ordinance the city council retains the right to increase or decrease the annual fee specified in the ordinance granting the license.

(e) The market value of the area licensed is determined by the per square foot appraised value of a fee simple interest in a useable tract of abutting property.

(f) The director shall periodically review the market values of license areas for which fees are based on market value. If it is determined that the market value of a licensed area has increased, the director shall notify the licensee in writing that the annual fee has been increased. If a licensee is unwilling to accept the increased fee, he may at his option terminate the license and receive any refund due for the prepaid portion of the current year's fee. (Ord. Nos. 18119; 18962)

**SEC. 43-116. TEMPORARY LICENSE; DIRECTOR DEFINED.**

(a) The director may grant a temporary license on a month-to-month basis if a license or abandonment application is being processed for city council action and if failure to grant a temporary license will subject the applicant to a substantial hardship.

(b) In this division DIRECTOR means the property management director. (Ord. Nos. 18118; 18838)

**SEC. 43-117. PENALTIES.**

(a) A person using or occupying a public right-of-way for a private use in violation of this division or without a license or other permit granted by the city is guilty of an offense and, upon conviction, is subject to a fine not to exceed \$900 for each day that the violation exists.

(b) Any owner, occupant, tenant, or licensee who fails to keep the sidewalks, curbs, and private structures constructed within or over the licensed area in good repair is guilty of maintaining a nuisance and, upon conviction, is subject to a fine not to exceed \$500 for each day the nuisance is maintained.

(c) Subsection (b) does not apply to railroad

§ 43-117

Streets and Sidewalks

§ 43-122

crossings for which maintenance and repair is required in the ordinance granting the license. (Ord. Nos. 18118; 18838; 19963)

#### SEC. 43-118. BREACH BY GRANTEE.

The director is authorized to terminate a license granted pursuant to this division if the grantee fails to fulfill any of the conditions stated in the license. (Ord. Nos. 18118; 18838)

#### SEC. 43-119. WAIVER.

The provisions of this division that are not required by state law or the city charter may be waived or modified by the city council in the ordinance granting the license. (Ord. Nos. 18118; 18838)

#### Division 2. Bicycle Parking Devices.

#### SEC. 43-120. DEFINITIONS.

In this chapter:

(1) **BICYCLE PARKING DEVICE** means a device, approved as to size and design by the director, to which a bicycle may be secured by a lock either provided by the user or provided on the device.

(2) **CITY** means the city of Dallas, Texas.

(3) **DIRECTOR** means the director of transportation for the city, or his designated representative. (Ord. 18838)

#### SEC. 43-121. LICENSE REQUIRED; APPLICATION; ISSUANCE.

(a) A person commits an offense if he installs or operates a bicycle parking device on a public right-of-way within the city without a license issued by the director.

(b) A person who desires to install or operate a bicycle parking device on a public right-of-way abutting his property shall apply in writing to the director for a bicycle parking device license. The application must contain the following information:

(1) the names, addresses, and telephone numbers of:

(A) the applicant;

(B) if the applicant is a lessee, the property owner, and

(C) the manufacturer of each bicycle parking device to be installed or operated;

(2) the number of bicycle parking devices to be installed or operated;

(3) the proposed location of each bicycle parking device;

(4) the dimensions of each bicycle parking device, measured with and without bicycles parked in the device;

(5) the proposed method of securing each bicycle parking device to the public right-of-way; and

(6) if the applicant is a lessee, written consent from the property owner to install or operate any bicycle parking device on public right-of-way abutting his property.

(c) The director shall forward a copy of any completed application to the departments of street and sanitation services, public works, and property management and to any utility company that might be affected by the proposed installation and operation of a bicycle parking device. The departments, and any utility company notified, shall review the application and return it, with any comments, to the director within 30 days of receipt.

(d) After reviewing the application and departmental comments, the director may issue a bicycle parking device license unless denial is required by Section 43-122. (Ord. 18838)

#### SEC. 43-122. DENIAL OR REVOCATION OF LICENSE.

(a) The director shall deny a bicycle parking device license if:

(1) the applicant fails to comply with the requirements of this division or other applicable law;

(2) the applicant makes a false statement of material fact on an application for a bicycle parking device license; or

Dallas City Code

SECTION.F

F-A.3

21

NEW LICENSE

REVISED 08-27-92

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a Private/Revocable License to \_\_\_\_\_  
 \_\_\_ to occupy, maintain, and utilize certain public property located near the intersection of  
 \_\_\_\_\_ and \_\_\_\_\_ and located in/adjacent to  
 Block(s) \_\_\_\_\_ within the limits hereinafter more fully described, for the purpose  
 of \_\_\_\_\_; providing for the terms  
 and conditions of this license; providing for the annual compensation to be paid to the City  
 of Dallas; providing for payment of the publication fee; and providing an effective date of  
 this license and ordinance.

**INSERT HISTORICAL STRUCTURE VERBAGE IF APPROPRIATE.**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1.** That a Private/Revocable License, hereinafter referred to as "license",  
 subject to the restrictions and conditions of this ordinance, is hereby granted to \_\_\_\_\_  
 \_\_\_\_\_, its successors and assigns, hereinafter  
 referred to as "GRANTEE", to occupy, maintain, and utilize for the purpose set out  
 hereinbelow the tract(s) of land described in Exhibit A, hereinafter referred to as "licensed  
 area" which is attached hereto and made a part hereof.

**SECTION 2.** That this license is granted for a term of \_\_\_\_\_ (\_\_\_\_) years, unless  
 sooner terminated according to other terms and provisions herein contained.

**SECTION 3.** That GRANTEE shall pay to the City of Dallas the sum of \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) annually for the license herein granted,  
 said sum to become due and payable on the 2nd day of January each year, in advance, during  
 the term hereof; provided, however, that the first payment due hereunder in the sum of \_\_\_\_\_  
 \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) shall become due and payable upon the  
 final passage of this ordinance and shall cover the consideration for 19\_\_\_\_. Such  
 consideration shall be in addition to and exclusive of any other taxes or special assessments  
 required by law to be paid by GRANTEE. Should GRANTEE fail to pay the above stated

annual fee within sixty (60) days of the due date, the Property Management Director may terminate this license. All sums payable to the City of Dallas hereunder shall be paid to the City Controller of the City of Dallas and deposited in Fund 004, Agency PGT, Org. 1301, Revenue Source 8200.

**SECTION 4.** That the licensed area shall be used by GRANTEE for the following purpose under the direction of the Director of Public Works of the City of Dallas: \_\_\_\_\_

**SECTION 5.** That this license is subject to the provisions set forth in EXHIBIT B, attached hereto and made a part hereof.

**SECTION 6.** That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. (The Governing Body of the City of Dallas reserves the right to terminate and cancel this license, at will, by Resolution passed by said Governing Body./The Governing Body of the City of Dallas reserves the right by resolution duly passed by said Governing body, to terminate and cancel this license upon giving GRANTEE SIXTY (60) days notice of its intent to cancel.) Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said resolution shall be final and shall not be subject to review by the Courts. GRANTEE shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or GRANTEE, as the case may be, this license shall become null and void and GRANTEE or anyone claiming any rights under this instrument shall remove any improvements and encroachments from the licensed area at GRANTEE's expense. Failure to do so shall subject GRANTEE to the provisions contained in EXHIBIT B, Subsection (a). All work shall be done at the sole cost of GRANTEE and to the satisfaction of the Director of Public Works.

