

**AGENDA
CITY OF ALLEN
CITY COUNCIL WORKSHOP MEETING
APRIL 14, 2009 – 6:00 P.M.
COUNCIL CONFERENCE ROOM
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Questions on Current Agenda.

Items of Interest.

1. Introduction of Robert Wendland, Chair of the Planning and Zoning Commission —
Peter H. Vargas, City Manager
2. Briefing Regarding the Allen Event Center —
Peter H. Vargas, City Manager
3. Committee Updates from City Council Liaisons —
4. Discussion of Regular Agenda Items —

Adjourn to Regular Meeting.

- open to the public -

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place convenient and readily accessible to the public at all times. Said notice was posted on Friday, April 10, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:

Authorize the City Manager to Execute Various Agreements Regarding the Allen Event Center/Hockey League to Include Amended and Restated Arena Lease, Amended Agreement with Global Entertainment Group, and Notice of Assignment and Consent

STAFF RESOURCE:

Peter H. Vargas, City Manager

PREVIOUS COUNCIL ACTION:

On October 23, 2007, the Allen City Council approved a management agreement with Global Entertainment Corporation to manage the Allen Event Center. On February 12, 2009, the Allen City Council approved an agreement with the Western Professional Hockey League, Inc. to base a professional minor league hockey team at the Allen Event Center.

ACTION PROPOSED:

Authorize the City Manager to Execute a Notice of Assignment of the Arena Lease to Base a Professional Minor League Hockey Team at the Allen Event Center between the City of Allen, Western Professional Hockey League, Inc. and Top Shelf, LLC. Authorize the City Manager to Enter into an Amended and Restated Arena Lease Agreement with Top Shelf, LLC to Base a Professional Minor League Hockey Team at the Allen Event Center. Authorize the City Manager to Execute a Conditional Assignment of Arena Lease between the City of Allen, Top Shelf, LLC and the Western Professional Hockey League, Inc. Authorize the City Manager to Execute the First Amendment to the Management Agreement for the Allen Event Center between the City of Allen and Global of Allen, LLC.

BACKGROUND

The Allen Event Center is a multi-purpose sports and entertainment facility with a main arena, practice ice rink, offices, locker rooms, team store and seating for approximately 6300 people. The facility is located within The Village at Allen development on the southeast corner of US 75 and Stacy Road.

The City of Allen has a number of agreements in place that deal with the Allen Event Center including an Arena Lease with the Western Professional Hockey League and the Facility Management Agreement with Global Allen, LLC (assigned from Global Entertainment Corporation). Global has been working for a number of months to develop an ownership group for the hockey team to assume the Arena Lease and the obligation to provide a minor league hockey team as the anchor tenant for the Allen Event Center.

Attached are four agreements that culminate the establishment of a franchise in the Western Professional Hockey League (WPHL) (dba as the Central Hockey League) at the Allen Event Center.

The first of the agreements is an assignment of the Arena Lease from the WPHL to Top Shelf, LLC a Texas based ownership group. The assignment of this agreement was anticipated when the Arena Lease was first executed with the WPHL and essentially assigns the obligations and benefits under the arena lease to Top Shelf LLC.

The second agreement is the Amended and Restated Arena Lease. This document comes forward based on various contributing factors. The original lease was executed with the WPHL and was used as a framework to negotiate with interested ownership groups to bring a team to Allen. As with many agreements, there is frequently a desire and need to refine some terms based on operating an individual hockey franchise in a unique market and facility. In addition, the original agreement was negotiated under a very different economic environment. The significant refinements to the Arena Lease are listed below:

- 1 Section 3.1 Rent (b) The Amended lease adjusts the game night lease from \$9,400 to \$8,500 between Friday night and Sunday evening (prior to 6:05 pm) and to \$7,000 per game on week nights for the first two years. After two years this lease will be subject to annual increases at the Manager's option not to exceed the CPI.
- 1 Section 3.11 Letter of Credit. Originally the City requested a letter of credit in the amount of \$750,000 to ensure performance of having a team at the event center. In the amended agreement this obligation is adjusted as follows:
 - A. The team will have a letter of credit with the league in the amount of \$100,000 to secure their operations of the hockey team to the league.
 - B. The team will have an additional \$150,000 letter of credit with the City to secure their obligations to the City.
 - C. In addition the management agreement is being amended requiring the Manager to create a performance reserve and a performance reserve pledge totaling \$300,000 for the first 10 years of operation. The Manager in cooperation with the Marketer (GEMS)

will establish a Performance Reserve in the amount of \$300,000 which will initially be established with \$200,000 cash and a pledge of \$100,000 from GEMS commissions. The cash portion will be reduced in \$50,000 increments over the next five years, but will be replaced by increasing the pledge from the Marketer so the cash plus the pledge will total \$300,000 for the first ten years of the Management Agreement. If there is no Hockey Tenant or the franchise does not play any hockey games during the hockey season, then the Manager shall cause the Marketer to forfeit the Marketer's current and future commissions which will otherwise be payable under the Management Agreement to be paid to the Event Center Operating account until the earlier of: (1) the total funds paid from the Performance Reserve and the commissions forfeited by the Marketer equal \$300,000; or (2) a hockey league team plays its home games at the Event Center.

While the overall amount of the guarantee is reduced, the obligation to pay is diversified between the Team, the Management Company and the Marketer. In addition, we continue to develop a good history with Global and their affiliates as the Allen Event Center and Hockey Team continue to move toward the 2009 inaugural season.

Other refinements:

- 1 Allow the team to have up to 150 hours of ice practice time during the season at no charge, in addition to game day practice which is also provided with no additional charges.
- 1 Decrease the cost to the City (by \$5,000 per occurrence) to request a game to be rescheduled for another event after the CHL schedule has been announced to \$20,000 on Friday, Saturday or Holiday and \$10,000 on any other day.
- 1 Provide for enhanced revenue sharing cross marketing between the Team and the Event Center
- 1 Provide revenue sharing of food and drink revenues for hockey patrons seated in the suites, loge and club level seats.
- 1 Provide approximately 1350 square feet of office space at no additional charge for the hockey team.

The Management Company, Global Allen, LLC, is in full support of these refinements to secure an investor owned hockey franchise and stands behind their commitment to operate the Event Center in a profitable manner without an operational subsidy from the City.

The third agreement is the Conditional Assignment of the Arena Lease between the City of Allen, Top Shelf, LLC and the WPHL and is intended to provide a seamless transition if the team defaults on its Franchise License with the league or the Amended Arena Lease with the City. It allows the WPHL to assume the Amended Arena Lease going forward to operate a team or to find a new team owner to operate a team under the terms of the Amended Arena Lease.

The last agreement is the First Amendment to the Management Agreement. This amendment formalizes Global Allen, LLC's obligation to provide financial security through themselves or through GEMS, for the Performance Reserve Account previously discussed.

BUDGETARY IMPACT

Per the facility management agreement, the financial terms of the arena lease agreement will be managed by Global Allen, LLC. Global Allen, LLC is in full support of all three documents to secure a locally owned hockey franchise and stand behind their commitment to operate the Allen Event Center in a profitable manner without an operational subsidy from the City.

STAFF RECOMMENDATION

Staff recommends authorizing the City Manager to enter into the following assignments and agreements:

- 1 The Notice of Assignment of the Arena Lease to base a minor league professional Hockey team at the Allen Event Center between the City of Allen, Western Professional Hockey League, Inc. and Top Shelf, LLC.
- 1 The Amended and Restated Arena Lease Agreement with Top Shelf, LLC to base a minor league professional hockey team at the Allen Event Center.
- 1 The Conditional Assignment of Arena Lease between the City of Allen, Top Shelf, LLC and the Western Professional Hockey League, Inc.
- 1 The First Amendment to the Management Agreement for the Allen Event Center between the City of Allen and Global Allen LLC.

**AGENDA
CITY OF ALLEN
CITY COUNCIL REGULAR MEETING
APRIL 14, 2009 – 7:00 P.M.
COUNCIL CHAMBERS
ALLEN CITY HALL
305 CENTURY PARKWAY**

Call to Order and Announce a Quorum is Present.

Pledge of Allegiance.

Public Recognition.

1. Citizens' Comments. *[The City Council invites citizens to speak to the Council on any topic not on the agenda or not already scheduled for Public Hearing. Prior to the meeting, please complete a "Public Meeting Appearance Card" and present it to the City Secretary. The time limit is three minutes per speaker, not to exceed a total of fifteen minutes for all speakers.]*
2. Presentation of Blue Star Flags to the Families of Allen Service Personnel Currently Deployed by the U.S. Armed Forces.
3. Presentation of Proclamations by the Office of the Mayor:
 - Presentation of a Proclamation to Representatives of the Planning and Development Department Proclaiming April 12-18, 2009, as "*Community Development Week.*"
 - Presentation of a Proclamation to Representatives of the Allen Police Department, Proclaiming April 12-18, 2009, as "*Public Safety Telecommunicators Week.*"
 - Presentation of a Proclamation to Representatives of the Allen Police Department, Proclaiming April 12-18, 2009, as "*Animal Control Officer Appreciation Week.*"

4. Planning and Zoning Commission Annual Report by Robert Wendland, Chair, Planning and Zoning Commission.

Consent Agenda. *[Routine Council business. Consent Agenda is approved by a single majority vote. Items may be removed for open discussion by a request from a Councilmember or member of staff.]*

5. Approve Minutes of the March 24, 2009, Regular Meeting.
6. Motion to Reappoint Mr. James Kerr to the North Texas Municipal Water District Board as a Representative for the City of Allen for a Two-Year Term Effective June 1, 2009, through May 31, 2011.
7. Adopt an Ordinance Approving and Enacting Supplement No. 3 to the Allen Land Development Code.
8. Adopt a Resolution Denying CoServ Gas Ltd.'s Requested Rate Changes.
9. Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Three-year Grant from the United States Department of Justice, Office of Community Oriented Policing Services to Add Three Sworn Police Officer Positions.
10. Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Three-year Grant from the United States Department of Justice, Bureau of Justice Assistance to Add Three Non-sworn Police Employee Positions.
11. Adopt a Resolution Approving the Dedication of Easements by the Arts of Collin County Commission, Inc. to the North Texas Municipal Water District for the Indian Creek Improvement Project Located along SH 121.
12. Approve a Resolution and Authorize the City Manager to Execute a License Agreement with the Town of Fairview, The Village at Allen LP and the City of Allen Regarding Stacy Road Median Art Work.
13. Authorize the City Manager to Execute Various Agreements Regarding the Allen Event Center/Hockey League to Include Amended and Restated Arena Lease, Amended Agreement with Global Entertainment Group, and Notice of Assignment and Consent.
14. Authorize the City Manager to Execute Agreement with The Village at Allen, LP for the Joint Use of a Digital Marquee Serving the Allen Event Center.

15. Authorize the City Manager to Execute a Professional Services Contract with Teague, Nall & Perkins for an Amount Not to Exceed \$51,000 in Connection with the Alignment of Ridgeview Drive from Alma Drive to Watters Road and Establish a Project Budget of \$60,000.
16. Award Bid and Authorize the City Manager to Execute a Contract with Durable Specialties, Inc. to Purchase Equipment and Installation of Four Traffic Signals within the City of Allen for an Amount of \$471,658.40 and Establish a Project Budget in the Amount of \$710,644.

Regular Agenda.

17. Conduct a Public Hearing and Adopt an Ordinance Considering a Request for an Amendment to PD Planned Development No. 73 for SC Shopping Center Uses, for an Amendment to the Sign Plan for the Development of 167± Acres for The Village at Allen Located at the Southeast Corner of US 75 and Stacy Road.

Other Business.

18. Calendar.
 - April 18 - Live Green Expo / Plano Centre / 9 a.m. - 5 p.m.
 - April 18 - ALLEN Reads / Civic Auditorium / 11 a.m. - 1 p.m.
 - April 23 - Topping Out Ceremony / Allen Event Center
 - April 25 - Great American Cleanup / 8 a.m. - 1 p.m.
19. Items of Interest. *[Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]*

Executive Session. (As needed)

Legal, Section 551.071; Property, Section 551.072; Personnel, Section 551.074.
As authorized by Section 551.071(2) of the Texas Government Code, the Workshop Meeting and/or the Regular Agenda may be Convened into Closed Executive Session for the Purpose of Seeking Confidential Legal Advice from the City Attorney on any Agenda Item Listed Herein.

(Closed to Public as Provided in the Texas Government Code.)

20. Reconvene and Consider Action on Items Discussed during Executive Session.

Adjournment.

This notice was posted at Allen City Hall, 305 Century Parkway, Allen, Texas, at a place

convenient and readily accessible to the public at all times. Said notice was posted on Friday, April 10, 2009, at 5:00 p.m.

Shelley B. George, City Secretary

Allen City Hall is wheelchair accessible. Access to the building and special parking are available at the entrance facing Century Parkway. Requests for sign interpreters or special services must be received forty-eight (48) hours prior to the meeting time by calling the City Secretary at 214.509.4105.

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Presentation of Blue Star Flags to the Families of Allen Service Personnel Currently Deployed by the U.S.

STAFF RESOURCE: Shelley B. George, City Secretary

ACTION PROPOSED: Presentation of Blue Star Flags

BACKGROUND

The City of Allen wishes to honor our Allen area service personnel currently deployed by the U.S. Armed Forces by presenting a Blue Star Flag to their families. The Blue Star Flag, whose history dates back to World War I, is displayed in the family's window when a loved one is currently serving in the Armed Forces.

Mayor Terrell and the Allen City Council will present Blue Star Flags to the following family:

Mr. and Mrs. Michael Allen, parents of:

* E4 Robert Allen of the United States Army. E-4 Allen was deployed in February 2008 to Iraq with the 1st Armored Division. He joined the Army in 2006.

* E5 David Allen of the United States Army. E-5 Allen is currently serving his second tour of duty in Iraq with the 1st Camp B Company. He joined the Army in 2007.

* Robert and David are serving in Iraq with their cousins, Andrew and Mark Shinn, of Frisco.

STAFF RECOMMENDATION

Staff recommends the Mayor and Allen City Council honor these servicemen by presenting a Blue Star Flag to their families.

*Office of the Mayor
City of Allen*

Proclamation

- WHEREAS** the Community Development Block Grant (CDBG) program provides federal grant funds to improve conditions and the quality of life in our neighborhoods; and,
- WHEREAS** the CDBG program provides Home Repair assistance and Homebuyer assistance to meet the needs of persons of low and moderate income; and,
- WHEREAS** the CDBG program furnishes assistance to community public service agencies providing emergency assistance, shelter and counseling services to individuals and families; and,
- WHEREAS** the CDBG Program has had a significant positive impact on the Allen community.

NOW, THEREFORE, I, STEPHEN TERRELL, MAYOR OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, do hereby proclaim April 12 - 18, 2009, as:

“COMMUNITY DEVELOPMENT WEEK”

in Allen, Texas, and I urge all citizens to take cognizance of this event and participate in all the events related thereto in this community.

Stephen Terrell, MAYOR

*Office of the Mayor
City of Allen*

Proclamation

WHEREAS, Public Safety Communication Technicians are the first and most critical contact our citizens have with emergency services and are the single vital link for our police officers and firefighters; and,

WHEREAS, the safety of our police officers and firefighters is dependent upon the quality and accuracy of information obtained from citizens who telephone the Allen Police and Fire Communications Center; and,

WHEREAS, the City of Allen wishes to honor Allen's Public Safety Communication Technicians whose diligence and professionalism keep our City and citizens safe.

NOW, THEREFORE, I, STEPHEN TERRELL, MAYOR OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, do hereby proclaim April 12– 18, 2009, as:

“PUBLIC SAFETY TELECOMMUNICATOR’S WEEK”

in Allen, Texas, and I urge all citizens to take cognizance of this event and participate in all the events related thereto in this community.

Stephen Terrell, MAYOR

*Office of the Mayor
City of Allen*

Proclamation

WHEREAS, the Allen Animal Control Officers provides outstanding service on a daily basis to the citizens of the City and to the various Public Safety,

WHEREAS, the Allen Animal Control Officers are commended for the many dedicated and long hours of service they perform in serving this community, and for fulfilling the Department's commitment to providing the highest and most efficient level of customer service; and,

WHEREAS, the Allen City Council wishes to recognize the Allen Animal Control Officers and the Shelter personnel for their services, which is in keeping with the long and distinguished tradition of the Animal Control Profession.

NOW, THEREFORE, I, STEPHEN TERRELL, MAYOR OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, do hereby proclaim April 12– 18, 2009, as:

“ANIMAL CONTROL OFFICERS APPRECIATION WEEK”

in Allen, Texas, and I urge all citizens to take cognizance of this event and participate in all the events related thereto in this community.

Stephen Terrell, MAYOR

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:Planning and Zoning Commission Annual
Report by Robert Wendland, Chair, Planning
and Zoning Commission**STAFF RESOURCE:**Ogden "Bo" Bass, AICP
Director of Planning and Development**BACKGROUND**

Robert Wendland, Chair of the Planning and Zoning Commission will present a PowerPoint presentation to the Council reviewing the Planning and Zoning Commission activity over the past year. Following the presentation, Mr. Wendland will be available to answer any questions.

MOTION*Information Item*

ALLEN CITY COUNCIL

REGULAR MEETING

MARCH 24, 2009

Present:

Stephen Terrell, Mayor

Councilmembers:

Debbie Stout, Mayor Pro Tem

Ross Obermeyer

Joey Herald

Robin L. Sedlacek

Gary L. Caplinger

Jeff McGregor

City Staff:

Peter H. Vargas, City Manager

Shelli Siemer, Assistant City Manager

Shelley B. George, City Secretary

Pete Smith, City Attorney

Workshop Session

With a quorum of the Councilmembers present, the Workshop Session of the Allen City Council was called to order by Mayor Terrell at 6:18 p.m. on Tuesday, March 24, 2009, in the Council Conference Room of the Allen City Hall, 305 Century Parkway, Allen, Texas:

- Presentation Regarding Proposed Stacy Road Median Artwork
- Committee Updates from City Council Liaisons
- Discussion of Regular Agenda Items

With no further discussion, the Workshop Session of the Allen City Council was adjourned at 6:50 p.m. on Tuesday, March 24, 2009.

Call to Order and Announce a Quorum is Present

With a quorum of the Councilmembers present, the Regular Meeting of the Allen City Council was called to order by Mayor Terrell at 7:05 p.m. on Tuesday, March 24, 2009, in the Council Chambers of the Allen City Hall, 305 Century Parkway, Allen, Texas.