**SECTION 7.** That the license is subject to the following conditions, terms and reservations:

- a) \_\_\_\_\_  
\_\_\_\_\_

- b) \_\_\_\_\_  
\_\_\_\_\_
- c) \_\_\_\_\_  
\_\_\_\_\_

**SECTION 8.** That the license granted hereby shall not become effective until and unless GRANTEE files a final acceptance, in writing, to the terms and conditions of this ordinance with the Property Management Director and said written acceptance shall be forwarded to the City Secretary of the City of Dallas. In the event said written final acceptance is not filed within six (6) months after the passage of this ordinance as provided for herein, then the Property Management Director may terminate this license.

**SECTION 9.** That upon receipt of GRANTEE's final written acceptance, the Property Management Director is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County.

**SECTION 10.** That the terms and conditions contained in this ordinance shall be binding upon GRANTEE, its successors and assigns.

**SECTION 11.** That this license may not be assigned without prior written approval from the Property Management Director, or his designee. Such assignment shall recite that it is subject to the terms, restrictions, and conditions contained in this ordinance. The assignee shall deliver (evidence of ownership of property abutting licensed area,) a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Property Management Director within 10 days of such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. Should GRANTEE fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Property Management Director may terminate this license.

**IF GRANTEE SELF-INSURES, INSERT THE SELF-INSURANCE PROVISION HERE AND RENUMBER THE REMAINING SECTIONS.**

**SECTION \_\_\_\_.** That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which

certified copy shall be delivered to the Property Management Director, or his designee. Upon receipt of the fee for the year 19\_\_, an acceptable certificate of insurance, and the fee for publishing this ordinance which GRANTEE shall likewise pay, the Property Management Director, or his designee, shall deliver to GRANTEE the certified copy of this ordinance. The Property Management Director, or his designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

SECTION \_\_\_\_\_. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so ordained.

**APPROVED AS TO FORM:**  
**SAM LINDSAY, City Attorney**

**Property Management Director**

BY \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
L. G. PEPPER

PASSED \_\_\_\_\_

**WHEREAS,** \_\_\_\_\_ is the owner of that certain structure located at/near the intersection of \_\_\_\_\_ and \_\_\_\_\_, said structure being more commonly known as the \_\_\_\_\_; and

**WHEREAS,** said structure lies within the \_\_\_\_\_ Historic District, and it is the desire of the City Council of the City of Dallas to promote the restoration and rehabilitation of buildings therein; and

**WHEREAS,** it is the opinion of the City Council of the City of Dallas that said structure is a "historically significant structure" for the limited purpose mentioned in Chapter 43, Article VI, Section 43-115 (a) (2) of the City Code of the City of Dallas; and

**WHEREAS,** said \_\_\_\_\_, has requested that he/she/it/they be granted a \_\_\_\_\_ for the purpose of allowing the continued use and maintenance of an \_\_\_\_\_, which are integral part of said historic structure; Now, Therefore,



**SECTION \_\_.** That in lieu of the insurance requirements specified in **EXHIBIT B**, Subsection (c), **GRANTEE** may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against the risks described in this Subsection (c) and shall not be required to maintain insurance hereunder provided that **GRANTEE** furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance, evidence of which shall be provided to the City prior to issuance of a certified copy of the ordinance to **GRANTEE**.

## EXHIBIT B

## ADDITIONAL LICENSE PROVISIONS

That this license is granted subject to the following conditions, terms and reservations:

- (a) That at such time as this license is terminated or canceled for any reason whatsoever, GRANTEE, upon orders issued by the City acting through the Director of Public Works, or his designee, shall remove all installations, improvements and appurtenances owned by it situated in, under or attached to the licensed area, and shall restore the premises to its former condition in accordance with the requirements of the Director of Public Works at the sole cost of GRANTEE. In the event, upon termination of this license, GRANTEE shall fail to remove its installations, improvements and appurtenances and to restore the licensed area in compliance with orders issued by City, or such work is not done to the satisfaction of the Director of Public Works, then in either event the City shall have the right to do all work necessary to restore said area to its former condition or cause such work to be done, and to assess the cost of all such work against GRANTEE; in neither event shall the City of Dallas be liable to GRANTEE on account thereof.
- (b) It is further understood that if and when the City of Dallas, in the exercise of its discretion, shall determine that the grade of any street, sidewalk or parkway should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the licensed area, and/or any of GRANTEE's installations and improvements thereon, any modifications or changes in construction or reconstruction of any public improvement attributable to GRANTEE's use of the licensed area and/or its installations and improvements thereon, shall be made at the sole expense of GRANTEE and to the satisfaction of the Director of Public Works.
- (c) At such time as this license is granted, it is agreed, and a condition hereof, that GRANTEE shall procure and keep in full force and effect commercial general liability insurance coverage issued by an insurance company authorized and approved by the State of Texas, acceptable to the City of Dallas and issued in the standard form approved by the State Board of Insurance. The insured provisions of this policy must name the City of Dallas, its officers and employees as additional insureds protecting the City of Dallas against any and all claims for damages to persons or property as a result of or arising out of the use, operation, and maintenance by GRANTEE of the licensed area and GRANTEE's installations, improvements, landscaping, and equipment in connection therewith and located therein. The commercial general liability coverage must provide combined single limits of liability for bodily injury and property damage of not less than \$500,000 for each occurrence, \$1,000,000 annual aggregate. The coverage must be on an "occurrence" basis and must include coverage for premises operations, independent contractors, products/completed operations, personal injury, contractual liability, and medical payments. This insurance shall also include coverage for underground, explosion, and collapse hazards.
1. Each policy must include a cancellation provision in which the insurance company is required to notify GRANTEE and the City of Dallas in writing not fewer than 30 days before canceling, failing to renew, or making a material change to the insurance policy.
  2. GRANTEE shall carry said insurance at its expense and shall furnish the City of Dallas proof of such insurance. In the event said insurance should terminate during the licensing term hereof, or GRANTEE fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, the Property Management Director, or his designee, may terminate the license granted herein.
- (d) GRANTEE is prohibited from using the licensed area in any manner which violates Federal, State or local laws, regulations, rules and orders, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, and shall provide satisfactory evidence of compliance upon the request of the City of Dallas. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the licensed area due to GRANTEE's use and occupancy thereof, GRANTEE, at its expense, shall be obligated to clean up the licensed area to the satisfaction of the City of Dallas and any governmental body having jurisdiction thereover. The City of Dallas may, at its option, clean the licensed area. If the City of Dallas elects to do so, GRANTEE shall promptly pay to the City of Dallas the reasonable cost of such cleanup upon receipt of bills therefor. GRANTEE agrees that the indemnity provisions contained in paragraph (g) herein shall be fully applicable to the requirements of this paragraph, in the event of GRANTEE's breach of this paragraph, or as a result of any such discharge, leakage, spillage, emission or pollution arising out of the GRANTEE's use of the licensed area.

(e) This license is subject to all State laws, the provisions of the Charter of the City of Dallas as it now exists, or as may hereafter be adopted or amended, and the ordinances of the City of Dallas now in effect or those which may hereafter be passed or adopted. The City of Dallas shall have the right to increase or decrease the compensation to be charged for the use contemplated by this grant in accordance with the provisions of the Dallas City Code as it now exists, or as may hereafter be adopted or amended.

(f) The Governing Body of the City of Dallas reserves the right, at any time without notice, to terminate and cancel this license, by resolution, upon a finding by the Governing Body that this license is inconsistent with the public use of the property or whenever the purpose or use of the license is likely to become a nuisance, and all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Dallas shall not be held liable by reason thereof. The decision of the Governing Body of the City in this matter shall be final and binding upon all parties insofar as the City's determination as to whether the GRANTEE's use of this license constitutes a nuisance or is inconsistent with the public use of the property.

(g) As a condition hereof, GRANTEE agrees and is bound to defend, indemnify and hold the City of Dallas, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the licensed area or GRANTEE's installations and improvements within the licensed area, from any act or omission of any representative, agent, customer and/or employee of GRANTEE, or by GRANTEE's breach of any of the terms or provisions of this license, or by any negligent or strictly liable act or omission of GRANTEE, its officers, agents, employees or subcontractors in the use, occupancy and maintenance of GRANTEE's installations and improvements within the licensed area; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City of Dallas, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the GRANTEE and the City of Dallas, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City of Dallas under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of GRANTEE's use of the licensed area or GRANTEE's improvements and equipment located thereon. In addition to the foregoing, GRANTEE covenants and agrees never to make a claim of any kind or character whatsoever against the City of Dallas for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

(h) This license is subject to any existing utilities or communication facilities, including drainage, presently located within the licensed area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, and to any vested rights presently owned by any utility or communications company, public or private, for the use of the licensed area for facilities presently located within the boundaries of said licensed area. It is the intent of the foregoing that this permission herein is made expressly subject to the utilization of the licensed area for communication and utility purposes, both public and private, including drainage, over, under, through, across and along the licensed area. No buildings shall be constructed or placed upon, over or across the licensed area in such a manner as to interfere with the operation of any utilities and communication facilities. All and any communication company and utility, both public and private, shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within the licensed area. All communication companies and utilities, both public and private, shall at all times have the full right of ingress and egress to or from and upon the licensed area for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone.

# TEMPORARY LICENSE AGREEMENT

THE STATE OF TEXAS)

Log No. \_\_\_\_\_

COUNTY OF DALLAS )

WHEREAS, \_\_\_\_\_, has made application for a Revocable/Private License for the hereinafter specified use or purpose within said right-of-way; and

WHEREAS, pursuant to Article VI, Section 43-116 of the Dallas City Code, it is the opinion of the Property Management Director that failure to grant a temporary license will subject the applicant to a substantial hardship;

NOW, THEREFORE, this Temporary License Agreement this day made between the City of Dallas, a Texas municipal corporation, hereinafter referred to as "City" and the hereinafter defined Licensee.

### 1.a) DEFINITION OF TERMS USED IN THIS TEMPORARY LICENSE AGREEMENT

Licensee:

License Fee: \$ \_\_\_\_\_ per monthly/annual period

Due Date: \_\_\_\_\_ and each anniversary period thereafter

Inception Date:

Possession Date:

Use or Purpose:

### b) ADDITIONAL LICENSE AGREEMENT INFORMATION:

License Fund: Fund \_\_\_\_\_ Org \_\_\_\_\_

Agency \_\_\_\_\_ Revenue Source \_\_\_\_\_

Licensee's Address:

Licensee's Phone:

Drivers License #

Social Security #

Taxpayer I. D. #

\_\_\_\_\_ / \_\_\_\_\_

2. Licensee, in consideration of being permitted to occupy the hereinafter described premises ("premises"), hereby agrees to pay to City the License Fee, payable on or before each due date and said License Fee shall be deposited to the appropriate License Fund. The obligation to pay the License Fee is an Independent covenant. Licensee further agrees to make all improvements and repairs and to undertake all maintenance necessary to keep said premises safe from deteriorating in value or condition, at no expense to City, and that City shall be absolutely exempt from any requirements to make any improvements, repairs, or undertaking any maintenance to the premises or other appurtenances during the period the premises are covered by this Temporary License Agreement. Licensee may take possession of the premises on the possession date, subject to City's continued use of the premises for any public purpose. This Temporary License Agreement shall begin on the inception date.

In the event Licensee's check for the License Fee is dishonored, Licensee shall pay to City a processing fee of \$15.00 for each dishonored check.

3. Licensee agrees that its occupancy is on a month-to-month basis, not to exceed one year.

4. The property described below shall be used by Licensee for the above stated use or purpose under the direction of the Director of Public Works & Transportation of the City of Dallas.

5. This license is granted subject to the following additional conditions, terms and reservations:

a. It is agreed by Licensee that failure to pay the License Fee stipulated herein or the violation of any other covenant herein contained shall forfeit the right to occupy the premises, and City shall be entitled to immediate possession thereof without the necessity of legal proceedings.

b. It is further understood and agreed that the premises are deemed suitable by Licensee for the uses contemplated to be made of the premises.

c. As further consideration for the license granted hereby, Licensee agrees that, in the event that Licensee's application for the Revocable or Private License is withdrawn, denied or exceeds one year, the license granted hereby shall automatically terminate and Licensee shall immediately remove all of its installations, improvements, landscaping and equipment within the premises and shall restore the premises to its former condition at Licensee's sole cost and expense. All work shall be done to the satisfaction of the Director of Public Works & Transportation.

d. At such time as this license is granted, it is agreed, and a condition hereof, that Licensee shall procure and keep in full force and effect commercial general liability insurance coverage issued by an insurance company authorized and approved by the State of Texas, acceptable to the City and issued in the standard form approved by the State Board of Insurance. The insured provisions of this policy must name the City, its officers and employees as additional insureds protecting the City against any and all claims for damages to persons or property as a result of or arising out of the use, operation, and maintenance by Licensee of the premises and licensee's installations, improvements, landscaping, and equipment in connection therewith and located therein. The commercial general liability coverage must provide combined single limits of liability for bodily injury and property damage of not less than \$500,000 for each occurrence, \$1,000,000 annual aggregate. The coverage must be on an "occurrence" basis and must include coverage for premises operations, independent contractors, products/completed operations, personal

Injury, contractual liability, and medical payments. This insurance shall also include coverage for underground, explosion, and collapse hazards.