Pledge of Allegiance

Public Recognition

1. Citizens' Comments.

**ALLEN CITY COUNCIL
REGULAR MEETING
MARCH 24, 2009**

PAGE 2

2. **Presentation of a Check by Collin County Commissioner Joe Jaynes to the City of Allen in the Amount of \$313,198 for the Celebration Pass Pedestrian Trail.**
3. **Present a Plaque-of-Appecciation to a Former Member of the Economic Development Corporation.**
 - **Kurt Kizer, 2002-2009**
4. **Presentation of Proclamations by the Office of the Mayor:**
 - **Presentation of a Proclamation to Representatives of the Library Board Proclaiming April 14, 2009, as *Library Workers Day*.**
 - **Presentation of a Proclamation to Representatives of the Library Board Proclaiming April 12-18, 2009, as *Library Week*.**

Consent Agenda

MOTION: Upon a motion made by Councilmember Obermeyer and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adopt the items on the Consent Agenda as follows:

5. **Approve Minutes of the March 10, 2009, Regular Meeting.**
6. **Adopt a Resolution Authorizing the City's Bond Counsel, the City's Financial Adviser, and City Staff to Proceed with Arrangements for the Sale of General Obligation Bonds, Series 2009.**

RESOLUTION NO. 2808-3-09(R): A RESOLUTION APPROVING A DATE FOR THE SALE OF GENERAL OBLIGATION BONDS; AUTHORIZING APPROPRIATE PERSONNEL AND CONSULTANTS TO PROCEED WITH ARRANGEMENTS AND THE PREPARATION OF DOCUMENTS FOR THE ISSUANCE AND SALE OF SUCH BONDS AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

7. **Adopt a Resolution Reappointing Members to Fill Expiring Terms on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 1 (Garden District).**

RESOLUTION NO. 2809-3-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPOINTING THE BOARD OF DIRECTORS OF THE ALLEN TAX INCREMENT FINANCING REINVESTMENT ZONE NO. 1; AND PROVIDING FOR AN EFFECTIVE DATE.

8. **Adopt a Resolution Reappointing Members to Fill Expiring Terms on the Board of Directors for Tax Increment Financing (TIF) Reinvestment Zone No. 2 (Central Business District).**

RESOLUTION NO. 2810-3-09(R): A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPOINTING THE BOARD OF DIRECTORS OF THE ALLEN TAX INCREMENT FINANCING REINVESTMENT ZONE NO. 2; AND PROVIDING FOR AN EFFECTIVE DATE.

9. **Declare a Vacancy in Place No. 3 of the Economic Development Corporation.**

**ALLEN CITY COUNCIL
REGULAR MEETING
MARCH 24, 2009**

PAGE 3

- 10. Authorize the City Manager to Execute Amendment Number Three of the Economic Development Agreement between the City of Allen and The MGHerring Group Adding Article VIII A—Trail Improvements, and Approving the Economic Development Grant for an Amount Not to Exceed \$70,669.**
- 11. Authorize the City Manager to Execute Documents to Provide Permanent and Temporary Easements to North Texas Municipal Water District (NTMWD) for the Installation of a Sewer Pipeline.**
- 12. Receive the CIP (Capital Improvement Program) Status Report.**
- 13. Receive the Summary of Property Tax Collections as of February 2009.**

The motion carried.

Regular Agenda.

- 14. Conduct a Public Hearing and Adopt an Ordinance Granting SUP Specific Use Permit No. 107 for a RaceTrac Fueling Station on Property Zoned Planned Development No. 3 for SC Shopping Center Uses, on 2± Acres Located in Tracts 1 and 2 of the Bethany Center Two Addition.**

Mayor Terrell opened the public hearing and asked anyone wishing to speak for or against this item to do so at this time.

The following individuals expressed opposition to the request:

Mike Yatim, 406 E. Main Street, Allen, Texas 75002

Richard J. Gomez, 506 Tealwood Drive, Murphy, Texas 75094

Robert McKinney, 801 S. Greenville Avenue, Allen, Texas 75002

Sam Khan, 1219 Aylesbury Drive, Allen, Texas 75002

Worley Stein, 205 Wildwood, Allen, Texas 75013, on behalf of American National Bank

With no one else speaking, Mayor Terrell closed the public hearing.

ORDINANCE NO. 2811-3-09: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE AND ZONING MAP, AS PREVIOUSLY AMENDED, BY GRANTING SPECIFIC USE PERMIT NO. 107 TO ALLOW A FUELING STATION 2.319± ACRES ZONED PD #3 SC – SHOPPING CENTER, AND FURTHER DESCRIBED IN EXHIBIT “A” ATTACHED HERETO; PROVIDING SPECIAL CONDITIONS; PROVIDING FOR THE APPROVAL OF THE SITE PLAN, ELEVATIONS AND FUELING TRUCK ROUTE ATTACHED HERETO AS EXHIBITS “B,” “C,” AND “D”; PROVIDING A REPEALING CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED THE SUM OF TWO THOUSAND DOLLARS (\$2,000) FOR EACH OFFENSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember Herald, the Council voted seven (7) for and none (0) opposed to adopt Ordinance No. 2811-3-09, as previously captioned, granting Specific Use Permit No. 107 for a RaceTrac fueling station on property zoned Planned Development No. 3 for SC Shopping Center Uses, on 2± acres

**ALLEN CITY COUNCIL
REGULAR MEETING
MARCH 24, 2009**

PAGE 4

located in Tracts 1 and 2 of the Bethany Center Two Addition with the addition of a three (3) foot landscape screening along the common boundaries between the subject property and the bank property. The motion carried.

Other Business

15. Calendar.

- April 6 – TRIAD Meeting

16. Items of Interest. [Council announcements regarding local civic and charitable events, meetings, fundraisers, and awards.]

- Councilmember Herald asked that others keep Chief Rushing in their thoughts and prayers as he undergoes surgery on Wednesday.
- Allen Kiwanis Club is sponsoring the Circus on April 3, 4 and 5.
- Council wished Councilmember Obermeyer's wife, Marilee, a happy birthday.

Executive Session

The Executive Session was not held.

17. Reconvene and Consider Action on Items Discussed during Executive Session.

Adjourn

MOTION: Upon a motion made by Mayor Pro Tem Stout and a second by Councilmember McGregor, the Council voted seven (7) for and none (0) opposed to adjourn the Regular Meeting of the Allen City Council at 8:25 p.m. on Tuesday, March 24, 2009. The motion carried.

These minutes approved on the 14th day of April, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:

Motion to Reappoint Mr. James Kerr to the North Texas Municipal Water District Board as a Representative for the City of Allen for a Two-Year Term Effective June 1, 2009, through May 31, 2011

STAFF RESOURCE:

Peter H. Vargas, City Manager
Shelley B. George, City Secretary

BACKGROUND

On April 11, 2006, the Allen City Council appointed Mr. James Kerr as one of the two NTMWD Board Members representing the City of Allen. Mr. Kerr's term expires May 31, 2009. The City Council, by a majority vote, should reappoint Mr. Kerr or appoint another Director to serve a term from June 1, 2009, to May 31, 2011.

In accordance with the statute creating the District (Article 8280-141), the qualifications of a Director include the following: "No person shall be appointed a Director unless he resides in the city from which he is appointed. No member of a governing body of a city and no employee of a city shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed.

Attached is a letter from Mr. Kerr expressing his interest in continuing to serve on the Board if the City Council is so inclined.

STAFF RECOMMENDATION

Staff recommends reappointing Mr. Kerr to the NTMWD Board as a representative for the City of Allen.

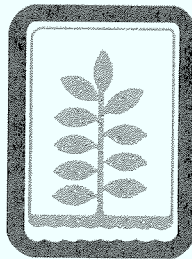
MOTION

I make a motion to reappoint Mr. James Kerr to the NTMWD Board as a representative for the City of Allen for a two-year term effective June 1, 2009.

ATTACHMENT

Letter - Kerr

Letter - NTMWD



**NORTH TEXAS MUNICIPAL
WATER DISTRICT**

Regional Service Through Unity
March 9, 2009

Mr. Peter Vargas, City Manager
City of Allen
305 Century Parkway
Allen, Texas 75013-8042

RE: NTMWD BOARD MEMBER APPOINTMENT

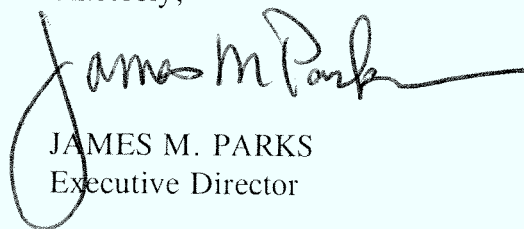
Dear Mr. Vargas:

This is your official notification that Mr. James Kerr's term of office as an NTMWD Board Member expires May 31, 2009. The City Council, by a majority vote, should reappoint Mr. Kerr or appoint another Director to serve a term from June 1, 2007 to May 31, 2009.

In accordance with the statute creating the District (Article 8280-141), the qualifications of a Director include the following: "No person shall be appointed a Director unless he resides in the city from which he is appointed. No member of a governing body of a city and no employee of a city shall be appointed as a Director." Under other state law, no other government official that receives compensation could be appointed.

The cities served by the NTMWD appreciate the work and effort expended by the appointed Directors. It is my practice to visit with new Directors in an orientation session prior to their first meeting; therefore, please notify my office in writing when the City Council has appointed a Director for the new term. Should you have any questions or need additional information, please do not hesitate to contact my office.

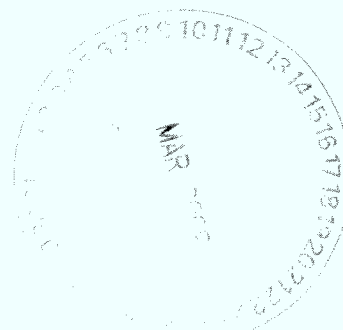
Sincerely,


JAMES M. PARKS
Executive Director

JMP/mcf

cc: Mr. James Kerr
Ms. Shelley George, City Secretary

James D. Kerr
406 Watson
Allen, Texas 75002
972-727-3106
214-536-0055
3/13/2009



Mr. Peter Vargas, City manager
City of Allen
Allen Civic Plaza
305 Century Parkway
Allen, Texas 75013

RE: NTMWD Board Reappointment

Dear Mr. Vargas,

This letter is to inform you, the Mayor, and the City Council Members that I do want to be reappointed as a Director to the North Texas Municipal Water District.

I have a working knowledge of all of the activities of the District, and have a good working relationship with all of the other Directors. Over the past term I have served as Secretary and Vice president of the board and regularly attended the monthly meetings as well as two national conferences, two state conferences, two annual workshops and all subcommittee meetings. I am a member of the Executive committee and on track to be President this coming year. As a member of this committee we have made two trips to Washington to lobby on behalf of Texas and NTMWD water issues.

One of the major issues facing the District is the acquisition of water for this area for the fifty years. The solution to the water issue is multifaceted and is changing almost daily. The wetlands reuse project is now pumping water to Lake Lavon, and the Lake Tawakoni pipeline is complete. We have established an award winning conservation program that is seen as a model for other areas of the state.

I have found the District to be very well managed and operated. The planning process is well organized, and the District is in sound financial condition. Mr. Jim Parks and his staff keep us well informed through the monthly meetings, written communication and workshops.

Should you or the Council ever need a more comprehensive report on the activities of the District please contact me. If I don't know the answer, I know who to call to get the answer.

Sincerely


James D. Kerr

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Adopt an Ordinance Approving and Enacting Supplement No. 3 to the Allen Land Development Code

STAFF RESOURCE: Shelley B. George, City Secretary

PREVIOUS COUNCIL ACTION: Adopted Ordinance No. 2735-5-08 Approving and Enacting Supplement No. 2

BACKGROUND

Upon adoption of Ordinance No. 2639-7-07, the City Council adopted a New Allen Land Development Code for the City of Allen. In May 2008, the City Council approved Supplement No. 2.

The proper procedure for adopting the updated supplement is through an ordinance. After adoption of the proposed ordinance, the City Secretary is requesting each Councilmember return their copy of the Land Development Code to be updated and the Land Development Code will be returned to you as soon as possible.

STAFF RECOMMENDATION

It is the recommendation of City Staff that the attached ordinance be adopted, updating the Land Development Code for the City of Allen.

MOTION

I make a motion to adopt Ordinance No. _____ adopting and enacting Supplement No. 3 to the Land Development Code of the City of Allen.

ATTACHMENT

Proposed Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ADOPTING SUPPLEMENT NO. 3 TO THE ALLEN LAND DEVELOPMENT CODE; PROVIDING FOR THE PRINTING THEREOF, AUTHENTICATION BY THE MAYOR AND ATTESTATION BY THE CITY SECRETARY; PROVIDING A REPEAL OF CERTAIN ORDINANCES; PROVIDING EXCEPTIONS TO REPEAL; PROVIDING A PENALTY FOR SUCH VIOLATION THEREOF; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City Council of the City of Allen, Texas, adopted a republication of the Land Development Code of the City of Allen by Ordinance; and,

WHEREAS, the City Council has enacted additional Ordinances amending the Land Development Code; and,

WHEREAS, it is necessary to supplement the Land Development Code of the City of Allen, Texas, to include those amendments within the body of the Code.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. Supplement No. 3 to the Land Development Code of the City of Allen, Texas, heretofore enacted by Ordinance No. 2639-7-07 be, and the same is hereby, adopted and shall hereafter constitute a Supplement to the Land Development Code.

SECTION 2. Copies of Supplement No. 3, duly authenticated and approved by attachment to a certified copy of this Ordinance, under signature of the Mayor and attested by the City Secretary, shall be printed and distributed to all holders of the Land Development Code in accordance with the current list kept for that purpose by the City Secretary.

SECTION 3. Said Code, as supplemented, shall be admitted in evidence without further proof, and the City Secretary shall record this Supplement adopted as amendments to said Code in the Ordinance records of the City, and thereafter such Code, as amended and supplemented, shall serve as a record of the Ordinances so codified, and it shall not be necessary in establishing the content of any particular Ordinance so codified to go beyond said record.

SECTION 4. It is the intention of the City Council to make this Supplement and the amendments incorporated within it part of the Land Development Code when printed or reprinted in page form, distributed to and incorporated within the original Land Development Code books distributed by the City Secretary. A copy of such Code, as supplemented hereby, shall be available for all persons desiring to examine the same in the office of the City Secretary during regular business hours. Ordinances passed subsequent to the enactment of this Supplement shall be added to the body of the Land Development Code and incorporated within it by reference so that reference to the Land Development Code of the City of Allen shall be understood and intended to include such additions and amendments.

SECTION 5. Whenever in the Land Development Code an act is prohibited or is made or declared to be unlawful, or an offense, or a misdemeanor, or whenever in such Code the doing of any act is required, or the failure to do any act is declared to be unlawful, the violation of such provision of the Code by any person, firm or corporation shall be deemed to be a misdemeanor and, upon conviction in the Municipal Court of the City of Allen, such person, firm or corporation shall be punished by a penalty of fine not to exceed the sum of Five Hundred Dollars (\$500) for each offense, except where a different penalty has been established by state law for

such offense, in which case the penalty shall be that fixed by state law, and for any offense which is a violation of any provision that governs fire safety, zoning, public health and sanitation or dumping refuse, the penalty shall be a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense, and each and every day such offense is continued shall constitute a new and separate offense.

SECTION 6. This Ordinance and the Supplement adopted hereby shall become effective upon passage as required by law.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, TRMC, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Adopt a Resolution Denying CoServ Gas Ltd.'s Requested Rate Changes

STAFF RESOURCE: Shelli Siemer, Assistant City Manager

PREVIOUS COUNCIL ACTION: On January 27, 2009, the City Council adopted a resolution suspending the effective date of CoServ Gas Ltd.'s statement of intent to increase gas rates

ACTION PROPOSED: Adopt a Resolution Denying CoServ Gas Ltd.'s Requested Rate Changes

BACKGROUND

On December 18, 2008, CoServ filed a Statement of Intent to increase rates with all cities in its North Texas service area. The Company seeks to increase revenues by \$2.9 million. Excluding the revenue from gas costs, which is merely a pass through, the requested increase results in a 20% increase over the \$14.8 million revenue earned by the Company in the test year. In addition to the rate increase, CoServ also seeks approval of a new rate design that provides for a flat fee per month based on a customer's prior 12 months of historical usages.

Along with all other cities, Allen took action to suspend the January 23, 2009 effective date for 90 days. The suspension period provided time to evaluate the filing, determine whether the filing complies with the law, and determine what further strategy, including settlement or litigation, to pursue. The Cities also approved working together as a coalition to investigate the Company's filing.

The coalition hired rate expert Connie Cannady to review the Company's rate request. Connie was the coalition's expert in the last CoServ rate case. The rate review found approximately \$2.4 million to \$2.8 million of the requested \$2.9 million increase is related to the capital structure and rate of return requested by the Company. In the 2004 case, the Cities and the Company came to an agreement on the total increase in revenue requirements and did not definitively establish a capital structure or rate of return.

In this case, the Company proposed a hypothetical capital structure cost of equity that does not reflect the actual amount of debt and equity owned by CoServ Gas. While it is not necessarily unusual to rely upon a proxy capital structure when setting rates, the unique circumstances underlying CoServ's structure, funding, and investors raises concerns. CoServ Gas Ltd. is a

partnership held by a non-profit cooperative electric provider, with a board of directors that sets the return (not the marketplace). The fact that CoServ Gas is a profit-making venture owned by a non-profit electric cooperative is very unusual. CoServ representatives were unable to provide examples of other ownership arrangements like this in Texas. The company believes that there may be one other company like this in the U.S.

The non-profit nature of CoServ Gas' owners and the lack of precedent make it difficult to agree upon an appropriate rate of return for the Company. The rate of return set for regulated utilities is intended to recognize the risk the investors undertake by investing their capital in the Company. With typical investor-owned utilities, one assumes that the investors have a choice regarding where to invest their capital, and that the choice is motivated entirely by maximizing the amount of profit to be earned relative to the risks. However, in this case, the sole investor, the electric cooperative, is specifically set up not to retain profits.

In our opinion, CoServ's gas operation more closely matches that of a municipal utility operation where the customers (taxpayers) are the owners. Based on this premise, we recommend that the rate of return be established in the same manner that it would be for a municipal utility, river authority, power agency or electric cooperative, which sets equity equal to the average bond yield plus 2%.

The Company maintains that it be considered an investor-owned utility, exactly like Atmos Gas or other investor-owned gas utilities. Accordingly, the Company believes that it is entitled to an 11% return on equity, far greater than the level that we believe is appropriate. At this time, the Company is unwilling to deviate from its position that it be treated as anything other than a traditional investor-owned utility when setting its rates.

BUDGETARY IMPACT

Expenses incurred to set rates are reimbursable by the Company, so no city funds are necessary. However, the Company is entitled to seek recovery of rate case expenses through a surcharge on customers' bills. In the 2004 rate case, the coalition was able to significantly reduce the Company's requested increase while keeping cities' total rate case expenses to less than \$1 per customer. We are cognizant of the costs of litigating a rate case and will pursue all options to minimize costs while protecting ratepayers from unreasonable rates.

STAFF RECOMMENDATION

The legal counsel and consultants have reviewed the Company's filing, and recommend denying the requested rate increase based primarily on the rate of return issue. The Coalition of Cities participated in a conference call and determined the best course of action is to take is to deny the request. Denying this rate case will prevent the implementation of increased rates, scheduled for April 23rd, and allows the Cities and CoServ to seek a resolution through settlement. If a settlement is not reached, CoServ may appeal at the Railroad Commission.

Therefore, staff recommends the City Council adopt the proposed Resolution denying CoServ's request for a rate increase.

MOTION

I make a motion to adopt Resolution No. _____ denying CoServ Gas Ltd.'s request for a rate increase.

ATTACHMENT

Rate Consultant's Report
Resolution

J. Stowe & Co.

March 31, 2009

Ms. Kristen Doyle
Lloyd, Gosselink, Baldwin & Townsend, P.C.
111 Congress Avenue, Suite 1800
Austin, Texas 78701

Dear Ms. Doyle:

J. Stowe & Co. provides the following preliminary report concerning a review of the request for rate change filed by CoServ Gas, Ltd. ("CoServ") for its entire service area in North Texas. As you will note, we have provided a range for the revenue requirements, depending on the decision made by the Cities with respect to alternative capital structures discussed herein. Once a decision is made, we will compute the overall recommended revenue requirements as well as provide recommendations with respect to rates for each customer class.

This study does not constitute an examination of the financial condition of CoServ or its affiliated operations. Therefore, J. Stowe & Co. cannot and does not express any position with regard to the accuracy or validity of the financial information provided by CoServ during the course of the analyses.

OVERVIEW OF THE FILING

Based on a test year ended June 30, 2008, CoServ filed for an increase of \$2,915,367 in revenue requirements with annualized revenue for the test year of \$56,659,744. Excluding the revenue from gas costs, which are merely a pass through, the requested increase results in a 19.7% increase in test year base and miscellaneous revenue of \$14,833,580. The rate filing was submitted to the Cities on or about December 18, 2008 with a rate design that provides for a flat fee per month based on a customer's prior twelve months of historical usages.¹

ANALYSIS OF THE FILING

In order to streamline the review and associated rate case expenses, we have attempted to perform the most cost-effective review of the filing as presented. Under this approach, we have limited our analysis to those issues that appear to have larger impacts on the underlying request as well as those issues that conflict with prior case findings. Therefore, any lack of focus on particular issues or computations within the case does not indicate any acquiescence with the Company's proposal or computational approach.

¹ The proposed residential rates have three flat rates based on low, medium and high usage patterns. The proposed commercial rates have two flat rates along with a more traditional rate design for the largest commercial customers.

Ms. Kristen Doyle
March 31, 2009
Page | 2

Summary of Major Findings

- We recommend a change to test year system-wide revenue requirements within the range of an increase of \$36,950 to an increase of \$424,816. This range is between \$2,878,417 and \$2,440,551 less than the \$2,915,367 requested by the CoServ.
- CoServ's requested value of storage gas should reflect more recent natural gas prices rather than those from the test year.
- CoServ has not provided justification for its significant revenue lag days, and therefore, has not justified its requested cash working capital.
- CoServ has not met its burden concerning the reasonableness of the requested overtime expense with approximately 14% of the employees reporting over 30% in overtime expense.
- CoServ has inappropriately included incentive compensation that relates to financial measures rather than operations measures.
- CoServ has not met its burden concerning its requested meter reading costs in that it has recently hired two internal meter readers and does not solely rely on affiliated services.
- CoServ has not met its burden concerning the requested increase in affiliated costs related to customer records and collections.
- CoServ's requested capital structure of 44.2% debt /55.8% equity and requested 11% return on equity are excessive in light of the Company's organization, actual capitalization and methodologies used for similar operations and ownership.
- CoServ has requested a volumetric rate per all Ccf sold to fund conservation efforts without justification of benefits to ratepayers.
- CoServ has inappropriately collected charitable donations from customers without prior approval from the Cities

TOTAL RATE BASE

The Company is requesting a return on an adjusted total rate base of \$75,082,419. The Company has essentially incorporated its per book balances as of June 30, 2008, with the addition of Completed Construction Not Classified ("CCNC"), exclusion of accumulated

Ms. Kristen Doyle
March 31, 2009
Page | 3

depreciation on PHFU, and a cash working capital allowance (“CWC”). We are recommending an adjusted total rate base of \$73,112,321, or \$1,970,098 less than the Company’s request. Our recommendation is based on the following adjustments:

- The Company’s storage gas inventory is based on a thirteen month average of its actual gas storage inventory value during the test year. The average price/MMBtu for this computation is \$6.67. Given the significant fall of natural gas prices since the end of 2008, it is our opinion that the \$6.67/MMBtu is not representative of today’s costs. Because a thirteen month average methodology is premised on establishing “normalized” monthly balances for inventories, the balance should reflect “normal” natural gas costs during the time these rates will be in effect. Using the NYMEX indices, we have priced the thirteen month average of MMBtus held in inventory during the test year at the corresponding monthly future prices published as of January 28, 2009. This computation results in an average storage gas inventory of \$2,390,496, with an average price/MMBtu of \$4.06. The impact of this adjustment is to reduce CoServ’s requested rate base by \$1,336,716 as shown on CTC Schedule 2.
- CoServ has requested \$633,382 in CWC based on a lead lag study. In the prior case, CoServ did not provide a lead lag study and the argument was that without such supporting analysis, any CWC allowance should not be included. In the instant case, CoServ has provided a detailed lead lag study, but the results of the study are unreasonable. More specifically, CoServ is requesting revenue lag days of 60.86 days. This number of lag days translates into average customer payment practices of over two months from the middle of the customers’ billing cycles. Clearly, if this is the average payment practice, the Company has not instituted reasonable billing and collection procedures and therefore, should not be allowed to pass through costs resulting from such inefficiencies.

For comparison, the Railroad Commission’s final order in the most recent Atmos Energy decision (GUD Docket No. 9762) provided for revenue lag days of 33.86 days; 44% less time for collections than proposed by CoServ.² In fact, Atmos had originally requested revenue lag days computed under the same methodology used by CoServ for the collection lag, which was found by the Commission to be unreasonable.

² Revenue lag days of 33.86 provides for an average payment time for customers of approximately 19 days after the end of the billing cycle.

Ms. Kristen Doyle
March 31, 2009
Page | 4

With respect to the billing lag days component of the revenue lag days, CoServ is using the same methodology as used by Atmos, but with staggeringly different results. Atmos supported a lag between the meter reading and the billing to be approximately 2.72 days. CoServ has used an average lag of 7.62 days. In other words, it takes CoServ almost 8 days after the meter is read to develop a bill for its customers. The Railroad Commission has stated that even one day between meter reading and billing is achievable.

We conducted some sensitivity computations on CoServ's proposal and found that it would only require a reduction of 4.8 days to CoServ proposed revenue lag days to completely remove any CWC requirement in this case. This begs the questions as to whether CoServ's CWC allowance would actually be negative if it ran more efficiently with respect to customer billings and collections. Therefore, it is our opinion, that CoServ should not be authorized a CWC allowance that requires rate payers to fund working capital needs derived from what appear to be inefficient operations. We recommend that the CWC allowance be set to \$0.³

O&M EXPENSE ADJUSTMENTS

CoServ is requesting recovery of O&M expenses of \$8,566,742. This is comprised of the Company's requested \$8,359,893 of operating expense, depreciation expense, and payroll and property tax expense shown on CTC Schedule 3 as well as the State Margin tax shown on CTC Schedule 1. We recommend that this amount be reduced by \$318,165 for a total O&M expense of \$8,248,577⁴. Our recommendation is based on the following adjustments:

- The Company annualized its payroll based on the actual number of employees as of the test year end, their respective annual salaries, the overtime for the test year and the incentive compensation amounts awarded. CoServ allocated 67.6% of these expenditures to expense with the remaining allocated to capital.

We noted three issues with respect to the annualization of payroll. First, the Company included overtime percentage that did not appear to be fully justified for a "normal" operation. In fact, 5 of the 36 employees had overtime percentages that were in excess of

³ We note that revenue lag days for electric T&D companies, where payments are received from third party REP's, are considerably less than the 60.86 days proposed by CoServ.

⁴ This amount is based on a 50/50 capital structure. The recommended O&M with State Margin Tax for a 60/40 capital structure is \$8,243,474; \$323,268 less than the Company proposed.

Ms. Kristen Doyle
March 31, 2009
Page | 5

30%, with two showing over 50%. In our opinion, and given our experience in evaluating utility rate filings, such overtime costs are excessive. We adjusted the overtime so that the average percentage for all employees is approximately 8%. Making this adjustment reduces the proposed payroll expense by \$28,085.

The second adjustment to the Company's proposed payroll expense is for the incentive compensation included in the rate filing. In recent rulings before the Public Utility Commission, the Commission found that, in order for such costs to be included in rates, the incentive compensation should be tied to operational measures, such as customer service, and safety, and not to meeting financial targets. Based on information provided by CoServ, approximately 30% of the incentive compensation awarded is tied to financial measures, and therefore, in our opinion, should be disallowed. This adjustment reduces the expensed portion of payroll expense by \$12,128. This adjustment and the overtime adjustment total \$40,213 as shown on CTC Schedule 4.

- The third issue with respect to the annualization of payroll expense was noted during the analysis of the proposed affiliated costs included in the filing. The Company requested that there be an increase in meter reading expense based on the meter reading services provided by CoServ electric operations. However, on or about the end of the test year, two of the meter readers became full time employees of CoServ Gas. Their respective salaries and benefits are included in the Company's direct payroll expense. Therefore, to include the requested affiliated costs would be a double counting of a certain portion of the costs.

Our analysis included a review of the number of daily meters that were read per employee during the test year by the affiliated operation. Assuming that each of the CoServ new hires would read the same daily numbers, we were able to compute the remaining number of meters that needed to be read by the affiliate. Adjusting the affiliated costs to remove the two gas meter readers, we then allocated the remaining costs based on the meters that still required affiliated readers. This computation results in a reduction to the Company's requested expense of \$166,499 as shown on CTC Schedule 4.

- In addition to the meter reading services, CoServ receives customer records and collection services from its affiliated electric operations. These costs have continued to increase each year since the prior rate filing, which in large part is understandable given the significant growth in customers. However, the test year expense does not follow the growth in customers as it had in prior years. The expense for customer records and

Ms. Kristen Doyle
March 31, 2009
Page | 6

collections increased by over 18.9% from the previous year and customers only increased by 14.7%. In prior years, the change in customer records and collections expense increased at a lower or somewhat equal percentage to the percentage increase in the number of customers. Therefore, for this filing, we have adjusted the expense to reflect the same percentage increase as the percentage increase in the average number of customers. This adjustment results in a decrease in expense of \$52,095.

- Our final adjustments to O&M expense are for taxes other than income. Due to the recommended adjustment to payroll expense, we have reduced payroll taxes by \$3,158. We had adjusted property taxes to take into account our recommended gas storage inventory, which reduces the amount proposed by CoServ by \$27,758.

FEDERAL INCOME TAXES

For purposes of this report, we have computed a federal income tax effect of all of the above in the same manner as proposed by the Company. Due to the range in the capital structure, the FIT amounts range from \$1,291,368 to \$1,614,210. These computations are shown on the two attached alternative CTC Schedule 5s.

CAPITAL STRUCTURE AND RATE OF RETURN

In the prior case, the Cities and the Company came to an agreement on the total increase in revenue requirements and did not definitively establish a capital structure or rate of return. The Company had proposed the use of a hypothetical capital structure in much the same manner as proposed in this case. However a closer look at the organizational and financial structure of CoServ is warranted now that operations and investment are more established.

CoServ does not have its own equity, but rather is partially funded by its affiliated partners along with its own long-term debt. As of the end of the test year, CoServ's trial balance reflected an "equity" position that was negative, and outstanding long term debt approximately equal to the total rate base requested in this proceeding. Therefore, if we were to use the actual capital structure, the rate of return would be solely based on CoServ Gas' cost of debt.

Conversely, the use of other gas distribution companies to determine both capital structure and rate of return is, in our opinion, not entirely supportable in that CoServ Gas Ltd. is a partnership held by a cooperative electric provider, with a board of directors that sets the return, (not the market place). If we review the capital structure of CoServ electric as of 2007, the percentage of

Ms. Kristen Doyle
March 31, 2009
Page | 7

debt and equity was 66.4% and 33.6%, respectively. CoServ is requesting a capital structure that is based on 44.2% debt and 55.8% equity, which in our opinion, is not at all reflective of its operations or its affiliates' operations. In order to provide the Cities alternatives, we have provided the rate of return computations with a capital structure of 60/40% (reflective of CoServ Electric) and a capital structure of 50/50%. We recommended that the Company's proposed capital structure be rejected.

In our opinion, CoServ's gas operation more closely matches that of a municipal utility operation where the customers (taxpayers) are the owners. Based on this premise, we are recommending that the rate of return be a combination of CoServ Gas' actual debt costs and an equity cost component based on non-investor owned electric computations. Instructions for the TCOS in PUC Project No. 21276 provided that using a "rate of return method" for a municipal utility, river authority, power agency or electric cooperative should include:

"A cost of owner's equity equal to the average yield for bonds of an entity with the TSP's credit rating published in Moody's Credit Perspective or similar publication during the most recent three months plus two percent shall be presumed reasonable."

We used the Moody's Municipal Bond Averages as of March 5, 2009 to develop a recommended return on equity under the above approach of 8.2%. We used the average of the "A" and "Baa" ratings (6.2%) and added the above referenced 2%. The actual debt cost for CoServ Gas, based on the trial balance provided in the rate filing, is 6.7%. Using the 60/40% capital structure, the overall rate of return is 7.30%, with a 50/50% capital structure providing a ROR of 7.45%. These compare to the Company's requested ROR of 8.93%.

COST OF SERVICE AND RATE DESIGN

CoServ is requesting a rate design that is based on a flat monthly fee for service for residential and non-large commercial customers. The proposal includes three usage categories for residential and two for non-large commercial customers where category assignment is based on a prior year's entire usage. The Company's proposal for large users is to maintain a traditional customer charge and volumetric charge based on actual monthly usages.

We do not recommend the rate design proposed by the Company. Although it will provide the Company with a steady stream of revenue with fewer impacts from weather fluctuations, it does not provide for a cost-causal matching during the period the rates are charged. Additionally, a flat rate structure would not promote conservation during periods when natural gas supplies are

Ms. Kristen Doyle
March 31, 2009
Page | 8

lessened due to weather or economics factors as the customers will pay a flat rate for entire year, regardless of usage. Therefore, we recommend a traditional approach that provides for a monthly customer charge (steady stream of revenue), plus a volumetric rate applied to actual monthly usage. In periods where gas costs increase, the customer may be able to use less and therefore, pay less, without having to wait until the following year to realize any cost savings.

With respect to conservation, CoServ is proposing a separate rate rider that would charge each customer \$.005 per Ccf (hundred cubic feet). These proceeds are to be used to fund the Company's "Conservation Program," which is stated as a program that will provide financial assistance to qualified customers to buy energy reducing goods and services. We recommend that the Cities disallow this proposal. The Company has not provided detail of the programs to be included, the estimated energy savings for each program, or how the conservation efforts will benefit the entire customer base that will be charged the additional rate.

One additional issue came to our attention during the rate review. CoServ Electric provides a program to both electric and gas customers which allows a "rounding-up" of a customer's billing to the nearest whole dollar; Operation Roundup®. The proceeds go to the CoServ Foundation, which distributes funding for a variety of charitable causes within the CoServ service area. However, the Company did not file any proposed rider for this type of program for its gas billings. In our opinion, the Cities should have approved such a program before its implementation as these are essentially charitable contribution being made by the customers.

In general, charitable contributions are included in the rate filing so regulators can determine the appropriateness of requiring ratepayers to pay for such contributions. In the instant case, CoServ has removed its reported charitable contributions for the test year (approximately \$5,000), but it did not include any information concerning the contributions under Operation Roundup®. Based on our inquiries, CoServ reported that customers who only received gas service contributed \$64,000 during the 2008 calendar year. Additionally, the combined gas and electric customers contributed \$177,000 for the same period. Assuming gas revenue represents 30% of the total revenue received from the combined billings, gas customer contributed approximately \$117,000 during 2008. Again, there was no regulatory approval for these collections.

J. Stowe & Co. greatly appreciates this opportunity to assist the Cities served by CoServ. Additional analysis will be conducted with an update to this preliminary report after the Cities have provided direction with respect to the revenue requirements and rate design issues. If you

Ms. Kristen Doyle
March 31, 2009
Page | 9

have any questions concerning these initial findings and recommendations, please contact Ms. Connie Cannady at 972-680-2000.

Very truly yours,

Connie Cannady
Manager
J. Stowe & Co.

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, DENYING COSERV GAS LTD.'S REQUESTED RATE CHANGES; AUTHORIZING INTERVENTION IN ANY NECESSARY PROCEEDINGS AFFECTING CITY'S INTERESTS BEFORE ADMINISTRATIVE OR JUDICIAL BODIES; REQUIRING REIMBURSEMENT OF REASONABLE LEGAL AND CONSULTANT EXPENSES; FINDING THAT THE MEETING AT WHICH THIS RESOLUTION IS ADOPTED IS OPEN TO THE PUBLIC AS REQUIRED BY LAW; AND REQUIRING DELIVERY OF THIS RESOLUTION TO THE COMPANY AND LEGAL COUNSEL.