1. Each policy must include a cancellation provision in which the insurance company is required to notify Licensee and the City in writing not fewer than 30 days before cancelling, failing to renew, or making a material change to the insurance policy.
2. Licensee shall carry said insurance at its expense and shall furnish the City proof of such insurance. In the event said insurance should terminate during the licensing term hereof, or Licensee fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, the Property Management Director, or her designee, may terminate the license granted herein.

e. As a condition hereof, Licensee agrees and is bound to defend, indemnify and hold the City, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the premises or Licensee's installations, improvements, landscaping and equipment within the premises, from any act or omission of any representative, agent, customer and/or employee of Licensee, or by Licensee's breach of any of the terms or provisions of this license, or by any negligent or strictly liable act or omission of Licensee, its officers, agents, representatives, customers, employees or subcontractors in the use, occupancy and maintenance of Licensee's installations, improvements, landscaping and equipment within the premises; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the Licensee and the City, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of Licensee's use of the premises or Licensee's installations, improvements, landscaping and equipment located thereon. In addition to the foregoing, Licensee covenants and agrees never to make a claim of any kind or character whatsoever against the City for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

f. It is further agreed that City reserves and has the absolute right to terminate this Temporary License Agreement at any time such termination becomes necessary; that the determination by City of the necessity for such termination shall be final and binding; that the City shall upon such determination become immediately entitled to possession of the premises without giving any notice and without the necessity of legal proceedings to obtain possession thereof; that any fees paid in advance shall be returned to Licensee in the proportion which the unexpired part of the period bears to the payment period; and in any event, upon termination or cancellation by City or Licensee,

Licensee shall remove installations, improvements, landscaping and equipment from said area at Licensee's expense. All work shall be done to the satisfaction of the Director of Public Works & Transportation.

6. City does hereby license and demise, subject to the foregoing terms and provisions, the property described on Exhibit "A", hereinabove referred to as the "premises", which is attached hereto and made a part hereof.

7. Licensee is further subject to the additional terms and conditions specified on Exhibit "B", attached hereto and made a part hereof.

8. This Temporary License Agreement embodies the complete agreement of the parties, superseding all oral or written previous and contemporary agreements between the parties and relating to matters in this Temporary License Agreement, and except as otherwise provided in this Temporary License Agreement cannot be modified without written agreement of City and Licensee to be attached and made a part of this Temporary License Agreement.

Signed in duplicate this the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, A.D.

**LICENSOR  
CITY OF DALLAS**

**LICENSEE**

BY: \_\_\_\_\_  
**GAY DEHOFF**  
Property Management Director

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_  
ADDRESS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

PHONE: \_\_\_\_\_

Fee to be Paid to: **City of Dallas**  
Mail to: **Property Management**  
**320 E. Jefferson Blvd., Rm 203**  
**Dallas, Texas 75203**

SAMPLE

ORDINANCE NO. \_\_\_\_\_

**AN ORDINANCE PERMITTING AND REGULATING THE CONSTRUCTION, MAINTENANCE AND USE OF A LONG DISTANCE TELECOMMUNICATIONS SYSTEM BY \_\_\_\_\_ ACROSS, OVER AND UNDER THE STREETS, HIGHWAYS AND PUBLIC RIGHTS-OF-WAY OF THE CITY OF DALLAS.**

**WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ hereinafter referred to as " \_\_\_\_\_ ", desires use of certain public rights-of-way within the City of Dallas for the purposes set forth below pursuant to the provision of the laws of the State of Texas, including, but not limited to, Article 1416 V.A.C.S.; and**

**WHEREAS, it is the position of the City of Dallas that all users of space in the public right-of-way for the conduct of a private business must obtain either a franchise or a license as required by Chapter XIV of the City Charter; and**

**WHEREAS, the City contends that a franchise is the appropriate instrument to authorize the use of public right-of-way for direct service connection to individual customers, and that licenses may be used to authorize such use for intra-company facilities for the provisions of long distance telecommunications services; and**

**WHEREAS, the City Council has determined that it is appropriate to grant the following license to \_\_\_\_\_; and**

**WHEREAS, \_\_\_\_\_ and the City of Dallas agree this license does not affect any right, privilege or authorization existing apart from this license;**

**WHEREAS, \_\_\_\_\_ is willing to accept this license solely on a compromise and settlement basis, to avoid the time and expense of litigation, without waiving any rights it may have under Article 1416, V.A.C.S.;**

Now, Therefore:

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

**SECTION 1. That a License, subject to the terms and conditions of this ordinance, hereinafter referred to as "license", is hereby granted to \_\_\_\_\_, its successor and assigns, to occupy, maintain and utilize for the purposes set out herein below the**



subsurface space beneath the tract(s) of land described in Exhibit A, which is attached hereto and made a part hereof, hereinafter referred to as the "public rights-of-way" or "licensed area" together with the rights of ingress and egress to or from said public rights-of-way or licensed area for the purposes set forth in Section 5.

**SECTION 2.** That this license is granted for a term of twenty (20) years from the date of passage of this ordinance unless sooner terminated according to other terms and provisions herein contained.

**SECTION 3.** That \_\_\_\_\_ shall pay to the City of Dallas the "minimum" fee of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) annually, said sum to become due and payable on the 2nd day of January each year in advance, during the term hereof.; provided, however, that the first payment due hereunder in the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_) shall become due and payable upon the final passage of this ordinance and shall cover the consideration for the year 19\_\_\_\_. This minimum fee represents the value, according to Section 43-114 (6) (2) of the Dallas City Code, of the public rights-of-way three feet in width to be used by \_\_\_\_\_ for the construction of all certain wires, cables, underground conduits and manholes (hereinafter the "facility" or "facilities") in connection with a long-distance telecommunications system or systems (not including cable television) that provides only long-distance telecommunications services in the public rights-of-way authorized in Section 5 below. Such consideration shall be in addition to and exclusive of all general municipal taxes of whatever nature, including but not limited to ad valorem taxes, special taxes and special assessments required by law to be paid by \_\_\_\_\_.

All sums payable to the City of Dallas hereunder shall be paid to the Director of Revenue and Taxation of the City of Dallas and shall be deposited in Fund 004, Agency PGT, Org. 1301, Revenue Source 8200.

**SECTION 4.** That the minimum fee of \$ \_\_\_\_\_, to be paid annually in accordance with Section 3 above shall be adjusted annually to reflect changes in the national index of the "Consumer Price Index for Urban Wage Earners and Clerical Workers", "CPI - W", published by the Bureau of Labor Statistics, Washington, D.C. (or such other similarly-purposed government index published nationally and agreed to by the City of Dallas and \_\_\_\_\_, such index to replace the CPI-W). The City shall notify

\_\_\_\_\_ by November 15th of each year of the fee, as adjusted, to be paid on the following January 2nd. The "base" for determining adjustments to the fee shall be the CPI - W reported for July, of the calendar year prior to granting of this license. The annual adjustment shall be calculated by taking the CPI - W for the month of July prior to the next fee payment over the base times the minimum fee. In no event shall the annual fee be reduced below the minimum fee specified in this ordinance. The fee established herein shall not be affected by any relocation of \_\_\_\_\_'s facilities required pursuant to Section 13 of this ordinance.

**SECTION 5.** That the licensed area shall be used by \_\_\_\_\_ for the following purposes: the installation, use, operation, construction, reconstruction, replacement, repair and/or maintenance of a facility or facilities in connection with the system. The use of the public rights-of-way in the licensed area for any other purposes, including the direct connection of customers or as a local distribution provider, providing cable services or operating a cable system as defined in the cable communications policy act of 1984 (47 U.S.C.A. §21 et seq.) as amended or as recognized by the Federal Communications Commission, is not authorized by this ordinance.