WHEREAS, the City of Allen ("City") is a regulatory authority under the Gas Utility Regulatory Act ("GURA") §§ 102.001(b) and 103.001 and has original jurisdiction over the gas utility rates of CoServ Gas Ltd.'s ("CoServ" or the "Company"); and,

WHEREAS, on or about December 18, 2008, CoServ filed with the City a Statement of Intent to increase gas rates in all municipalities within the CoServ System; and,

WHEREAS, the City took action to suspend the January 23, 2009, effective date of CoServ's Statement of Intent for the maximum period allowed by law and to join with other cities served by CoServ ("CoServ Cities") to hire a rate expert and legal counsel to evaluate the Company's support for its requested rate increase; and,

WHEREAS, approximately \$2.4 million to \$2.8 million of the Company's requested \$2.9 million increase is related to its requested rate of return and proposed capital structure, which does not appear to be reasonably supported by actual operations; and,

WHEREAS, based upon the analysis and recommendation of the CoServ Cities' expert and legal counsel, the City finds that the Company has not satisfactorily established that it is entitled to increase its rates; and,

WHEREAS, GURA § 103.022 provides that costs incurred by cities in ratemaking activities are to be reimbursed by the regulated utility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Company's Statement of Intent to increase gas utility rates within the City be denied in all respects.

SECTION 2. The Company shall continue to charge its existing rates for natural gas services to customers within the City.

SECTION 3. The City's reasonable rate case expenses shall be reimbursed by CoServ.

SECTION 4. It is hereby officially found and determined that the meeting at which this Resolution is passed is open to the public as required by law and the public notice of the time, place, and purpose of said meeting was given as required.

SECTION 5. A copy of this Resolution shall be sent to Charles D. Harrell, Chief Financial Officer, CoServ Gas Ltd., 7701 South Stemmons, Corinth, Texas 76210-1842 and to Kristen Doyle, counsel for Cities Served by CoServ at Lloyd Gosselink Rochelle & Townsend, P.C., 816 Congress Avenue, Ste. 1900, Austin, Texas 78701.

SECTION 6. This resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Three-year Grant from the United States Department of Justice, Office of Community Oriented Policing Services to Add Three Sworn Police Officer Positions

STAFF RESOURCE: Michael A. Stephens, Deputy Chief of Police
Kenneth Myers, Sergeant

PREVIOUS COUNCIL ACTION: None.

ACTION PROPOSED: Adopt a resolution authorizing the City Manager to apply for, accept, reject, alter, or terminate a three-year grant from the United States Department of Justice, Office of Community Oriented Policing Services to add three sworn police officers positions

BACKGROUND

The Office of Community Oriented Policing Services (COPS Office) announced the availability of funding under the COPS Hiring Recovery Program (CHRP). The COPS Office will receive the funds from the American Recovery and Reinvestment Act of 2009 to address the personnel needs of state, local, and tribal law enforcement.

CHRP is a competitive grant program that provides funding directly to law enforcement agencies having primary law enforcement authority to create and preserve jobs and to increase their community policing capacity and crime-prevention efforts. Up to \$1 billion in grant funding will be available for the hiring and rehiring of additional career law enforcement officers. There is no local match requirement for CHRP, but grant funding will be based on current entry-level salary and benefits packages and therefore any additional costs for higher salaries or benefits for particular individuals hired will be the responsibility of the grantee agency. CHRP grants will provide 100 percent funding for approved entry-level salaries and benefits for 3 years (36 months) for newly-hired, full-time sworn officer positions (including filling existing unfunded vacancies) or for rehired officers who have been laid off, or are scheduled to be laid off on a future date, as a result of local budget cuts.

There is no cap on the number of positions an agency may request, but awards will be limited

to available funding. At the conclusion of federal funding, grantees must retain all sworn officer positions awarded under the CHRP grant. The retained CHRP-funded position(s) should be added to the grantees law enforcement budget with state and/or local funds, over and above the number of locally-funded positions that would have existed in the absence of the grant.

BUDGETARY IMPACT

There will be a minimal impact on the city's budget during the first three 3 years of the grant. The budget may be impacted by expenses associated with uniforms / equipment, overtime, cost of living adjustments, or other similar expenses.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into an agreement with the United States Department of Justice, Office of Community Oriented Policing Services to apply for, accept, reject, alter, or terminate a grant from the COPS Hiring Recovery Program, to fund three additional police officer positions, if awarded.

MOTION

I make a motion to adopt Resolution No. _____ accepting the COPS Hiring Recovery Program grant from the United States Department of Justice, Office of Community Oriented Policing Services, if awarded.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, TO APPLY FOR, ACCEPT, REJECT, ALTER, OR TERMINATE A GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES PROVIDING GRANT FUNDING FOR A THREE SWORN POLICE OFFICERS UNDER THE COPS HIRING RECOVERY PROGRAM, IF AWARDED.

WHEREAS, the City of Allen, and its police department, wishes to provide the highest level of police services to all residents and visitors; and,

WHEREAS, the City of Allen Police Department has recognized the need to add three additional officers to assist with public safety issues in the community; and,

WHEREAS, the Office of Community Oriented Policing Services is providing \$1,000,000,000 in funding to local communities under the American Recovery and Reinvestment Act.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City of Allen has agreed that in the event of loss or misuse of the COPS Hiring Recovery Program funds will be returned to the United States Department of Justice, Office of Community Oriented Policing Services in full.

SECTION 2. The City Manager is hereby authorized to apply for, accept, reject, alter, or terminate this grant from the United States Department of Justice, Office of Community Oriented Policing Services to assist the City of Allen and the Allen Police Department to fund three additional police officer positions.

SECTION 3. This resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Adopt a Resolution Authorizing the City Manager to Apply for, Accept, Reject, Alter, or Terminate a Three-year Grant from the United States Department of Justice, Bureau of Justice Assistance to Add Three Non-sworn Police Employee Positions

STAFF RESOURCE: Michael A. Stephens, Deputy Chief of Police
Kenneth Myers, Sergeant

PREVIOUS COUNCIL ACTION: None.

ACTION PROPOSED: Adopt a resolution authorizing the City Manager to apply for, accept, reject, alter, or terminate a three-year grant from the United States Department of Justice, Bureau of Justice Assistance to add three non-sworn police employee positions

BACKGROUND

The U.S. Department of Justice, Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA) announced that it is seeking applications for funding under the Recovery Act Edward Byrne Memorial Competitive Grant Program. On February 17, 2009, President Obama signed into law the landmark American Recovery and Reinvestment Act of 2009 (the "Recovery Act"). As one of its many elements, the Recovery Act provides the U.S. Department of Justice (DOJ) with funding for grants to assist state, local, and tribal law enforcement (including support for hiring), to combat violence against women, to fight crimes against children, to improve the functioning of the criminal justice system, to assist victims of crime, and to support youth mentoring. DOJ is committed to working with our national, state, local and tribal partners to ensure this funding invests in the American workforce. Specifically, under this solicitation, BJA will assist state, local, and tribal jurisdictions in improving the criminal justice system, providing assistance to victims of crime (other than compensation) and supporting communities in preventing drug abuse and crime.

Applicants are limited to national, regional, state, or local public and private entities, including for-profit (commercial) and nonprofit organizations, faith-based and community organizations, institutions of higher education, tribal entities, and units of local government that support initiatives to improve the functioning of the criminal justice system and provide assistance to

victims of crime (other than compensation).

The city will seek funding under Category IV: Hiring of Civilian Staff in Law Enforcement and Public Safety-Related Agencies. Applications soliciting under Category IV are to hire civilian staff in law enforcement agencies. Personnel in this category include but are not limited to civilian crime and intelligence analysts, dispatchers, and training staff to support sworn law enforcement with the goal of making sworn law enforcement more available on the street in an effort to reduce and prevent crime. Personnel in this category may not be used for administrative or clerical support.

The grant period is for 24 months with a maximum grant of \$250,000 per applicant. There is no retention period requirement.

BUDGETARY IMPACT

The grant application budget will ask for compensation for wages only for three non-sworn police positions. The average salary is estimated to be \$30,000 per position per year. The City will match funds by paying for fringe benefits. The budget impact will be approximately \$72,000 over a two-year period.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to enter into an agreement with the United States Department of Justice, Bureau of Justice Assistance to apply for, accept, reject, alter, or terminate a Edward Byrne Memorial Competitive Grant to fund three additional non-sworn police employee positions, if awarded.

MOTION

I make a motion to adopt Resolution No. _____ accepting the Edward Byrne Memorial Competitive Grant from the United States Department of Justice, Bureau of Justice Assistance, if awarded.

ATTACHMENT

Resolution

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, TO APPLY FOR, ACCEPT, REJECT, ALTER, OR TERMINATE A GRANT FROM THE UNITED STATES DEPARTMENT OF JUSTICE, BUREAU OF JUSTICE ASSISTANCE PROVIDING GRANT FUNDING FOR A THREE NON-SWORN POLICE POSITIONS UNDER THE EDWARD BYRNE MEMORIAL COMPETITIVE GRANT PROGRAM, IF AWARDED.

WHEREAS, the City of Allen, and its police department, wishes to provide the highest level of police services to all residents and visitors; and,

WHEREAS, the City of Allen Police Department has recognized the need to add three additional non-sworn positions to assist with public safety issues in the community; and,

WHEREAS, the Bureau of Justice Assistance is providing funding to local communities under the American Recovery and Reinvestment Act; and,

WHEREAS, the City of Allen agrees to provide matching funds for the these positions as it appears in the grant application.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The City of Allen has agreed that in the event of loss or misuse of the Edward Byrne Memorial Competitive Grant Program funds will be returned to the United States Department of Justice, Bureau of Justice Assistance in full.

SECTION 2. The City Manager is hereby authorized to apply for, accept, reject, alter, or terminate this grant from the United States Department of Justice, Bureau of Justice Assistance to assist the City of Allen and the Allen Police Department to fund three additional non-sworn positions.

SECTION 3. This resolution shall take effect immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:

Adopt a Resolution Approving the Dedication of Easements by the Arts of Collin County Commission, Inc. to North Texas Municipal Water District for the Indian Creek Improvement Project

STAFF RESOURCE:

Peter H. Vargas, City Manager
Dennis Abraham, Project Director, Arts of Collin County

PREVIOUS COUNCIL ACTION:

None

BOARD/COMMISSION ACTION:

The Arts of Collin County Commission Board of Directors voted unanimously to recommend to the Owner Cities adoption of the proposed resolution

BACKGROUND

The City of Allen, as an owner city of the Arts of Collin County, is required per the Inter-Local Agreement with the Cities of Frisco and Plano to approve of any disposal of an asset that exceeds \$50,000 in value. The Proposed Resolution dedicates the necessary easements to North Texas Municipal Water District (NTMWD) for construction, maintenance and operation of a sewer force main located along SH 121. NTMWD has paid a fair market value to the Arts of Collin County Commission, Inc. (ACC) of \$128,029 for one temporary and one permanent easement relating to the Indian Creek Improvement Project. These funds will be used for the Arts of Collin County Project.

STAFF RECOMMENDATION

Staff recommends that the City Council approve ACC Resolution 46-3-09.

MOTION

I make a motion to approve Resolution No. _____ approving the dedication of the requested Permanent Easement of 0.289± acres and the Temporary Easement of 4.454± acres by the Arts of Collin County Commission, Inc. to the North Texas Municipal Water District for the Indian Creek Improvement Project located along SH 121.

ATTACHMENT

ACC Resolution 46-3-09
Resolution

RESOLUTION NO. 46-3-09

A RESOLUTION OF THE ARTS OF COLLIN COUNTY COMMISSION, INC., TO DEDICATE AND CONVEY A PORTION OF LAND TO THE NORTH TEXAS MUNICIPAL WATER DISTRICT, COLLIN COUNTY, TEXAS TO DEDICATE AND MAINTAIN A UTILITY EASEMENT ALONG STATE HIGHWAY 121; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the Arts of Collin County Commission, Inc., (hereafter ACC) is the owner of the property identified in Exhibit A attached; and,

WHEREAS, the North Texas Municipal Water District; (hereafter NTMWD) requires the easement dedication and right to construct, reconstruct, operate, repair, maintain, re-build, replace, relocate, alter, remove and perpetually maintain public utilities, together with all incidental improvements, and all necessary laterals in, upon and across the specified portion of the property along State Highway 121 for the purpose of the construction and maintenance of a sanitary sewer line utility and,

WHEREAS, the ACC finds that the dedication is necessary to construct and maintain the utility; and,

WHEREAS, in February of 2004, the Cities of Allen, Frisco and Plano entered into an Interlocal Agreement (hereinafter "ILA") regarding the creation of a performing arts center in Collin County, Texas; and,

WHEREAS, Article III (f) of the ILA states: "The Corporation shall have all powers provided by law except those that are reserved by the Cities. " The following rights are specifically reserved by the Cities: (f) Sale or disposal of an asset whose value exceeds \$50,000.; and,

WHEREAS, the dedication and conveyance of the property identified in Exhibit A involves the disposal of an asset whose value exceeds \$50,000; and,

WHEREAS, it is anticipated that the Cities of Allen, Frisco and Plano will approve the proposed dedication and conveyance;

NOW, THEREFORE, BE IT RESOLVED BY THE ARTS OF COLLIN COUNTY COMMISSION, INC., THAT:

SECTION 1. That the dedication follows the proposed boundaries of the roadway, and that the sanitary sewer line utility is important to provide improvements to the member cities of the NTMWD. The requested Permanent Easements include 0.289 acres and the Temporary Easements for this pipeline will require 4.454 acres. NTMWD will restore the property after the pipeline is placed and the compensation for the easements would be One Hundred and Twenty Eight Thousand and Twenty Nine Dollars (\$128,029.00). Exhibit A (the Easement for Right-of-Way document) is the agreement being approved by the ACC.

SECTION 2. That there is no feasible or prudent alternative to the taking of a portion of the ACC property for the construction of a sanitary sewer line utility and that all reasonable planning to minimize harm to the future use of the property has been taken in determining the scope of this taking.

SECTION 3. Should any sentence, paragraph, subdivision, clause, phrase or section of this resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this resolution as a whole, or any part of provisions thereof other than the part so decided to be invalid, illegal or unconstitutional.

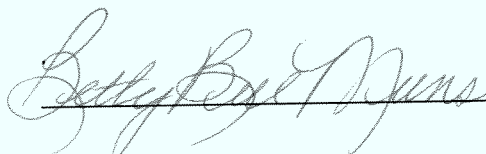
SECTION 4. This Resolution shall become effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE BOARD OF DIRECTORS OF THE ARTS OF COLLIN COUNTY COMMISSION, INC., ON THIS THE 19 DAY OF March 2009.

APPROVED:


STEVE MATTHEWS, PRESIDENT

ATTEST:


BETTY BELL MUNS, SECRETARY

**EASEMENT FOR RIGHT-OF-WAY
SANITARY SEWER PIPELINE
INDIAN CREEK FORCE MAIN
PROJECT 139, IRS 06-1**

STATE OF TEXAS § KNOWN ALL MEN BY THESE PRESENTS:
 §
COUNTY OF COLLIN §

THAT the undersigned, **The Arts of Collin County Commission, Inc.**, (hereinafter called "Grantor") for and in consideration of the sum of One-Hundred-Twenty-Eight Thousand and Twenty-nine AND NO/100 DOLLARS (\$128,029.00) cash in hand paid by the **NORTH TEXAS MUNICIPAL WATER DISTRICT** (hereinafter called "Grantee") and other good and valuable consideration the receipt of which is hereby acknowledged and confessed, has granted, sold and conveyed, and by these presents, does grant, sell and convey unto the Grantee a Permanent Easement and right-of-way, along with a Temporary Construction Easement, in and through those certain premises owned by Grantor to construct, operate, reconstruct, perpetually maintain and remove one pipeline, for the transportation of wastewater (the "Sanitary Sewer" pipeline), with all incidental equipment, and appurtenances under or through the following described lands situated in Collin County, Texas, to-wit:

BEING a tract of land situated in the Shadrick Jackson Survey, Abstract No. 489, City of Allen, Collin County, Texas, and being a part of that same tract of land as described in deed **The Arts of Collin County Commission, Inc.** recorded in Volume 6000, Page 5392 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

BEING a tract of land situated in the Shadrick Jackson Survey, Abstract No. 489, City of Allen, Collin County, Texas, and being a part of that same tract of land as described in deed to **The Arts of Collin County Commission, Inc.** recorded in Volume 6000, Page 5392 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

SEE ATTACHED EXHIBIT "A" FOR DESCRIPTION

The Grantee shall utilize the easement for one Sanitary Sewer pipeline and appurtenances, including above grade appurtenances consisting of man holes and access covers (referred to herein collectively as "Grantees pipeline or the pipeline") as may be required for its operation of the pipeline. Grantee, and Grantee's successors and assigns, shall have the continued and unobstructed right of ingress and egress over the permanent easement granted for the installation, operation, inspection, and maintenance of Grantee's pipeline.

The Temporary Construction Easement granted and described herein will terminate and cease upon completion of the construction and testing of the pipeline. Said Temporary Construction Easement is described in Exhibit "A".

Grantee, and Grantee's successors and assigns, agrees to bury said pipeline to a depth of at least 48" from the top of the pipeline to existing ground surface except where burying the pipeline to such depth would impair the normal and efficient operation of the pipeline. Grantee will, insofar as practicable, restore the ground disturbed by the laying, constructing, repairing, maintaining, replacing or removing of said pipeline, and will take such steps as may be reasonably required to prevent damage to the property of Grantor from soil erosion resulting from operations of Grantee hereunder. Grantee will separate the topsoil during construction by double-ditching and will restore said topsoil within the easement. Grantee shall leave the surface as nearly as reasonably possible as it was prior to the construction of the pipeline and will restore all improvements, including fences, driveways, bridges, drainage channels, and other improvements damaged through the use of said easement to substantially the same condition as they were prior to the construction of the pipeline. Grantee agrees to re-seed the easement areas after construction of said pipeline.

Grantee has the right to trim or cut down or eliminate trees or shrubbery to the extent, in the reasonable judgment of Grantee, its successors and assigns, as may be necessary to prevent possible interference with the installation and operation of said pipelines and to remove possible hazards thereto, and the right to remove or prevent the construction of any and all improvements, buildings, reservoirs or other obstructions on said permanent easement, except as are specifically allowed under the terms hereof. Grantor shall not construct or permit to be constructed, any house, building, reservoir, or other prohibited improvement on or within the permanent easement or remove soil which would impair the lateral support for Grantee's pipeline or leave it with insufficient cover for the safe operation of said pipeline. However, Grantor retains the right to cross the permanent easement area with fences, streets, roads, and utilities ("facilities") at angles not less than 45 degrees provided that said facilities do not endanger or interfere with Grantee's pipeline and provided that Grantee is provided with a copy of the construction plans and drawings not less than 30 days before the beginning of construction of said facilities. Grantor shall not grant any other easements within the permanent easement which would (1) endanger or interfere with the safe and efficient operation of Grantee's pipeline, or (2) cross Grantee's easement at less than a 45 degree angle. Grantee may not fence or enclose the easement but may install gates in any fence along or crossing the easement for access.

If Grantee should abandon the rights granted herein for said pipeline and appurtenances constructed upon said land and, if such abandonment should continue for a continuous period of thirty-six (36) months, all rights of Grantee herein shall terminate and revert to Grantor, their heirs, legal representatives, successors and assigns. Grantee shall have the right for one year following any termination of this easement to remove its pipe, valves and all other property. Following the expiration of such period, any such property remaining on said land shall be and become the property of Grantor.

Grantee shall have the right to assign the easement in whole or in part to one or more assignees. Grantee, shall indemnify, defend, assume all liability for, and hold harmless the Grantor, its successors and assigns, from all actions, claims, suits, penalties, obligations, liabilities, and/or injuries and/or death to persons that may be caused by Grantee's activities pursuant to this Easement, or arising out of or in connection with such activities. Nothing in this indemnity provision shall be read to extend indemnification to Grantor for Grantor's own

negligence, gross negligence, or intentional tortious acts in the performance of this Easement.

The above described easements and rights shall inure unto the said Grantee, and Grantee's successors and assigns, and the covenants and agreements contained herein shall constitute covenants running with the land, binding upon Grantor, its legal representatives, successors and assigns, for the benefit of Grantee, and Grantee's successors and assigns.

By executing this Easement, the undersigned represents that they are duly authorized to execute this document; that Grantor is the owner of fee simple title to the property across which the easement is being granted; that the property is held by Grantor free and clear of any liens or encumbrances and that Grantor is the sole party entitled to receive the consideration being paid for the easement.

TO HAVE AND TO HOLD unto the said **NORTH TEXAS MUNICIPAL WATER DISTRICT**, its successors and assigns, the above described easement and right-of-way, and I do hereby bind myself, any heirs, executors, and administrators to warrant and forever defend all and singular the said premises to the **NORTH TEXAS MUNICIPAL WATER DISTRICT**, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof herein.

WITNESS OUR HANDS this _____ day of _____, 2009.

GRANTOR:

ACKNOWLEDGMENT

THE STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, the undersigned authority, on this day personally appeared _____, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this ____ day of _____, 2009.

Notary Public in and for
the State of Texas

My commission expires: _____

PARCEL 3A
PAGE 1 of 4

EXHIBIT "A"

**NORTH TEXAS MUNICIPAL WATER DISTRICT
INDIAN CREEK FORCE MAIN PROJECT-PHASE 2
PERMANENT SANITARY SEWER EASEMENT
OWNER
THE ARTS OF COLLIN COUNTY COMMISSION, INC.**

**Description for Parcel 3A
0.098 Acres**

BEING a tract of land situated in the Shadrick Jackson Survey, Abstract No. 489, City of Allen, Collin County, Texas, and being a part of that same tract of land as described in deed The Arts of Collin County Commission, Inc. recorded in Volume 6000, Page 5392 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found at the intersection of the south line of State Highway No. 121 (controlled access highway having a variable width right-of-way), with the southwest line of Exchange Parkway (variable width right-of-way), and lying in a non tangent circular curve to the right having a radius of 75.50 feet;

THENCE southeasterly along the southwest line of said Exchange Parkway and said curve to the right, through a central angle of 17°45'56", an arc distance of 23.41 feet and having a chord which bears S 54°35'56" E, 23.32 feet;

THENCE S 66°20'05" W, departing the southwest line of said Exchange Parkway, at all times remaining 20.00 feet south of and parallel to the south line of said State Highway No. 121, 28.84 feet;

THENCE N 68°39'55" W, 14.14 feet;

THENCE S 66°20'05" W, at all times remaining 10.00 feet south of and parallel to the south line of said State Highway No. 121, 360.92 feet;

THENCE N 68°39'55" W, 14.14 feet to a point in the south line of State Highway No. 121;

THENCE N 66°20'05" E, along the south line of said State Highway No. 121, 397.77 feet to the POINT of BEGINNING and containing 4,280 square feet or, 0.098 acre of land.

TOGETHER with a temporary construction easement adjoining the south line of the aforescribed 10 foot wide sanitary sewer easement being described as follows.

PARCEL 3A
PAGE 2 OF 4

**NORTH TEXAS MUNICIPAL WATER DISTRICT
INDIAN CREEK FORCE MAIN PROJECT-PHASE 2
TEMPORARY CONSTRUCTION EASEMENT**

BEING a tract of land situated in the Shadrick Jackson Survey, Abstract No. 489, City of Allen, Collin County, Texas, and being a part of that same tract of land as described in deed The Arts of Collin County Commission, Inc. recorded in Volume 6000, Page 5392 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

COMMENCING at a 1/2-inch iron rod found at the intersection of the south line of State Highway No. 121 (controlled access highway having a variable width right-of-way), with the southwest line of Exchange Parkway (variable width right-of-way), lying in a circular curve to the right having a radius of 75.50 feet;

THENCE southeasterly, along the southwest line of said Exchange Parkway and said curve to the right, through a central angle of 17°45'56", an arc distance of 23.41 feet and having a chord which bears S 54°35'56" E, 23.32 feet to the **POINT of BEGINNING**;

THENCE southeasterly, continuing along the southwest line of said Exchange Parkway, through a central angle of 21°25'40", an arc distance of 28.23 feet and having a chord which bears S 35°00'08" E, 28.07 feet to a 1/2-inch iron rod found;

THENCE S 24°06'49" E, continuing along the southwest line of said Exchange Parkway, 52.48 feet;

THENCE S 66°20'05" W, departing the southwest line of said Exchange Parkway, at all times remaining 100.00 feet south of and parallel to the south line of said State Highway No. 121, 442.97 feet;

THENCE N 68°39'55" W, 42.43 feet;

THENCE S 66°20'05" W, at all times remaining 70.00 feet south of and parallel to the south line of said State Highway No. 121, 489.99 feet;

THENCE S 66°24'04" W, at all times remaining 70.00 feet south of and parallel to the south line of said State Highway No. 121, 29.68 feet to a point in the west line of said Arts of Collin County tract, same being the east line of a tract of land as described in deed to Mixon Investment Company, Inc. recorded in Volume 803, Page 446 DRCCT;

THENCE N 00°38'49" W, along the west line of said Arts of Collin County tract and east line of said Mixon tract, 76.02 feet to a TXDOT monument found in the south line of State Highway No. 121 at the northwest corner of said Arts of Collin County tract and northeast corner of said Mixon tract;

THENCE N 66°20'05" E, along the south line of said State Highway No. 121, 547.23 feet;

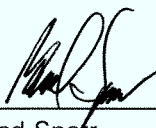
THENCE S 68°39'55" E, departing the south line of said State Highway No. 121, 14.14 feet;

THENCE N 66°20'05" E, all times remaining 10.00 feet south of and parallel to the south line of said State Highway No. 121, 360.92 feet;

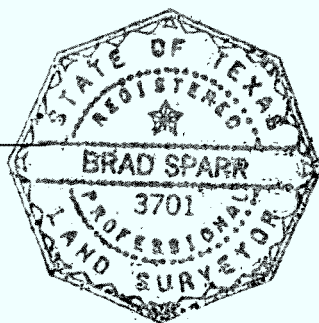
PARCEL 3A
PAGE 3 OF 4

THENCE S 68°39'55" E, 14.14 feet;

THENCE N 66°20'05" E, at all times remaining 20.00 feet south of and parallel to the south line of said State Highway No. 121, 28.84 feet to the POINT of BEGINNING and containing 77,609 square feet or, 1.782 acres of land.

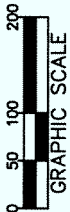


Brad Sparr
Registered Professional
Land Surveyor No. 3701



Sparr Surveys
2553 County Road 722
McKinney, TX 75069
(214) 544-2297

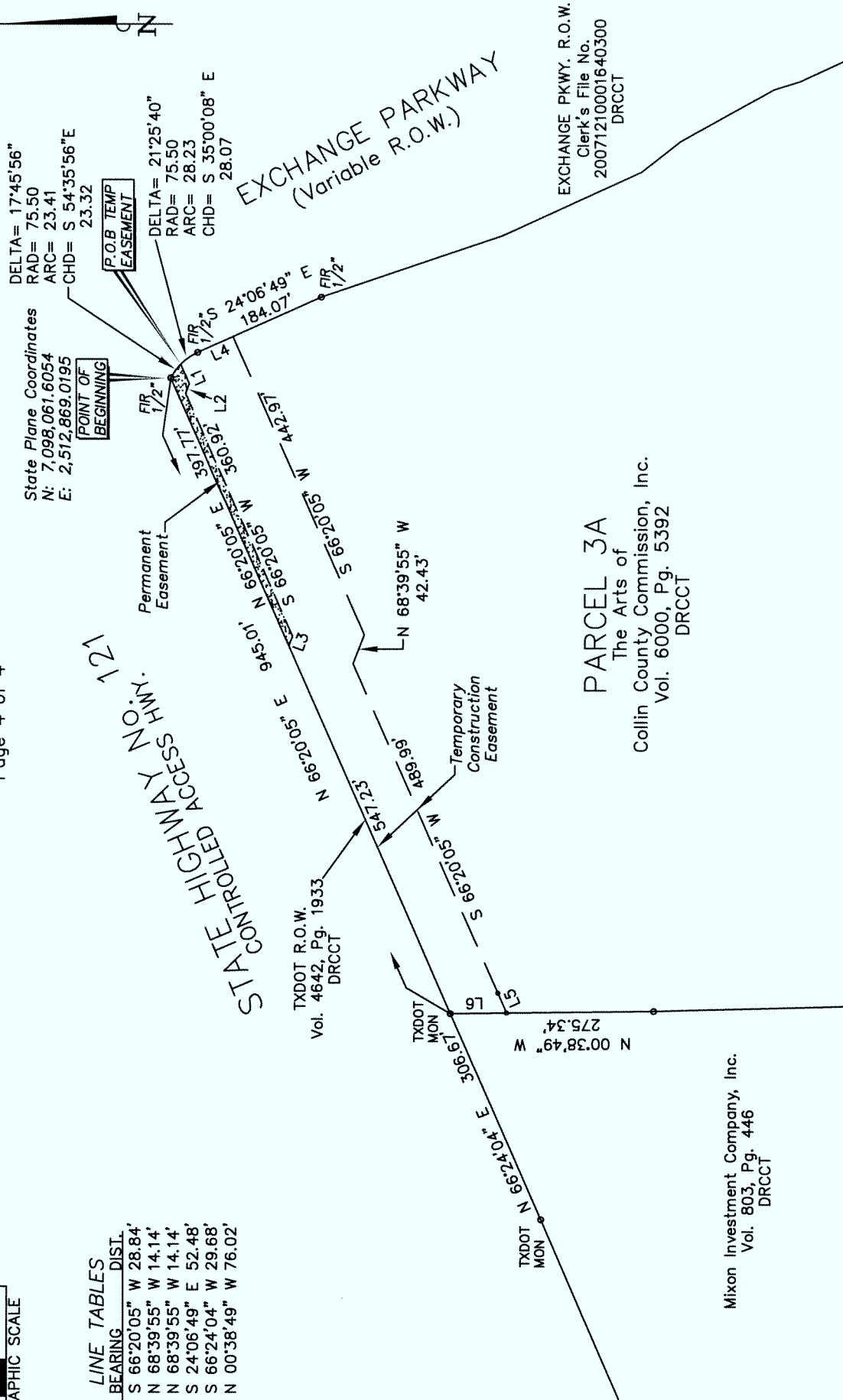
EXHIBIT "A"
Page 4 of 4



LINE TABLES

No.	BEARING	DIST.
L1	S 66°20'05" W	28.84'
L2	N 68°39'55" W	14.14'
L3	N 68°39'55" W	14.14'
L4	S 24°06'49" E	52.48'
L5	S 66°24'04" W	29.68'
L6	N 00°38'49" W	76.02'

STATE HIGHWAY NO. 121
CONTROLLED ACCESS HWY.



EXCHANGE PKWY. R.O.W.
Clerk's File No.
20071210001640300
DRCCT

PARCEL 3A
The Arts of
Collin County Commission, Inc.
Vol. 6000, Pg. 5392
DRCCT

Mixon Investment Company, Inc.
Vol. 803, Pg. 446
DRCCT

EASEMENT EXHIBIT
PARCEL 3A
NORTH TEXAS MUNICIPAL WATER DISTRICT
INDIAN CREEK
FORCE MAIN PROJECT, PHASE 2
4,280 Sq. Ft. / 0.098 Acre
TRACT OF LAND IN THE SHADRICK JACKSON SURVEY
ABSTRACT No. 489
COLLIN COUNTY, TEXAS
OCTOBER 2008



LEGEND
FIR FOUND IRON ROD
ALL BEARINGS ARE ON THE TEXAS STATE PLANE
COORDINATE SYSTEM, NAD 83 (1983 ADJ.), NORTH
CENTRAL ZONE. ALL DISTANCES SHOWN ARE SURFACE
AND MAY BE CONVERTED TO GRID BY DIVIDING BY A
CONVERSION FACTOR OF 1.0001637.

Sparr Surveys
2553 C.R. 722
McKinney, Texas 75069
(214) 544-2297

PARCEL 3B
PAGE 1 of 4

EXHIBIT "A"

**NORTH TEXAS MUNICIPAL WATER DISTRICT
INDIAN CREEK FORCE MAIN PROJECT-PHASE 2
10' WIDE PERMANENT SANITARY SEWER EASEMENT
OWNER
THE ARTS OF COLLIN COUNTY COMMISSION, INC.**

**Description for Parcel 3B
0.191 Acre**

BEING a tract of land situated in the Shadrick Jackson Survey, Abstract No. 489, City of Allen, Collin County, Texas, and being a part of that same tract of land as described in deed to The Arts of Collin County Commission, Inc. recorded in Volume 6000, Page 5392 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

BEGINNING at a 1/2-inch iron rod found at the intersection of the south line of State Highway No. 121 (controlled access highway having a variable width right-of-way), with the northeast line of Exchange Parkway (variable width right-of-way);

THENCE N 66°20'05" E, along the south line of said State Highway No. 121, 815.92 feet;

THENCE S 21°20'05" W, departing the south line of said State Highway No. 121, 14.14 feet;

THENCE S 66°20'05" W, at all times remaining 10.00 feet south of and parallel to the south line of said State Highway No. 121, 778.85 feet;

THENCE S 21°20'05" W, 14.14 feet;

THENCE S 66°20'05" W, at all times remaining 20.00 feet south of and parallel to the south line of said State Highway No. 121, 16.93 feet to a point in the northeast line of said Exchange Parkway;

THENCE N 24°03'50" W, along the northeast line of said Exchange Parkway, 20.00 feet to the POINT of BEGINNING and containing 8,327 square feet or, 0.191 acres of land.

TOGETHER with a temporary construction easement being described as follows.

PARCEL 3B
PAGE 2 of 4

**NORTH TEXAS MUNICIPAL WATER DISTRICT
INDIAN CREEK FORCE MAIN PROJECT-PHASE 2
TEMPORARY CONSTRUCTION EASEMENT**

BEING a tract of land situated in the Shadrick Jackson Survey, Abstract No. 489 and the J.J. Driggers Survey, Abstract No. 274, City of Allen, Collin County, Texas, and being a part of that same tract of land as described in deed to The Arts of Collin County Commission, Inc. recorded in Volume 6000, Page 5392 in the Deed Records of Collin County, Texas (DRCCT), and being more particularly described as follows:

BEGINNING at a point in the northeast line of Exchange Parkway (variable width right-of-way), from which a 1/2-inch iron rod found at the intersection of the south line of State Highway No. 121 (controlled access highway having a variable width right-of-way), with the northeast line of said Exchange Parkway bears N 24°03'50" W, 20.00 feet;

THENCE N 66°20'05" E, departing the northeast line of said Exchange Parkway, at all times remaining 20.00 feet south of and parallel to the south line of said State Highway No. 121, 16.93 feet;

THENCE N 21°20'05" E, 14.14 feet;

THENCE N 66°20'05" E, at all times remaining 10.00 feet south of and parallel to the south line of said State Highway No. 121, 778.85 feet;

THENCE N 21°20'05" E, 14.14 feet to a point in the south line of said State Highway No. 121;

THENCE N 66°20'05" E, along the south line of said State Highway No. 121, 857.67 feet to a TXDOT monument found at the northeast corner of said Arts of Collin County tract;

THENCE S 01°17'31" E, departing the south line of said State Highway No. 121, along the east line of said Arts of Collin County tract, 75.70 feet;

THENCE S 66°20'05" W, departing the east line of the said Arts of Collin County tract, at all times remaining 70.00 feet south of and parallel to the south line of said State Highway No. 121, 771.58 feet;

THENCE S 21°20'05" W, 42.43 feet;

THENCE S 66°20'05" W, at all times remaining 100.00 feet south of and parallel to the south line of said State Highway No. 121, 252.02 feet;

THENCE N 23°39'55" W, 45.00 feet;

THENCE S 66°20'05" W, at all times remaining 55.00 feet south of and parallel to the south line of said State Highway No. 121, 380.85 feet;


THENCE S 23°39'55" E, 45.00 feet;

PARCEL 3B
PAGE 3 of 4

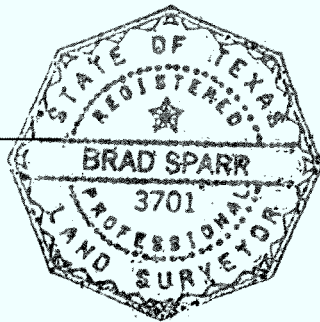
THENCE S 66°20'05" W, at all times remaining 100.00 feet south of and parallel to the south line of said State Highway No. 121, 209.65 feet to a point in the northeast line of said Exchange Parkway, lying in a non-tangent circular curve to the left having a radius of 437.00 feet;

THENCE northwesterly, along the northeast line of said Exchange Parkway, along said curve to the left, through a central angle of 00°29'04", an arc distance of 3.69 feet and having a chord which bears N 23°49'09" W, 3.69 feet to a 1/2-inch iron rod found;

THENCE N 24°03'50" W, continuing along the northeast line of said Exchange Parkway, 76.31 feet to the POINT of BEGINNING and containing 116,394 square feet or, 2.672 acres of land.