**SECTION 6.** The installation, construction, reconstruction replacement or repair work done by \_\_\_\_\_ in the licensed area, under the direction of the Director of Public Works, that may affect the property of other public or private utilities located in the licensed area or public rights-of-way shall be subject to and governed by all laws, rules, ordinances and regulations of the City of Dallas and State of Texas, that are applicable to insuring the work done does not interfere with or inconvenience the public in the use of the licensed area including, but not limited to the following:

- A. Prior to the start of construction of the facilities within the licensed area or public rights-of-way, \_\_\_\_\_ shall submit final construction and engineering plans to the City's Director of Public Works for his review and approval, pursuant to the standards generally applicable to requests for licenses to use the public rights-of-way, including the City's Utility Location and Coordination Policy. Approval of such plans will not be unreasonably denied, delayed or withheld by the City. \_\_\_\_\_'s design and construction must be coordinated with other utility facilities in the licensed area and with the Utility Management Division of the Revenue and Taxation Department in accordance with the City of Dallas Utility Location and Coordination Policy. Except in an emergency, \_\_\_\_\_ shall contact Dallas Water Utilities

(670-6398), Texas Utilities Electric Company (698-7996), Lone Star Gas Company (426-7041), Southwestern Bell Telephone Company (464-4095) and TCI Cablevision of Dallas (320-7502) or the successors to such companies and any other franchises pursuant to Chapter 14 of the Dallas City Charter, at least forty eight (48) hours prior to any installation, construction, reconstruction, replacement or repair work by \_\_\_\_\_ of its facilities within the licensed area that may affect the property of any of these utilities and communication facilities located in the licensed area or public rights-of-way so that they may locate their facilities for \_\_\_\_\_ or its contractors and, at their option, have a representative present during the period of construction, reconstruction or replacement or repair.

- B. All excavations and other construction in the streets shall be so carried out as to interfere as little as practical with the surface use of the streets and sidewalks and with the surface use of private property, in accordance with any lawful and reasonable direction given by and under the authority of the governing body of the City under the police and regulatory powers of the City necessary to provide for public convenience and safety. \_\_\_\_\_ agrees to promptly restore all public rights-of-way excavated by \_\_\_\_\_ to substantially the same condition as before such excavation in accordance with plans approved by and to the reasonable satisfaction of the City's Directors of Public Works and Streets and Sanitation Services. In addition, \_\_\_\_\_ shall contact the Department of Transportation (670-3260) in the event the installation, construction, reconstruction, replacement, repair and/or maintenance of its facilities requires the temporary closing of a traffic lane or lanes.
- C. Except in an emergency, \_\_\_\_\_ shall not excavate any pavement in any licensed area or public rights-of-way or significant amounts of any unpaved licensed area or public rights-of-way without first securing a street cut permit or any other necessary permission of the City, but such permit or permission shall not be unreasonably delayed or withheld if the proposed excavation is in accordance with the terms of this ordinance. The City shall be notified as soon as practicable regarding work performed under emergency conditions.
- D. The City through the Director of Public Works shall have the power at any time to order and require \_\_\_\_\_ to remove or abate any facility that creates a public nuisance or is dangerous to life or property, and in case \_\_\_\_\_ after notice, fails or refuses to comply, the City shall have the power to remove or abate same at the expense of \_\_\_\_\_, all without compensation or liability for damages to \_\_\_\_\_.

**SECTION 7.** In this section list all appropriate conditions and requirements for this specific request. If none, delete this section and renumber the remaining sections.

**SECTION 8.** That in the event that the governing body of the City of Dallas authorizes abutting landowners to occupy space under the surface of any public rights-of-way within the licensed area, such grant to abutting landowners shall be subject to the rights of \_\_\_\_\_ described in this ordinance.

**SECTION 9.** That in the event that the governing body of the City of Dallas closes or abandons any public rights-of-way which contains any facilities of \_\_\_\_\_, any conveyance of land contained in such closed or abandoned street, alley, highway or public place shall be subject to the rights of \_\_\_\_\_ described in this ordinance. In the event that any portion of the public rights-of-way that includes facilities of the system becomes the subject of condemnation proceedings, it is agreed that \_\_\_\_\_ property rights and interest in such public rights-of-way shall be severed from the City's interest. In such proceedings and any such condemnation awards shall be specifically allocated between \_\_\_\_\_ interest and the City's interest. The City shall make a diligent effort to notify \_\_\_\_\_ within a reasonable time of any condemnation action (or threatened action) filed against the public rights-of-way that affects any facility of the system, or any proposed sale in lieu of condemnation.

**SECTION 10.** That \_\_\_\_\_ shall indemnify, defend, save and hold harmless the City and all of its officers, agents, and employees from all suits, actions, or claims of any character, style, and description, brought for or on account of any injuries or damages received or sustained by any person or any property occasioned by, or arising out of, the installation, construction, reconstruction, replacement, repair and/or maintenance of \_\_\_\_\_'s facilities in the public rights-of-way on account of any negligent act or omission of any representative, agent, and/or employee of \_\_\_\_\_'s. This indemnification shall also cover any claim for damage that any utility or communications company, whether publicly or privately owned, may sustain or receive to its property located in the licensed area or public rights-of-way by reason of \_\_\_\_\_'s negligent use of said public rights-of-way or \_\_\_\_\_'s negligent installation, construction, reconstruction, replacement, repair and/or maintenance of facilities located therein, except to the extent of negligence on the part of the utility or a communications company, its contractor, agents or employees. \_\_\_\_\_ shall never make any claim of any kind or character whatsoever against the City of Dallas for damages that it may

suffer by reason of the installation, construction, reconstruction, operation and/or maintenance of any public improvement, utility, or communication facility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water and/or sanitary sewer mains and/or storm sewer facilities and whether such damage is due to flooding, infiltration, backflow and/or seepage caused from the failure of any installation, natural causes or from any other cause of whatsoever kind or nature except for damages occasioned by intentional misconduct or gross negligence on the part of the City, it being further expressly understood this limitation of liability does not apply to independent contractors of the City of Dallas.

**SECTION 11.** That the governing body of the City of Dallas, its Director of Public Works and its Property Management Director shall have the right to be kept fully informed as to matters pertaining in any way to \_\_\_\_\_'s exercise of its rights under this ordinance including the installation, construction, reconstruction, replacement and/or repair of the facilities connected with the system in Dallas. \_\_\_\_\_ shall provide the City with maps describing the location and specific identification of its facilities within the licensed area. Any and all maps, construction drawings and specifications shall be available for reasonable inspection by the Utility Management Division of the City's Revenue and Taxation Department, or to any other City Department, to facilitate coordination and cooperation of \_\_\_\_\_'s facilities with other utility and communication facilities within the licensed area. Maps, construction drawings and specifications required by this ordinance and maintained by \_\_\_\_\_ shall not leave the possession of \_\_\_\_\_ except with the consent of \_\_\_\_\_.

**SECTION 12.** That any notice or communication required in the administration of this ordinance shall be sent as follows:

Notices to the City will be sent to:

City Secretary  
1500 Marilla Street,  
Dallas City Hall  
Dallas, Texas 75201

Property Management Director  
320 E. Jefferson Blvd., Room 203  
Dallas, Texas 75203

Notice to \_\_\_\_\_ will be to:

With copy to:

0086F.WPF



CITY OF DALLAS

October 16, 1995

Mr. Ken Dipple  
Cowles and Thompson  
NationsBank Plaza  
901 Main Street  
Dallas, Texas 75202

Dear Ken:

Enclosed per your request are form license ordinances used by the City of Dallas. A private license is used when the abutting property owner is the applicant. A revocable license is used when a non-abutting property owner is the applicant. The Dallas City Charter requires the distinction. If you have any questions, please feel free to call me again.