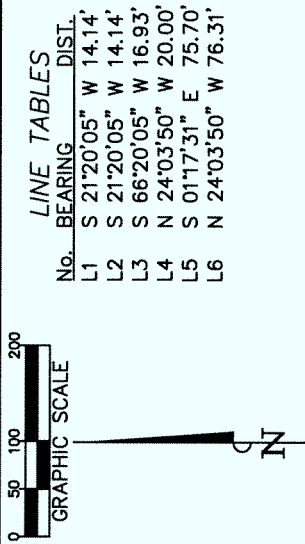


Brad Sparr
Registered Professional
Land Surveyor No. 3701



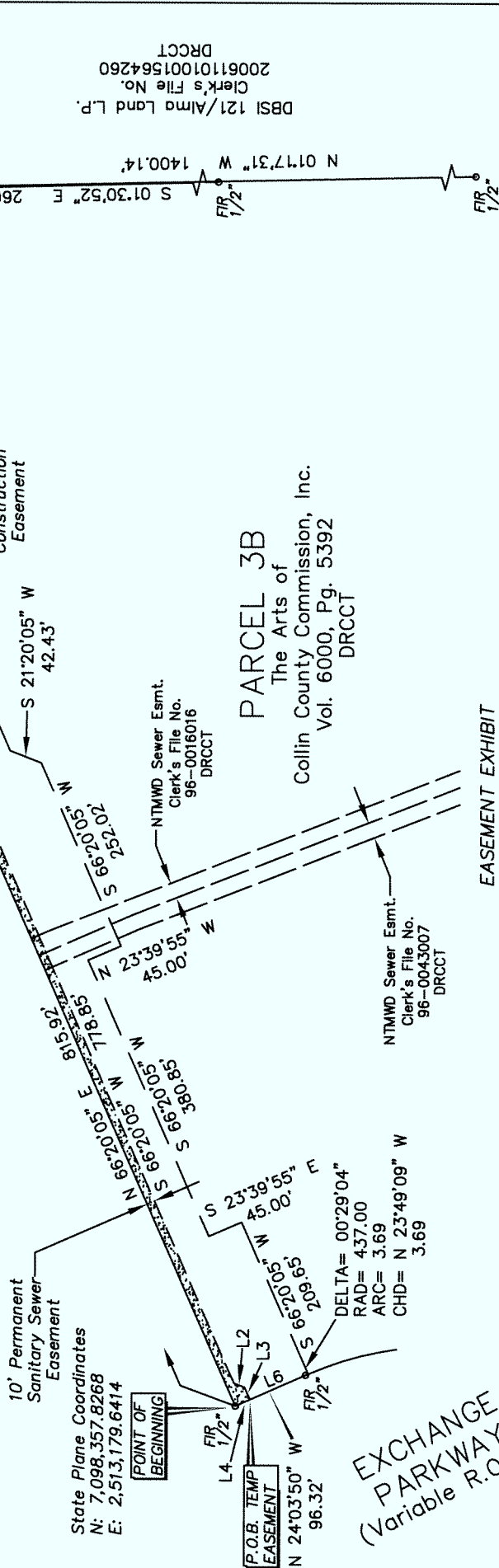
Sparr Surveys
2553 County Road 722
McKinney, TX 75069
(214) 544-2297

EXHIBIT "A"
Page 4 of 4



No.	BEARING	DIST.
L1	S 21°20'05" W	14.14'
L2	S 21°20'05" W	14.14'
L3	S 66°20'05" W	16.93'
L4	N 24°03'50" W	20.00'
L5	S 01°17'31" E	75.70'
L6	N 24°03'50" W	76.31'

STATE HIGHWAY NO. 121
CONTROLLED ACCESS HWY.



PARCEL 3B
The Arts of
Collin County Commission, Inc.
Vol. 6000, Pg. 5392
DRCCT

EASEMENT EXHIBIT
PARCEL 3B

NORTH TEXAS MUNICIPAL WATER DISTRICT
INDIAN CREEK FORCE MAIN PROJECT, PHASE 2
8,327 Sq. Ft. / 0.191 Acre
TRACT'S OF LAND IN THE
SHADRICK JACKSON SURVEY, ABSTRACT No. 489
J.J. DRIGGERS SURVEY, ABSTRACT No. 274
COLLIN COUNTY, TEXAS
OCTOBER 2008

LEGEND

FIR FOUND IRON ROD
ALL BEARINGS ARE ON THE TEXAS STATE PLANE
COORDINATE SYSTEM, NAD 83 (1993 ADJ.). NORTH
CENTRAL ZONE. ALL DISTANCES SHOWN ARE SURFACE
AND MAY BE CONVERTED TO GRID BY DIVIDING BY A
CONVERSION FACTOR OF 1.0001637.

Sparr Surveys
2553 C.R. 722
McKinney, Texas 75069
(214) 544-2297

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING THE SALE OR DISPOSAL OF AN ASSET WHOSE VALUE EXCEEDS FIFTY THOUSAND DOLLARS (\$50,000) BY THE DEDICATION AND CONVEYANCE OF PROPERTY TO NORTH TEXAS MUNICIPAL WATER DISTRICT, AS ADOPTED IN THE AGREEMENT BY AND BETWEEN THE CITY OF ALLEN TEXAS, THE CITY OF FRISCO TEXAS AND THE CITY OF PLANO TEXAS, PERTAINING TO THE CREATION OF A PERFORMANCE ARTS CENTER IN COLLIN COUNTY, TEXAS; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, at a regularly scheduled meeting of the Arts of Collin County Commission, Inc., (hereafter ACC), with a quorum in attendance, the ACC reviewed and approved the dedication and conveyance of property to North Texas Municipal Water District (NTMWD) an asset as set forth in ACC Resolution No 46-3-09, attached hereto; and,

WHEREAS, the city of Allen is one of the owners of the ACC, and in accordance with the terms and conditions of the agreement entered into by and between the Cities of Allen, Frisco, and Plano in 2004, each city must approve of any disposal of an asset that exceeds \$50,000 in value; and,

WHEREAS, the City Council of the City of Allen finds that the asset proposed to be dedicated by the ACC is at least \$50,000 in value and the City approves of the action of the ACC and finds that the dedication is in the best interest of the ACC and will improve use of the ACC property.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The recitals set forth above are true and correct and are adopted herein verbatim as if fully set forth at length.

SECTION 2. The City Council of the City of Allen approves of the dedication and conveyance of property for the construction and maintenance of utilities as set forth in Arts of Collin County Commission Resolution 46-3-09 to North Texas Municipal Water District.

SECTION 3. The City Council of paragraph, subdivision, clause, phrase or section of this Resolution be adjudged or held to be unconstitutional, illegal or invalid, the same shall not affect the validity of this Resolution as a whole, or any part of provisions thereof other than the part so decided to be invalid, illegal or unconstitutional.

SECTION 4. The Resolution shall become effective immediately from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECRETARY

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Approve a Resolution and Authorize the City Manager to Execute a License Agreement with the Town of Fairview, The Village at Allen LP and the City of Allen Regarding Stacy Road Median Art Work

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: On March 24, 2009, a presentation was made by MGHerring Group and artist, Rich Morgan, at the Council workshop meeting

ACTION PROPOSED: Approve a Resolution and Authorize the City Manager to Execute a License Agreement with the Town of Fairview, The Village at Allen LP and the City of Allen Regarding Stacy Road Median Art Work

BACKGROUND

The Village at Allen LP (Developer, also known as MGHerring Group) is developing retail life style centers in the City of Allen and the Town of Fairview (the Cities). The city limit line of Allen and Fairview runs along the center line of Stacy Road from US 75 to SH 5. The Developer under the auspices of The Village at Allen LP desires to place art work in the median of Stacy Road to create a signature entry into Allen and Fairview. During a Council Workshop meeting on March 24, 2009, the Developer accompanied by the artist, Mr. Rich Morgan, presented concept plans for five metal panels approximately 10 feet wide and 20 feet high to be placed on the Stacy Road median between US 75 and the first opening in the median.

A summary of the license agreement is as follows:

- 1 The Cities collectively grant to The Village at Allen LP a nonexclusive license for a period of 30 years to construct, install, operate and maintain art work as described in Exhibit "A" of the agreement.
- 1 Agrees that there will be no cost to the Cities for construction, installation, operation and maintenance of the art work.
- 1 The Developer owns the art work.
- 1 In the event that The Village at Allen LP removes art work, the median will be restored

to condition prior to installation of art work.

- ¹ The Village at Allen LP will comply with all regulations by the Cities.
- ¹ The Cities agree to not unreasonably interfere with the visibility of the art work or the ability to install and maintain the art work.
- ¹ The Village at Allen LP agrees to defend, indemnify and hold the Cities harmless against any and all claims.

BUDGETARY IMPACT

There is no budget impact.

STAFF RECOMMENDATION

Approve the resolution and authorize the City Manager to execute a License Agreement with the Town of Fairview, The Village at Allen LP and City of Allen regarding Stacy Road median art work.

MOTION

I make a motion to approve Resolution No. _____ and authorize the City Manager to execute a License Agreement with the Town of Fairview, The Village at Allen LP and City of Allen regarding Stacy Road median art work.

ATTACHMENT

Resolution
Location Map
License Agreement

RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, APPROVING A LICENSE AGREEMENT WITH THE TOWN OF FAIRVIEW AND THE VILLAGE AT ALLEN FOR THE INSTALLATION OF ARTWORK TO BE LOCATED IN THE STACY ROAD MEDIAN BETWEEN US 75 AND EAST TO THE FIRST MEDIAN OPENING; AUTHORIZING THE CITY MANAGER TO EXECUTE THE LICENSE AGREEMENT; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, City of Allen, Texas and the Town of Fairview, Texas, between US 75 and Greenville Avenue where control the Stacy Road right-of-way; and,

WHEREAS, City of Allen and the Town of Fairview require a formal license for the use of its right-of-way (ROW); and,

WHEREAS, The Village at Allen LP desires the installation of five (5) 10 foot by 20 foot metal art panels within the Stacy Road ROW.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The License Agreement by and between the City of Allen, Texas, and the Town of Fairview and The Village at Allen LP is hereby approved; and the City Manager is authorized to execute the license Agreement on behalf of the City.

SECTION 2. This resolution shall become effective from and after its passage.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL, 2009.

APPROVED:

Stephen Terrell, MAYOR

ATTEST:

Shelley B. George, CITY SECETARY

ARTISTIC ELEMENT LICENSE AGREEMENT

STATE OF TEXAS §
 §
COLLIN COUNTY §

This Artistic Element License Agreement ("Agreement") effective as of _____, 2009 ("Effective Date") is made by and between the City of Allen, Texas ("Allen"), a Texas home rule municipality, the Town of Fairview, Texas ("Fairview"), a Texas home rule municipality, and The Village at Allen LP ("Company"), a Texas limited partnership, acting by and through their respective authorized officers.

WITNESSETH:

WHEREAS, the Company is developing retail life style centers in Allen and Fairview; and

WHEREAS, the city limit line of Allen and Fairview runs along the center line of Stacy Road from U.S. 75 to S.H. 5; and

WHEREAS, the Company desires to place art work in the median of Stacy Road to enhance the entry into Allen and Fairview; and

WHEREAS, Allen and Fairview desire to grant a license to the Company to install and maintain the art work.

NOW THEREFORE, in consideration of the foregoing and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Allen, Fairview and the Company agree as follows:

1. Grant of License. Allen and Fairview (collectively, the "Cities") hereby grant to Company a nonexclusive license for a period of 30 years from the Effective Date to utilize the median of Stacy Road from U.S. 75 to S.H. 5 to construct, install, operate and maintain the art work substantially in accordance with the plans and location as shown in Exhibit "A" attached hereto and made a part hereof (the "Art Work").

2. Construction. Company shall have the right but not the obligation to construct and install the Art Work at no cost to the Cities. This Agreement shall terminate without further notice on _____ (or other date as may be mutually agreed by the parties) in the event the Company has not completed the construction and installation of the Art Work.

3. Ownership and Maintenance. Company shall own the Art Work and shall reasonably operate and maintain the Art Work at no cost to the Cities. Company shall have the right to remove the Art Work at any time at no cost to the Cities and upon removal, shall restore the licensed area in substantially the same condition as existed before installation of the Art Work. The Company agrees and covenants to maintain and repair the Art Work in a first class condition save and except reasonable wear and tear. The Company agrees and covenants to promptly remove the Art Work, at its costs, in

the event of termination of this Agreement, and shall restore the licensed area in substantially the same condition as existed before installation of the Art Work. In the event the Company fails to remove the Art Work within thirty (30) days after termination of this Agreement the Cities may remove the Art Work and charge the costs of such removal and restoration of the licensed area to the Company. In such event the Company does hereby release the Cities from any and all liability for any damage to, or destruction of, the Art Work.

4. Regulatory Authority of the Cities. Company's property and operations hereunder shall be subject to such regulation by the Cities as may be reasonably necessary for the protection or benefit of the general public. In this connection, Company shall be subject to, governed by and shall comply with all applicable federal, state and local laws, including all ordinances, rules and regulations of the Cities, as same may be adopted and amended from time to time. Cities agree to not unreasonably interfere with the visibility of the Art Work or the ability to install and maintain the Art Work, provided, however, if the governing bodies of both Cities determine that the location of the Art Work in the right-of-way is not in the public interest, Company shall remove the Art Work from the licensed area.

5. Indemnity. The Company agrees to defend, indemnify and hold the Cities, their 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 the Art Work or Company's activities related thereto or that may arise out of or be occasioned by the Company's breach of any of the terms or provisions of this Agreement, or by and negligent act or omission of the Company, its officers, agents, associates, employees, affiliates, or contractors, in the performance of this Agreement; except that the indemnity provided for in this paragraph shall not apply to any liability to the extent resulting from the negligence of, or breach under this Agreement by, the Cities, their officers, agents, employees or separate contractors, and in the event of joint and concurrent negligence or breach by both the Company and the Cities, responsibility, 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 Cities under Texas law and without waiving any defenses of the parties under Texas law. The provisions of this paragraph are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any person or entity.

6. Insurance.

(a) Company shall obtain and maintain insurance during the term of this Agreement with coverage in an amount reasonably sufficient to repair or replace the Art Work in the event the Art Work is damaged or destroyed, and the following insurance: (1) a policy of comprehensive general liability insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the use of the licensed area by the Company pursuant to this Agreement with a minimum combined single limit of not less than \$1. Million Dollars per occurrence for injury to persons (including death), and for property damage with an aggregate of not less than

\$1 Million Dollars; and (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Company its officers, agents, and employees with a minimum of \$1 Million Dollars combined single limit.

(b) The insurance and certificate of insurance shall contain the following provisions: (1) name the Cities, their respective officers, agents and employees as additional insureds as to all applicable coverage; (2) provide for at least thirty (30) days prior written notice to the Cities for cancellation, nonrenewal, or material change of the insurance; (3) provide for a waiver of subrogation against the Cities for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

(d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of construction of the Art Work.

(e) Without limiting any of the other obligations or liabilities of Company, the Company shall require its general contractors, at the general contractor's own expense, to maintain during the construction of the Art Work, the required insurance including the required certificate and policy conditions as stated herein.

7. Events of Default. A default shall exist if a party fails to perform or observe any material covenant contained in this Agreement. The non-defaulting party shall promptly notify the defaulting party in writing upon becoming aware of the existence of any condition or event which would constitute a default by the defaulting party, or, with the giving of notice or passage of time, or both, would constitute a default by the defaulting party under this Agreement. Such notice shall specify the nature of the default, the time period of the default's existence and what action, if any, the notifying party requires or proposed to require with respect to curing the default. A default shall exist if the Company fails to repair and/or maintain the Art Work in a first class condition, save and except reasonable wear and tear, or in the event the Company fails to repair or replace the Art Work in the event of a casualty. In the event of a casualty resulting in partial or total destruction of the Art Work the Company agrees and covenants to take all necessary action to repair or replace the Art Work or portion thereof within a reasonable period of time not to exceed six (6) months following such event of casualty.

8. Remedies Available. If the Company causes an event of default to occur, through either an affirmative act or omission, the Cities will provide the Company with a written notice to cure the default. If, at the end of thirty (30) days from receipt of said notice, the default is ongoing and the Company is not in conformance with the terms of this Agreement, the Cities may pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law, or termination of this Agreement, without the necessity of further notice to or demand upon the Company. Provided, however, that if an event of default cannot be reasonably cured in thirty (30) days, such event of default

shall not become a default, unless Company fails to commence diligent work and effort to cure the default within thirty (30) days.

9. Notices. Any notice required or permitted to be delivered hereunder shall be upon receipt sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or by courier or other hand delivery.

If intended for Fairview:

Town of Fairview
Attn: Town Manager
500 S. Highway 5
Fairview, TX 75069

If intended for Allen:

City of Allen
Attn: City Manager
305 Century Parkway
Allen, TX 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard, Hager
& Smith, L.L.P.
500 North Akard, Suite 1800
Dallas, TX 75201

If intended for the Company:

The Village at Allen, LP
c/o The MGHerring Group
Attn: President
5710 LBJ Freeway, Suite 450
Dallas, Texas 75240-6399

With a copy to:

Attn: Barry R. Knight
Winstead P.C.
5400 Renaissance Tower
Dallas, Texas 75270

10. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of all parties hereto.

11. Assignment. Company shall not assign any of its rights or obligations under this Agreement without the prior written consent of the Cities with such consent not to be unreasonably delayed, conditioned or withheld.

12. Limitation on Liability. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Company, in satisfying the conditions of this Agreement, has acted independently, and Cities assume no responsibilities or liabilities to third parties in connection with these actions.

13. Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement.

14. Governing Law. The Agreement shall be governed by the laws of the State of Texas and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

15. Amendment. This Agreement may be amended by the mutual written agreement of the parties.

16. Legal Construction. In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

17. Recitals. The recitals to this Agreement are incorporated herein.

18. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

19. Exhibits. Any exhibits to this Agreement are incorporated herein by reference for all purposes wherever reference is made to the same.

20. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

21. Estoppel. The Cities shall, at any time upon reasonable request by the Company, provide an estoppel certificate or other document evidencing that this Agreement is in full force and effect, that no event of default by the Company exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default), and the status of any other obligations set forth in this Agreement.

22. Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

Executed on this _____ day of _____, 2009.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
City Secretary

AGREED AS TO FORM:

By: _____
City Attorney

Executed on this _____ day of _____, 2009.

TOWN OF FAIRVIEW, TEXAS

By: _____
Sim Israeloff, Mayor

ATTEST:

By: _____
Town Secretary

AGREED AS TO FORM:

By: _____
Town Attorney

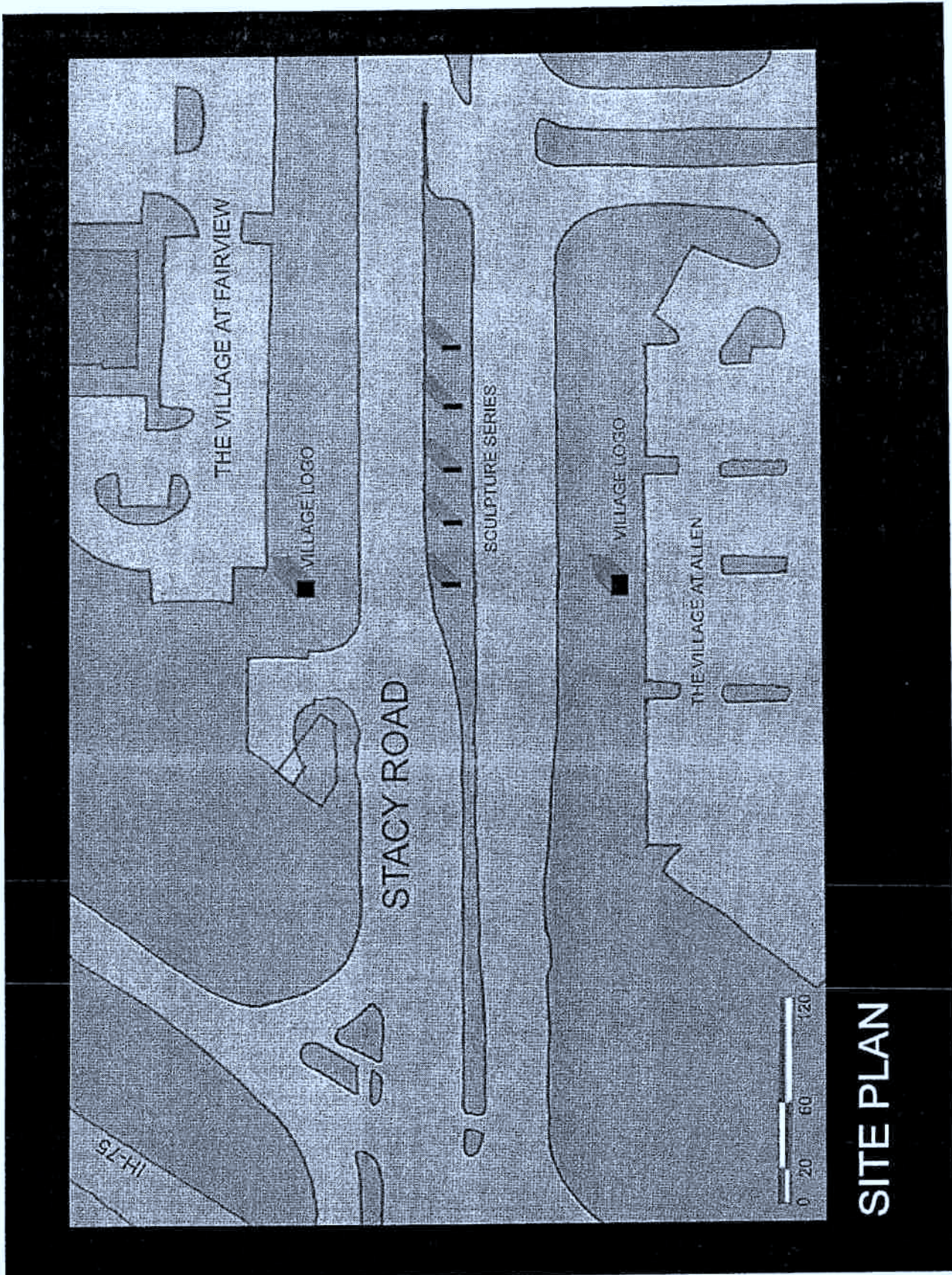
Executed on this _____ day of _____, 2009.

The Village at Allen LP,
a Texas limited partnership

By: HERRING VILLAGE AT ALLEN GP INC.,
a Texas corporation,
its general partner

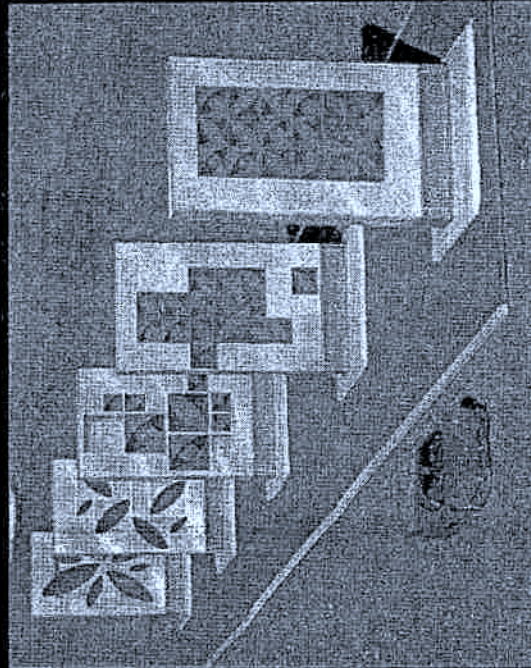
By:  _____
Gar Herring, President

EXHIBIT A

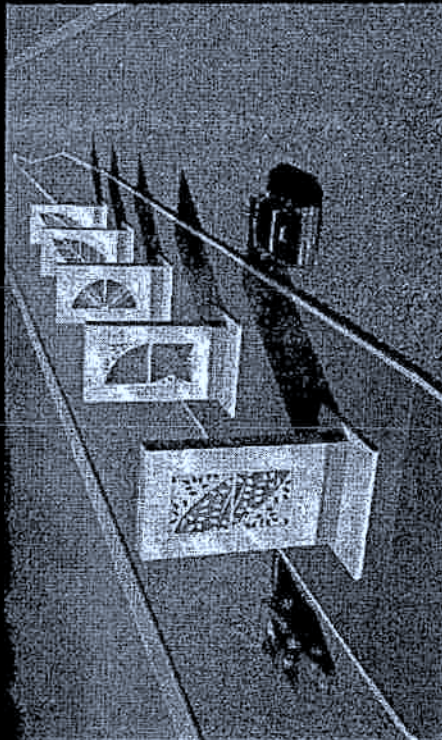


SCULPTURE

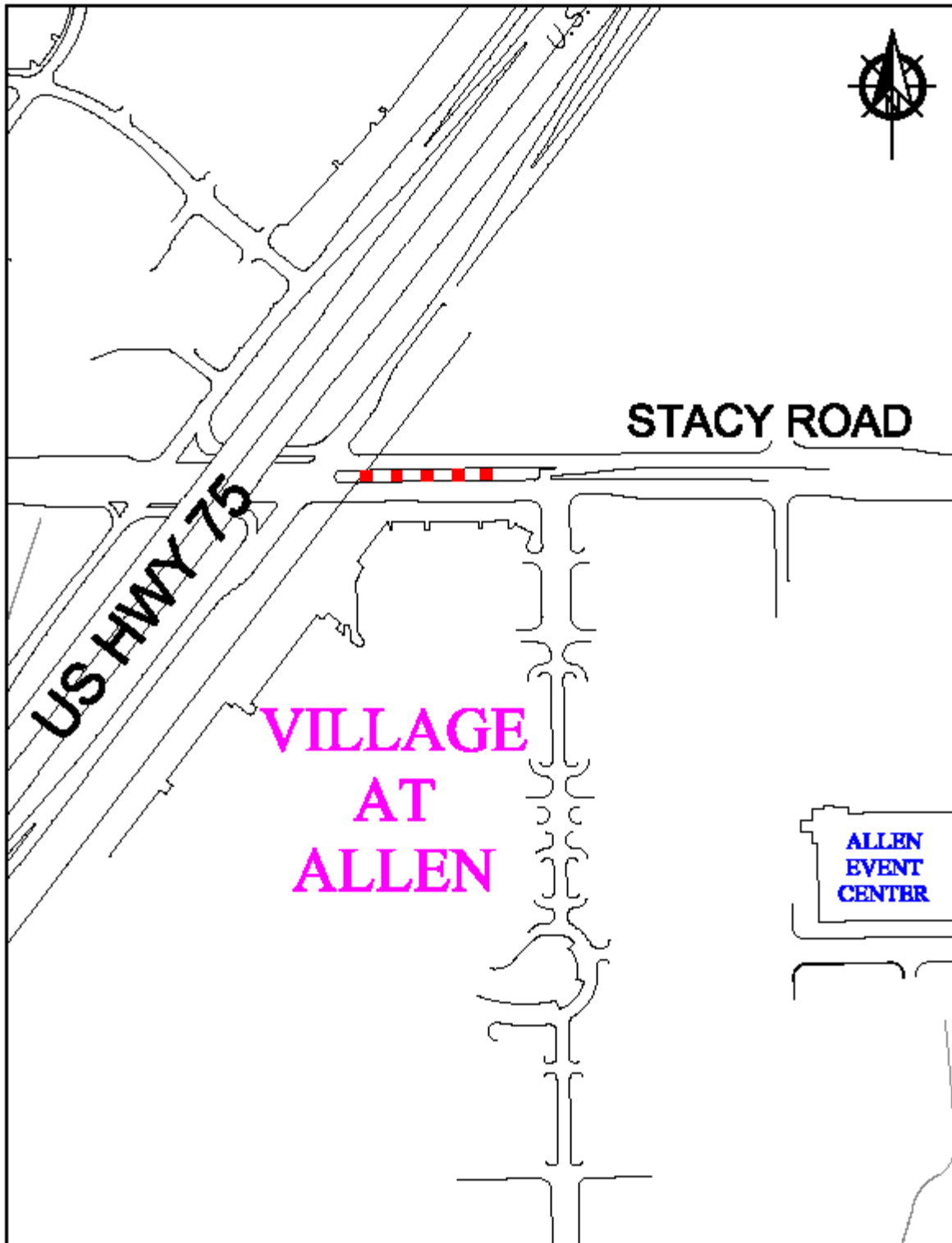
EASTBOUND



WESTBOUND



Location Map
Stacy Road Artwork



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:

Authorize the City Manager to Execute Various Agreements Regarding the Allen Event Center/Hockey League to Include Amended and Restated Arena Lease, Amended Agreement with Global Entertainment Group, and Notice of Assignment and Consent

STAFF RESOURCE:

Peter H. Vargas, City Manager

PREVIOUS COUNCIL ACTION:

On October 23, 2007, the Allen City Council approved a management agreement with Global Entertainment Corporation to manage the Allen Event Center. On February 12, 2009, the Allen City Council approved an agreement with the Western Professional Hockey League, Inc. to base a professional minor league hockey team at the Allen Event Center.

ACTION PROPOSED:

Authorize the City Manager to Execute a Notice of Assignment of the Arena Lease to Base a Professional Minor League Hockey Team at the Allen Event Center between the City of Allen, Western Professional Hockey League, Inc. and Top Shelf, LLC. Authorize the City Manager to Enter into an Amended and Restated Arena Lease Agreement with Top Shelf, LLC to Base a Professional Minor League Hockey Team at the Allen Event Center. Authorize the City Manager to Execute a Conditional Assignment of Arena Lease between the City of Allen, Top Shelf, LLC and the Western Professional Hockey League, Inc. Authorize the City Manager to Execute the First Amendment to the Management Agreement for the Allen Event Center between the City of Allen and Global of Allen, LLC.

BACKGROUND

The Allen Event Center is a multi-purpose sports and entertainment facility with a main arena, practice ice rink, offices, locker rooms, team store and seating for approximately 6300 people. The facility is located within The Village at Allen development on the southeast corner of US 75 and Stacy Road.

The City of Allen has a number of agreements in place that deal with the Allen Event Center including an Arena Lease with the Western Professional Hockey League and the Facility Management Agreement with Global Allen, LLC (assigned from Global Entertainment Corporation). Global has been working for a number of months to develop an ownership group for the hockey team to assume the Arena Lease and the obligation to provide a minor league hockey team as the anchor tenant for the Allen Event Center.

Attached are four agreements that culminate the establishment of a franchise in the Western Professional Hockey League (WPHL) (dba as the Central Hockey League) at the Allen Event Center.

The first of the agreements is an assignment of the Arena Lease from the WPHL to Top Shelf, LLC a Texas based ownership group. The assignment of this agreement was anticipated when the Arena Lease was first executed with the WPHL and essentially assigns the obligations and benefits under the arena lease to Top Shelf LLC.

The second agreement is the Amended and Restated Arena Lease. This document comes forward based on various contributing factors. The original lease was executed with the WPHL and was used as a framework to negotiate with interested ownership groups to bring a team to Allen. As with many agreements, there is frequently a desire and need to refine some terms based on operating an individual hockey franchise in a unique market and facility. In addition, the original agreement was negotiated under a very different economic environment. The significant refinements to the Arena Lease are listed below:

- 1 Section 3.1 Rent (b) The Amended lease adjusts the game night lease from \$9,400 to \$8,500 between Friday night and Sunday evening (prior to 6:05 pm) and to \$7,000 per game on week nights for the first two years. After two years this lease will be subject to annual increases at the Manager's option not to exceed the CPI.
- 1 Section 3.11 Letter of Credit. Originally the City requested a letter of credit in the amount of \$750,000 to ensure performance of having a team at the event center. In the amended agreement this obligation is adjusted as follows:
 - A. The team will have a letter of credit with the league in the amount of \$100,000 to secure their operations of the hockey team to the league.
 - B. The team will have an additional \$150,000 letter of credit with the City to secure their obligations to the City.
 - C. In addition the management agreement is being amended requiring the Manager to create a performance reserve and a performance reserve pledge totaling \$300,000 for the first 10 years of operation. The Manager in cooperation with the Marketer (GEMS) will establish a Performance Reserve in the amount of \$300,000 which will initially be established with \$200,000 cash and a pledge of

\$100,000 from GEMS commissions. The cash portion will be reduced in \$50,000 increments over the next five years, but will be replaced by increasing the pledge from the Marketer so the cash plus the pledge will total \$300,000 for the first ten years of the Management Agreement. If there is no Hockey Tenant or the franchise does not play any hockey games during the hockey season, then the Manager shall cause the Marketer to forfeit the Marketer's current and future commissions which will otherwise be payable under the Management Agreement to be paid to the Event Center Operating account until the earlier of: (1) the total funds paid from the Performance Reserve and the commissions forfeited by the Marketer equal \$300,000; or (2) a hockey league team plays its home games at the Event Center.

While the overall amount of the guarantee is reduced, the obligation to pay is diversified between the Team, the Management Company and the Marketer. In addition, we continue to develop a good history with Global and their affiliates as the Allen Event Center and Hockey Team continue to move toward the 2009 inaugural season.

Other refinements:

- 1 Allow the team to have up to 150 hours of ice practice time during the season at no charge, in addition to game day practice which is also provided with no additional charges.
- 1 Decrease the cost to the City (by \$5,000 per occurrence) to request a game to be rescheduled for another event after the CHL schedule has been announced to \$20,000 on Friday, Saturday or Holiday and \$10,000 on any other day.
- 1 Provide for enhanced revenue sharing cross marketing between the Team and the Event Center
- 1 Provide revenue sharing of food and drink revenues for hockey patrons seated in the suites, loge and club level seats.
- 1 Provide approximately 1350 square feet of office space at no additional charge for the hockey team.

The Management Company, Global Allen, LLC, is in full support of these refinements to secure an investor owned hockey franchise and stands behind their commitment to operate the Event Center in a profitable manner without an operational subsidy from the City.

The third agreement is the Conditional Assignment of the Arena Lease between the City of Allen, Top Shelf, LLC and the WPHL and is intended to provide a seamless transition if the team defaults on its Franchise License with the league or the Amended Arena Lease with the City. It allows the WPHL to assume the Amended Arena Lease going forward to operate a team or to find a new team owner to operate a team under the terms of the Amended Arena Lease.

The last agreement is the First Amendment to the Management Agreement. This amendment formalizes Global Allen, LLC's obligation to provide financial security through themselves or through GEMS, for the Performance Reserve Account previously discussed.

BUDGETARY IMPACT

Per the facility management agreement, the financial terms of the arena lease agreement will be managed by Global Allen, LLC. Global Allen, LLC is in full support of all three documents to secure a locally owned hockey franchise and stand behind their commitment to operate the Allen Event Center in a profitable manner without an operational subsidy from the City.

STAFF RECOMMENDATION

Staff recommends authorizing the City Manager to enter into the following assignments and agreements:

- 1 The Notice of Assignment of the Arena Lease to base a minor league professional Hockey team at the Allen Event Center between the City of Allen, Western Professional Hockey League, Inc. and Top Shelf, LLC.
- 1 The Amended and Restated Arena Lease Agreement with Top Shelf, LLC to base a minor league professional hockey team at the Allen Event Center.
- 1 The Conditional Assignment of Arena Lease between the City of Allen, Top Shelf, LLC and the Western Professional Hockey League, Inc.
- 1 The First Amendment to the Management Agreement for the Allen Event Center between the City of Allen and Global Allen LLC.

MOTION

I make a motion to authorize the City Manager to execute:

1. *The Notice of Assignment of the Arena Lease to base a professional minor league hockey team at the Allen Event Center between the City of Allen, Western Professional Hockey League, Inc. and Top Shelf, LLC.*
2. *Enter into the Amended and Restated Arena Lease Agreement with Top Shelf, LLC to base a professional minor league hockey team at the Allen Event Center.*
3. *Enter into the Conditional Assignment of Arena Lease between the City of Allen, Top Shelf, LLC and the Western Professional Hockey League.*
4. *Execute the First Amendment to the Management Agreement for the Allen Event Center between the City of Allen and Global Entertainment Corporation.*

ATTACHMENT

Notice of Assignment and Consent

Amended and Restated Lease
Conditional Assignment of Arena Lease
First Amendment to the Management Agreement

NOTICE OF ASSIGNMENT AND CONSENT

THIS NOTICE OF ASSIGNMENT AND CONSENT (the “**Assignment**”), is entered into as of this _____ day of April, 2009 (the “**Effective Date**”), by and between THE CITY OF ALLEN, TEXAS (the “**City**”), WESTERN PROFESSIONAL HOCKEY LEAGUE, INC., d/b/a Central Hockey League, (“**WPHL**”), and Top Shelf, LLC, a Texas limited liability company, (“**Team Owner**”).