Very truly yours,

  
Janis D. Everhart  
Assistant City Attorney

Enclosures

NEW LICENSE

REVISED 08-27-92

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a Private/Revocable License to \_\_\_\_\_ to occupy, maintain, and utilize certain public property located near the intersection of \_\_\_\_\_ and \_\_\_\_\_ and located in/adjacent to Block(s) \_\_\_\_\_ within the limits hereinafter more fully described, for the purpose of \_\_\_\_\_

\_\_\_\_\_ ; providing for the terms and conditions of this license; providing for the annual compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

INSERT HISTORICAL STRUCTURE VERBAGE IF APPROPRIATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:

SECTION 1. That a Private/Revocable License, hereinafter referred to as "license", subject to the restrictions and conditions of this ordinance, is hereby granted to \_\_\_\_\_, its successors and assigns, hereinafter referred to as "GRANTEE", to occupy, maintain, and utilize for the purpose set out hereinbelow the tract(s) of land described in Exhibit A, hereinafter referred to as "licensed area" which is attached hereto and made a part hereof.

SECTION 2. That this license is granted for a term of \_\_\_\_\_ (\_\_\_\_) years, unless sooner terminated according to other terms and provisions herein contained..

SECTION 3. That GRANTEE shall pay to the City of Dallas the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) annually for the license herein granted, said sum to become due and payable on the 2nd day of January each year, in advance, during the term hereof; provided, however, that the first payment due hereunder in the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) shall become due and payable upon the final passage of this ordinance and shall cover the consideration

SECTION.F

for 19\_\_\_. Such consideration shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by GRANTEE. Should GRANTEE fail to pay the above stated annual fee within sixty (60) days of the due date, the Property Management Director may terminate this license. All sums payable to the City of Dallas hereunder shall be paid to the City Controller of the City of Dallas and deposited in Fund 004, Agency PGT, Org. 1301, Revenue Source 8200.

**SECTION 4.** That the licensed area shall be used by GRANTEE for the following purpose under the direction of the Director of Public Works of the City of Dallas: \_\_\_\_\_

**SECTION 5.** That this license is subject to the provisions set forth in EXHIBIT B, attached hereto and made a part hereof.

**SECTION 6.** That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. (The Governing Body of the City of Dallas reserves the right to terminate and cancel this license, at will, by Resolution passed by said Governing Body./The Governing Body of the City of Dallas reserves the right by resolution duly passed by said Governing body, to terminate and cancel this license upon giving GRANTEE SIXTY (60) days notice of its intent to cancel.) Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Dallas shall not be held liable by reason thereof. Said resolution shall be final and shall not be subject to review by the Courts. GRANTEE shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel, and in either event upon the termination or cancellation by the City or GRANTEE, as the case may be, this license shall become null and void and GRANTEE or anyone claiming any rights under this instrument shall remove any improvements and



encroachments from the licensed area at GRANTEE's expense. Failure to do so shall subject GRANTEE to the provisions contained in EXHIBIT B, Subsection (a). All work shall be done at the sole cost of GRANTEE and to the satisfaction of the Director of Public Works.

SECTION 7. That the license is subject to the following conditions, terms and reservations:

- a) \_\_\_\_\_
- b) \_\_\_\_\_
- c) \_\_\_\_\_

SECTION 8. That the license granted hereby shall not become effective until and unless GRANTEE files a final acceptance, in writing, to the terms and conditions of this ordinance with the Property Management Director and said written acceptance shall be forwarded to the City Secretary of the City of Dallas. In the event said written final acceptance is not filed within six (6) months after the passage of this ordinance as provided for herein, then the Property Management Director may terminate this license.

SECTION 9. That upon receipt of GRANTEE's final written acceptance, the Property Management Director is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County.

SECTION 10. That the terms and conditions contained in this ordinance shall be binding upon GRANTEE, its successors and assigns.

SECTION 11. That this license may not be assigned without prior written approval from the Property Management Director, or his designee. Such assignment shall recite that it is subject to the terms, restrictions, and conditions contained in this ordinance. The assignee shall deliver (evidence of ownership of property abutting licensed area,) a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Property Management Director within 10 days of

such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. Should GRANTEE fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Property Management Director may terminate this license. IF GRANTEE SELF-INSURES, INSERT THE SELF-INSURANCE PROVISION HERE AND RENUMBER THE REMAINING SECTIONS.

SECTION \_\_. That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Property Management Director, or his designee. Upon receipt of the fee for the year 19\_\_, an acceptable certificate of insurance, and the fee for publishing this ordinance which GRANTEE shall likewise pay, the Property Management Director, or his designee, shall deliver to GRANTEE the certified copy of this ordinance. The Property Management Director, or his designee, shall be the sole source for receiving certified copies of this ordinance for one year after its passage.

SECTION \_\_. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so ordained.

APPROVED AS TO FORM:  
SAM LINDSAY, City Attorney

PROPERTY MANAGEMENT DIRECTOR

BY \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
L. G. PEPPER

PASSED \_\_\_\_\_

SECTION \_\_\_\_ . That in lieu of the insurance requirements specified in EXHIBIT B, Subsection (c), GRANTEE may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against the risks described in this Subsection (c) and shall not be required to maintain insurance hereunder provided that GRANTEE furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance, evidence of which shall be provided to the City prior to issuance of a certified copy of the ordinance to GRANTEE.

ORDINANCE NO. \_\_\_\_\_

An ordinance granting a Private/Revocable License to \_\_\_\_\_ to occupy, maintain and utilize certain public property located near the intersection of \_\_\_\_\_ and located in/adjacent to City Block(s) \_\_\_\_\_ within the limits hereinafter more fully described, for the purpose of \_\_\_\_\_; providing for the terms and conditions of this license; providing for the annual compensation to be paid to the City of Dallas; providing for payment of the publication fee; and providing an effective date of this license and ordinance.

ooo0ooo

WHEREAS, on \_\_\_\_\_, the City Council of the City of Dallas passed Ordinance No. \_\_\_\_\_, thereby granting \_\_\_\_\_ the right, privilege and franchise to utilize certain public property in \_\_\_\_\_ for the maintenance and use of \_\_\_\_\_; and

WHEREAS, the rights granted by said ordinance have expired; and

**INSERT HISTORICAL STRUCTURE VERBAGE IF APPROPRIATE**

WHEREAS, \_\_\_\_\_ has requested renewal of the rights granted by said ordinance; and

WHEREAS, the City Council of the City of Dallas is of the opinion that a license should be granted to \_\_\_\_\_ to continue to use this public property for said purpose, subject to the conditions hereinafter more fully set out; NOW, THEREFORE

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF DALLAS:**

SECTION 1. That a Private/ Revocable License, hereinafter referred to as "license", subject to the restrictions and conditions of this ordinance, is hereby granted to \_\_\_\_\_,

, its successors and assigns, hereinafter referred to as GRANTEE, to occupy, maintain and utilize for the purpose set out hereinbelow the tract(s) of land described in Exhibit A, hereinafter referred to as "licensed area", which is attached hereto and made a part hereof.

**SECTION 2.** That this license is granted for a term of forty (40) years, unless sooner terminated according to other terms and provisions herein contained.

**SECTION 3.** That **GRANTEE** shall pay to the City of Dallas the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) annually for the license herein granted, said sum to become due and payable on the 2nd day of January each year, in advance, during the term hereof; provided, however, that the first payment due hereunder in the sum of \_\_\_\_\_ DOLLARS (\$\_\_\_\_\_) shall become due and payable upon the final passage of this ordinance and shall cover the consideration for 19\_\_\_. Such consideration shall be in addition to and exclusive of any other taxes or special assessments required by law to be paid by **GRANTEE**. Should **GRANTEE** fail to pay the above stated annual fee within sixty (60) days of the due date, the Property Management Director may terminate this license. All sums payable to the City of Dallas hereunder shall be paid to the City Controller of the City of Dallas and deposited in Fund 004, Agency PGT, Org. 1301, Revenue Source 8200.

**SECTION 4.** That the licensed area shall be used by **GRANTEE** for the following purpose under the direction of the Director of Public Works of the City of Dallas: \_\_\_\_\_

**SECTION 5.** That this license is subject to the provisions set forth in EXHIBIT B, attached hereto and made a part hereof.

**SECTION 6.** That this license is nonexclusive and is made expressly subject and subordinate to the right of the City to use the licensed area for any public purpose. (The Governing Body of the City of Dallas reserves the right to terminate and cancel this license, at will, by resolution duly passed by said Governing Body./The Governing Body of the City of Dallas reserves the right by resolution duly passed by said Governing Body, to terminate and cancel this license upon giving **GRANTEE** sixty (60) days notice of its intent to cancel.) Upon termination, all rights granted hereunder shall thereupon be considered fully terminated and cancelled and the City of Dallas shall not be held liable by reason thereof. Said resolution shall be final and shall not be subject to review by the Courts. **GRANTEE** shall have the right of cancellation upon giving the City of Dallas sixty (60) days written notice of its intention to cancel. In the event of either termination or cancellation by the City or **GRANTEE**, as the case may be, this license shall become null and void and **GRANTEE** or anyone claiming

any rights under this instrument shall remove any improvements and encroachments from the licensed area at GRANTEE's expense. Failure to do so shall subject GRANTEE to the provisions contained in EXHIBIT B, Subsection (a). All work shall be done at the sole cost of GRANTEE and to the satisfaction of the Director of Public Works.

**SECTION 7.** That the license granted hereby shall not become effective until and unless GRANTEE files an final acceptance, in writing, to the terms and conditions of this ordinance with the Property Management Director and said acceptance shall be forwarded to the City Secretary of the City of Dallas. In the event said written final acceptance is not filed within six (6) months after the passage of this ordinance as provided for herein, then the Property Management Director may terminate this license.

**SECTION 8.** That upon receipt of GRANTEE's final written acceptance, the Property Management Director is hereby authorized to execute a NOTICE OF LICENSE and to file same in the deed records of Dallas County.

**SECTION 9.** That the terms and conditions contained in this ordinance shall be binding upon GRANTEE, its successors and assigns.

**SECTION 10.** That this license may not be assigned without prior written approval from the Property Management Director, or his designee. Such assignment shall recite that it is subject to the terms, restrictions and conditions contained in this ordinance. The assignee shall deliver (evidence of ownership of property abutting the licensed area,) a copy of the assignment, along with the assignee's written acceptance of the provisions of this ordinance, to the Property Management Director within ten (10) days of such assignment; said assignment and written acceptance shall be forwarded to the City Secretary of the City of Dallas. Should GRANTEE fail to obtain prior written approval for assignment of this license or fail to provide the City of Dallas with the required written acceptance and a copy of the assignment, the Property Management Director may terminate this license.

**IF GRANTEE SELF-INSURES, INSERT THE SELF-INSURANCE PROVISION HERE AND RENUMBER THE REMAINING SECTIONS.**

**SECTION \_\_.** That the City Secretary is hereby authorized and directed to certify a copy of this ordinance for recordation in the Deed Records of Dallas County, Texas, which certified copy shall be delivered to the Property Management Director, or his designee. Upon receipt of the fee for

the year 19\_\_, an acceptable certificate of insurance and the fee for publishing this ordinance which GRANTEE shall likewise pay, the Property Management Director, or his designee, shall deliver to GRANTEE the certified copy of this ordinance. The Property Management Director, or his designee, shall be the sole source for receiving certified copies of this ordinance for one (1) year after its passage.

SECTION \_\_. This ordinance shall take effect immediately from and after its passage and publication in accordance with the provisions of the Charter of the City of Dallas and it is accordingly so ordained.

APPROVED AS TO FORM:

SAM LINDSAY, Acting City Attorney

PROPERTY MANAGEMENT DIRECTOR

BY: \_\_\_\_\_  
Assistant City Attorney

\_\_\_\_\_  
L. G. PEPPER

PASSED \_\_\_\_\_.

**WHEREAS,** \_\_\_\_\_ is the owner of that certain structure located at/near the intersection of \_\_\_\_\_ and \_\_\_\_\_, said structure being more commonly known as the \_\_\_\_\_; and

**WHEREAS,** said structure lies within the \_\_\_\_\_ Historic District, and it is the desire of the City Council of the City of Dallas to promote the restoration and rehabilitation of buildings therein; and

**WHEREAS,** it is the opinion of the City Council of the City of Dallas that said structure is a "historically significant structure" for the limited purpose mentioned in Chapter 43, Article VI, Section 43-115 (a) (2) of the City Code of the City of Dallas; and

**WHEREAS,** \_\_\_\_\_ has requested renewal of rights granted by said ordinance for the continued use and maintenance of \_\_\_\_\_, which are an integral part of said historic structure; and

**SECTION \_\_\_\_.** That in lieu of the insurance requirements specified in EXHIBIT B, Subsection (c), **GRANTEE** may self-insure to the extent permitted by applicable law under any plan of self-insurance, maintained in accordance with sound accounting practices, against the risks described in this Subsection (c) and shall not be required to maintain insurance hereunder provided that **GRANTEE** furnishes the City satisfactory evidence of the existence of an insurance reserve adequate for the risks covered by such plan of self-insurance, evidence of which shall be provided to the City prior to issuance of a certified copy of the ordinance to **GRANTEE**.



## EXHIBIT B

## ADDITIONAL LICENSE PROVISIONS

That this license is granted subject to the following conditions, terms and reservations:

- (a) That at such time as this license is terminated or canceled for any reason whatsoever, **GRANTEE**, upon orders issued by the City acting through the Director of Public Works, or his designee, shall remove all installations, improvements and appurtenances owned by it situated in, under or attached to the licensed area, and shall restore the premises to its former condition in accordance with the requirements of the Director of Public Works at the sole cost of **GRANTEE**. In the event, upon termination of this license, **GRANTEE** shall fail to remove its installations, improvements and appurtenances and to restore the licensed area in compliance with orders issued by City, or such work is not done to the satisfaction of the Director of Public Works, then in either event the City shall have the right to do all work necessary to restore said area to its former condition or cause such work to be done, and to assess the cost of all such work against **GRANTEE**; in neither event shall the City of Dallas be liable to **GRANTEE** on account thereof.
- (b) It is further understood that if and when the City of Dallas, in the exercise of its discretion, shall determine that the grade of any street, sidewalk or parkway should be modified or changed, or that any other work should be done in connection with any public improvement which will affect the licensed area, and/or any of **GRANTEE**'s installations and improvements thereon, any modifications or changes in construction or reconstruction of any public improvement attributable to **GRANTEE**'s use of the licensed area and/or its installations and improvements thereon, shall be made at the sole expense of **GRANTEE** and to the satisfaction of the Director of Public Works.
- (c) At such time as this license is granted, it is agreed, and a condition hereof, that **GRANTEE** shall procure and keep in full force and effect commercial general liability insurance coverage issued by an insurance company authorized and approved by the State of Texas, acceptable to the City of Dallas and issued in the standard form approved by the State Board of Insurance. The insured provisions of this policy must name the City of Dallas, its officers and employees as additional insureds protecting the City of Dallas against any and all claims for damages to persons or property as a result of or arising out of the use, operation, and maintenance by **GRANTEE** of the licensed area and **GRANTEE**'s installations, improvements, landscaping, and equipment in connection therewith and located therein. The commercial general liability coverage must provide combined single limits of liability for bodily injury and property damage of not less than \$500,000 for each occurrence, \$1,000,000 annual aggregate. The coverage must be on an "occurrence" basis and must include coverage for premises operations, independent contractors, products/completed operations, personal injury, contractual liability, and medical payments. This insurance shall also include coverage for underground, explosion, and collapse hazards.
1. Each policy must include a cancellation provision in which the insurance company is required to notify **GRANTEE** and the City of Dallas in writing not fewer than 30 days before canceling, failing to renew, or making a material change to the insurance policy.
  2. **GRANTEE** shall carry said insurance at its expense and shall furnish the City of Dallas proof of such insurance. In the event said insurance should terminate during the licensing term hereof, or **GRANTEE** fails to furnish proof of insurance coverage in accordance with the specifications as required by this section, the Property Management Director, or his designee, may terminate the license granted herein.
- (d) **GRANTEE** is prohibited from using the licensed area in any manner which violates Federal, State or local laws, regulations, rules and orders, regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal and water and air quality, and shall provide satisfactory evidence of compliance upon the request of the City of Dallas. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or from the licensed area due to **GRANTEE**'s use and occupancy thereof, **GRANTEE**, at its expense, shall be obligated to clean up the licensed area to the satisfaction of the City of Dallas and any governmental body having jurisdiction thereover. The City of Dallas may, at its option, clean the licensed area. If the City of Dallas elects to do so, **GRANTEE** shall promptly pay to the City of Dallas the reasonable cost of such cleanup upon receipt of bills therefor. **GRANTEE** agrees that the indemnity provisions contained in paragraph (g) herein shall be fully applicable to the requirements of this paragraph, in the event of **GRANTEE**'s breach of this paragraph, or as a result of any such discharge, leakage, spillage, emission or pollution arising out of the **GRANTEE**'s use of the licensed area.

(e) This license is subject to all State laws, the provisions of the Charter of the City of Dallas as it now exists, or as may hereafter be adopted or amended, and the ordinances of the City of Dallas now in effect or those which may hereafter be passed or adopted. The City of Dallas shall have the right to increase or decrease the compensation to be charged for the use contemplated by this grant in accordance with the provisions of the Dallas City Code as it now exists, or as may hereafter be adopted or amended.

(f) The Governing Body of the City of Dallas reserves the right, at any time without notice, to terminate and cancel this license, by resolution, upon a finding by the Governing Body that this license is inconsistent with the public use of the property or whenever the purpose or use of the license is likely to become a nuisance, and all rights granted hereunder shall thereupon be considered fully terminated and canceled and the City of Dallas shall not be held liable by reason thereof. The decision of the Governing Body of the City in this matter shall be final and binding upon all parties insofar as the City's determination as to whether the GRANTEE's use of this license constitutes a nuisance or is inconsistent with the public use of the property.

(g) As a condition hereof, GRANTEE agrees and is bound to defend, indemnify and hold the City of Dallas, its officers, agents and employees, harmless against any and all claims, lawsuits, judgments, costs and expenses for personal injury (including death), property damage or other harm for which recovery of damages is sought, suffered by any person or persons, that may arise out of or be occasioned by the use, occupancy and maintenance of the licensed area or GRANTEE's installations and improvements within the licensed area, from any act or omission of any representative, agent, customer and/or employee of GRANTEE, or by GRANTEE's breach of any of the terms or provisions of this license, or by any negligent or strictly liable act or omission of GRANTEE, its officers, agents, employees or subcontractors in the use, occupancy and maintenance of GRANTEE's installations and improvements within the licensed area; except that the indemnity provided for in this paragraph shall not apply to any liability resulting from the sole negligence or fault of the City of Dallas, its officers, agents, employees or separate contractors, and in the event of joint and concurring negligence or fault of both the GRANTEE and the City of Dallas, responsibility and indemnity, if any, shall be apportioned comparatively in accordance with the laws of the State of Texas, without, however, waiving any governmental immunity available to the City of Dallas under Texas law and without waiving any defenses of the parties under Texas law. This obligation to indemnify and defend shall also include any claim for damage that any utility or communication company, whether publicly or privately owned, may sustain or receive by reason of GRANTEE's use of the licensed area or GRANTEE's improvements and equipment located thereon. In addition to the foregoing, GRANTEE covenants and agrees never to make a claim of any kind or character whatsoever against the City of Dallas for damage of any kind that it may suffer by reason of the installation, construction, reconstruction, operation or maintenance of any public improvement, utility or communication facility, whether presently in place or which may in the future be constructed or installed, including but not limited to, any water or wastewater mains or storm sewer facilities, regardless of whether such damage is due to flooding, infiltration, backflow or seepage caused from the failure of any installation, natural causes, City's negligence, or from any other cause whatsoever.

(h) This license is subject to any existing utilities or communication facilities, including drainage, presently located within the licensed area, owned and/or operated by the City of Dallas or any utility or communications company, public or private, and to any vested rights presently owned by any utility or communications company, public or private, for the use of the licensed area for facilities presently located within the boundaries of said licensed area. It is the intent of the foregoing that this permission herein is made expressly subject to the utilization of the licensed area for communication and utility purposes, both public and private, including drainage, over, under, through, across and along the licensed area. No buildings shall be constructed or placed upon, over or across the licensed area in such a manner as to interfere with the operation of any utilities and communication facilities. All and any communication company and utility, both public and private, shall have the right to remove and keep removed all or parts of any buildings which may in any way endanger or interfere with the construction, maintenance or efficiency of its respective systems within the licensed area. All communication companies and utilities, both public and private, shall at all times have the full right of ingress and egress to or from and upon the licensed area for the purpose of constructing, relocating, inspecting, patrolling, maintaining and adding to or removing all or part of its respective systems without the necessity at any time of procuring the permission of anyone.