RECITALS

WHEREAS, City is the owner of a multi-purpose sports and entertainment facility currently under construction in the City of Allen, Texas (the “**Facility**”);

WHEREAS, the City, as landlord, and WPHL entered into that certain Arena Lease dated February 13, 2008 (the “**Lease**”) to allow use of the Facility for a hockey team licensed by WPHL;

WHEREAS, Team Owner and WPHL entered into that certain License Agreement dated April 1, 2009, to allow Team Owner to participate in the Central Hockey League;

WHEREAS, WPHL has the right to assign all its rights and obligations under the Lease to Team Owner as the operator of a Central Hockey League team to play its home games at the Facility, and WPHL desires to exercise such right of assignment; and

WHEREAS, the City has the right to consent to the assignment of WPHL’s rights and obligations under the Lease to Team Owner, and the City desires to consent to such assignment.

NOW THEREFORE, in consideration of the covenants and conditions contained herein and other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

COVENANTS

1. Recitals Incorporated. The above Recitals are hereby incorporated as if fully set forth herein.

2. Assignment and Assumption. WPHL hereby assigns all of its rights and obligations under the Lease to Team Owner, and Team Owner hereby assumes all such rights and obligations; and WPHL shall have no more obligations or liability under the Lease. The Team Owner does hereby expressly assume all the rights, responsibilities and obligations of WPHL under the Lease as of the Effective Date. From and after the Effective Date of this Agreement the Team Owner shall assume all liabilities and responsibilities of the WPHL under the Lease.

3. Consent. In accordance with Section 4.10 of the Lease, the City hereby consents to the assignment contained in Section 2 of this Assignment.

4. Entire Agreement. This Assignment is the entire agreement of the parties with respect to the subject matter of this Assignment. There is no other collateral oral or written agreement between the parties that in any manner relates to the subject matter of this Assignment. This Assignment may only be amended by the written mutual agreement of the parties.

5. Counterparts. This Assignment may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same document.

6. Governing Law. The Agreement shall be governed by the laws of the State of Texas; and exclusive venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

[signature page to follow]

IN WITNESS WHEREOF, the parties have caused this Assignment to be executed by their duly authorized representatives as of the day and year first written above.

The City of Allen, Texas

Western Professional Hockey League, Inc.

By: Peter H. Vargas

By: _____

Its: City Manager

Its: _____

Top Shelf, LLC, a Texas limited liability company

By: _____

Its: _____

AMENDED AND RESTATED ARENA LEASE

THIS ARENA LEASE (the "Lease") made as of the ____ day of _____, 2009.

B E T W E E N:

THE CITY OF ALLEN, TEXAS
(Hereinafter referred to as "**City**")

and -

TOP SHELF, LLC, a Texas limited liability company
(Hereinafter referred to as "**Team**")

WHEREAS:

- A. City is the owner of a multi-purpose sports and entertainment facility under construction in the City of Allen, Texas (the "**Facility**");
- B. City has hired, or intends to hire, a facility management services company to be the manager of the Facility ("**Manager**"), a marketing services company to sell Premium Seating within the Facility and other rights ("**Marketer**"), and a ticketing services company as the exclusive ticket seller for the Facility ("**Ticketer**");
- C. Team is the licensee of the Western Professional Hockey League, Inc. d/b/a Central Hockey League ("**WPHL**") under that certain License Agreement dated April 1, 2009, to be based at the Facility;
- D. WPHL and City entered into that certain Arena Lease dated February 13, 2008 (the "**Initial Lease**");
- E. WPHL has fully assigned its rights and obligations under the Initial Lease to Team, and pursuant to which the City then became landlord to Team under the Initial Lease; and
- F. Team and City desire to amend and restate the Initial Lease as set forth herein.

NOW THEREFORE in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by all of the parties hereto, the parties hereby agree as follows:

ARTICLE 1

INTERPRETATION

Section 1.1 Definitions

In this Lease, the following words and phrases have the following meanings:

- (a) **“Applicable Game Hours”** has the meaning given to it in Section 2.3;
- (b) **“Applicable Usage Hours”** has the meaning given to it in Section 2.3;
- (c) **“Concessions”** means the sale of food and beverages (including alcoholic beverages) in the Facility by Manager or an entity contracted by Manager as a food service provider;
- (d) **“Concession Revenue”** means all gross revenue generated from Concessions during the specified food and beverage period net of applicable sales taxes and gratuities if any;
- (e) **“CPI”** means the “Consumer Price Index for All Urban Consumers” published by the Bureau of Labor of the United State Department of Labor, U.S. City Average, All Items (1982-84 = 100) or, if necessary, any other successor or substitute index (appropriately adjusted) published by such Bureau or its successor;
- (f) **“Event of Default”** has the meaning given to it in Section 6.1;
- (g) **“Excluded Areas”** means the following areas of a Facility: (i) all “sit-down” restaurant or bar areas within the Facility where food and/or beverages are prepared and/or served for consumption within such premises, (ii) Concessions areas; (iii) the Office/Retail Areas (as defined in Section 1.1(h) below); (iv) any retail areas designated by City from time to time for licensing to third parties; (v) office areas used by City or Manager (as that term is defined in the Management Agreement by and between the City and Global Entertainment Corporation dated October 23, 2007, as amended, and hereinafter referred to as the Management Agreement), or designated by City from time to time for licensing to third parties; (vi) Facility common areas and meeting rooms; (vii) the adjacent (second sheet) ice facility; and (viii) all other areas within the Facility including, but not limited to, areas designated by City and used for storage, security, maintenance or other operational purposes;
- (h) **“Office/Retail Areas”** means the areas within the Facility that City has leased to Team for office or retail purposes pursuant to a written agreement between the parties;

- (i) **“Opening Date”** means the date the first temporary or permanent certificate of occupancy is issued for the Facility.
- (j) **“Premium Seats”** means seating in suites, loge seating and club section seating within the Facility; and
- (k) **“Primary Tenant”** means, with respect to facility usage, the individual or group which, because of the total number of contracted dates within the facility, shall receive commercially reasonable priority in scheduling its requested home facility usage dates and times.

ARTICLE 2

GRANT OF LEASE

Section 2.1 Grant and Term

Upon the terms and conditions set forth in this Lease, City hereby grants to Team, and Team hereby takes and accepts from City, an exclusive lease to use the Facility (except for the Excluded Areas) during Applicable Usage Hours during the Term of this Lease for the purposes of:

- (a) playing Team’s exhibition, regular season and play-off home games and, when applicable, the WPHL/CHL All-Star Game;
- (b) holding Team’s practices;
- (c) holding Team’s training camp for players ; and
- (d) any other use specifically permitted under this Lease.

Team’s rights under this Lease include the exclusive right to use approximately 1,305 square feet of office space (planned to include 5 offices, 2 cubicles, 1 reception desk, and 1 workroom) and to use a room to be designated as Team’s dressing room, and the non-exclusive right to use the visiting team’s dressing room, a game official’s room, a hospitality room for scouts and members of the media and a Team office. The rights of Team shall not extend to any Excluded Area. Team, at its sole cost and expense, shall be allowed to add improvements to Team’s dressing room, upon reasonable approval of Manager, and any such improvements which are affixed to the building shall at once become part of the realty and be surrendered to City at the end of the Term (as defined below); any such improvements shall be accomplished in a good and workmanlike manner and in compliance with all applicable laws, and Team shall not permit any mechanic’s, materialman’s or other liens to be filed against the Facility or the real property, nor against Team’s interest under this Lease. City may ask Team to temporarily vacate Team’s dressing room upon City giving fair and reasonable notification, and the City shall repair any damage caused to Team’s dressing room during such time. This request will not interfere with normal WPHL scheduled home

hockey games (including play-off and exhibition games), or scheduled practice, try out, or training camp sessions. The initial term of this Lease shall begin on the Opening Date for the Facility and expire April 30, 2019 (the "**Term**") unless sooner terminated as provided in this Lease and shall be for all of Team's home games (approximately thirty-two (32) and no less than thirty (30) regular season home games each season) which constitute one-half of Team's games each season. Additionally and in accordance with Team's WPHL License Agreement, Team shall be required to execute the WPHL document "Conditional Assignment of Arena Lease" prior to the commencement of the initial term and provide a fully executed copy to the City and Manager.

Section 2.2 Option to Renew

If no Event of Default on the part of Team exists, Team shall have the option to extend the term of this Lease for one additional term of ten (10) years beginning on the expiration of the initial term. The Team must notify City in writing of its intention to extend the Term of the Lease not less than ninety (90) days prior to the expiration of the initial term of this Lease.

Section 2.3 Applicable Usage Hours

Team's rights under this Lease will be exercisable only during the following times ("**Applicable Usage Hours**"):

- (a) from two (2) hours before the start of each of Team's exhibition, regular season and play-off games to two (2) hours after the conclusion thereof ("**Applicable Game Hours**"); this provision only applies to on ice activities and has no bearing as to when the Manager chooses to open or close the facility to the public; and
- (b) during practices, as provided for in Section 2.5 hereof; and during training camp, as provided for in Section 2.6 hereof.

In addition, and where possible pending previously scheduled events, Team may use the ice surface at no extra charge for recreational skating after each regular season game played by Team in the Facility, if such usage is conducted in conjunction with local community groups and/or Facility sponsors. Spectators may be admitted not earlier than two (2) hours prior to game time.

Section 2.4 Scheduling

Not later than April 1 of each year, City and Team shall negotiate the scheduling of Team's hockey games for the then upcoming WPHL hockey season. Approximately thirty-two (32) home games (and no less than thirty (30) home games) shall be scheduled between October 1 and March 30 during each season through the term of this Lease. In the inaugural hockey season, City shall allow Team to play its first home game no later than the later of: (1) November 5, 2009, and (2) Opening Date. City will

use all commercially reasonable efforts each year to accommodate Team in scheduling its games at the Facility with the understanding that Team is the Primary Tenant of the Facility. Team will generally be given preference over other users on the majority of those occasions on which there is a conflict or potential conflict with another use, although each of City and Team recognizes the obligation to be reasonable and flexible with respect to the scheduling priorities of the other. Without limiting the generality of the foregoing, City and Team shall co-operate with each other in good faith with respect to the scheduling of Team's regular season and playoff home games. City will use reasonable efforts to provide a minimum of 24 Friday and Saturday dates during each hockey season and priority scheduling of playoff contests. For the purposes of establishing game dates for Team, the months during a regular hockey season will occur October through March with playoffs generally occurring in the Months of April and May ("**Hockey Season**"). It is acknowledged that City will be taking all reasonable measures to maximize the use and profitability of the Facility and that there will be other events held at the Facility that may, from time to time, conflict with dates requested by Team. Once a schedule has been set for the hockey season, City may not alter the schedule except by agreement with Team and WPHL and only in accordance with the following: (a) City must make such a rescheduling request at least four (4) months in advance; (b) City must make such a request to WPHL and receive approval from WPHL; (c) following WPHL approval of the request, City shall pay Twenty Thousand Dollars (\$20,000.00) to Team if the originally scheduled game was on a Friday, Saturday or holiday, or Ten Thousand Dollars (\$10,000.00) if the originally scheduled game was on day other than Friday, Saturday or holiday; and (e) City may not request any more than three (3) changes per hockey season. In the event a previously scheduled game is rescheduled under this Section, and if Team actually suffers financial hardships greater than the amount of the applicable rescheduling fee, then Team may demonstrate such to Manager for Manager's reasonable consideration.

Section 2.5 Practices

Team may also arrange for the use of the Facility for Team's practices, and practices for the visiting team, but such use shall be on and subject to the following terms and conditions to include all charges specified in Section 3.1:

- (a) City understands that practice time on day of games is required by the WPHL and thus shall accommodate requests for practice time on days on which Team is scheduled to play a game at the Facility with the understanding that Team is the Primary Tenant of the Facility on such days; and
- (b) the use of the Facility for practices on days on which Team is not scheduled to play a game at the Facility is subject to availability and Manager approval in its reasonable discretion.

Section 2.6 Training Camp

City understands that having the Facility available for preseason training and exhibition games is important in the operation of Team's business and, provided Team provides sixty day advance notice and there is no conflict with any other event on the Facility schedule, Team will have first right and priority scheduling for use of the Facility for holding Team's training camp(s) for players prior to the start of each hockey season. Manager may use the adjacent ice facility to fulfill the purposes of this Section. Team will engage in good faith discussions with Manager regarding sponsorship activities related to practice. Practices may be open to the public for Facility community relations purposes, and regular non-game-day practice rental rates will apply as described in Section 3.1.

Section 2.7 City Exclusive Rights

City (through Manager, Marketer or Ticketer as appropriate) shall have the exclusive right from time to time:

- (a) to grant licenses to use the private suites (including "party suites" to be leased on an event by event basis), loge seats, and club seats, in the Facility;
- (b) to operate (or contract with others to operate) all restaurants within the Facility;
- (c) to provide (or contract with others to provide) food and beverage services within Premium Seat areas;
- (d) to operate (or contract with others to operate) Concessions within the Facility;
- (e) to sell permanent and non-permanent advertising rights to third parties for all areas within or on the exterior of the Facility (including the advertising on the center ice circle for the Facility naming rights sponsor, the scoreboard, the LED ribbon board, and back-lit signs, and all other promotional and advertising platforms not described herein), subject to the provisions of Sections 2.7(k), 2.8(e), 2.8(f) and 4.4; at the sole discretion of City or City's agent, Team may be provided the opportunity to participate in the sale of such advertising rights reserved to City, and then Team's agents shall receive the same commission rate then currently being paid to City's agent;
- (f) to market and sell all Premium Seating and, at the sole discretion of City or City's agent, Team may be provided the opportunity to participate in the

sale of Premium Seating and advertising rights reserved to City, and then Team's agents shall receive the same commission rate then currently being paid to City's agent. However any such sales must be accomplished subject to the relevant provisions of this Agreement including without limitation Sections 3.3 and 4.4;

- (g) Team agrees and acknowledges that Team must utilize Ticketer (as defined in the Management Agreement) in the sale of all tickets to Team's games played at the Facility. For special events, following reasonable approval by Manager, Team may provide a Team sponsor or charity the ability to sell tickets for a specific event. There will be fees charged to Team based upon gross ticket revenue including credit card fees, box office staffing fees (at the rate of 3% of game night gross ticket sales or \$300, whichever is less; these fees will be capped at these amounts for the first three hockey seasons hereunder, but will become subject to annual increases not to exceed 3% starting with the fourth hockey season hereunder), ticket fees, group sales service fees and expenses. City will use its commercially reasonable efforts to minimize ticketing surcharges assessed to Team. It is understood that Team will be included in discussions with the box office service. Further Team acknowledges that fees will be added to the base ticket price such as facility and parking fees;
- (h) to award an exclusive television hook up contract;
- (i) to sell the naming rights to the entire Facility and to seek capital sponsorships of specific components of or items forming a part of the Facility, such as, but not limited to, the scoreboard, the ice surface and pouring rights in respect of alcoholic and non alcoholic beverages. The party obtaining such naming rights shall be entitled to significant and prominent interior signage locations, established in the reasonable discretion of the City. Each capital sponsor of a specific component of or item forming a part of the Facility shall be entitled to a significant interior sign and, where practicable, such sign shall be located on or near the component or item so sponsored, the elements of which shall be established in the reasonable discretion of the City. Except to the extent such sponsorship involves Team Inventory (as defined in Section 3.3(a)), all of the revenues from the sale of such naming rights and all of the proceeds of such capital sponsorships and all costs associated with obtaining same, shall be for the account of City exclusively with Marketer being compensated by City. It is understood that where City sells market category dominance sponsorship contracts, Team will be included to the extent that Team's exclusive rights are impacted as defined in Section 2.8. Team will be consulted prior to the City signing any exclusive or market category dominance sponsors, to determine the impact it may have on the Team; and

- (j) to market and use five (5) minutes of video board time, other than the LED ribbon board, during each game, consisting of three (3) minutes within twenty (20) minutes prior to opening face off and one (1) minute during each intermission period;
- (k) To market and use fifty percent (50%) of the time or usage of the LED ribbon board during the course of each game;
- (l) In City's sole discretion, make available to Team the right to sell non-Team Inventory on terms to be agreed to in good faith by the City and team;
- (m) To lease common area and meeting space;
- (n) To receive 20 complimentary tickets per game from Team;
- (o) Sell and retain all Facility parking if applicable, and include a parking fee and facility fee in the ticket price for all Team Tickets, provided that Manager, in its sole and absolute discretion, may agree to allow Team to participate in certain portions of such fees for hockey games;
- (p) All other rights related to the Facility not described in this Agreement;
- (q) The personal use of two suites, including tickets, during WPHL hockey events with the City to pay market rates for food and beverages to be served in the suites, and the right to use such suites for non hockey events; and
- (r) At Manager's request, Team may be granted the right to sell certain advertising or sponsorship rights on commission mutually agreed upon between Team and Manager.

Section 2.8 Team's Exclusive Rights

Team shall have the exclusive right from time to time, on such commercially reasonable terms and conditions as City deems fit:

- (a) to receive the net revenue for ticket sales of all non-Premium Seats through Ticketer; Team acknowledges that the net revenue of such ticket sales will not include any amounts for the ticketing, facility, parking, box-office and other similar fees which shall be added to the net price of the tickets; and Team may release unsold seats prior to a game for City to sell on behalf of Team with the net revenue being for the benefit of Team;

- (b) to sell game night programs/magazine(s) for Team's games in the Facility during Applicable Game Hours, to sell advertising space therein, to set up a reasonable number of portable kiosks in the Facility, as determined by Team and as approved by the appropriate fire marshal or similar authority, and to sell Team hockey souvenirs bearing the logos or colors of Team, WPHL or member teams of WPHL (provided that the number, size, character and location of the kiosks shall be subject to City's prior approval, such approval not to be unreasonably withheld, delayed or conditioned); and further, provided Team enters into any such agreement as mandated by WPHL, assigning the rights to the logos of the WPHL and its member teams;
- (c) to enter into agreements with third parties concerning the broadcasting on radio, television, satellite, broadband or other media, of Team's games played at the Facility. Team shall be responsible for the costs associated with the set up and/or transmission of such broadcasts;
- (d) to sell Team, and/or WPHL and/or member team, branded souvenirs in the retail store located in the Facility in accordance with Section 3.6;
- (e) under terms and conditions reasonably approved by City and in accordance with Section 4.4, to sell limited advertising rights to third parties as more particularly described in Section 3.3(a);
- (f) to place one (1) center ice logo within the face-off circle to be used for the Team's logo;
- (g) to schedule and promote a National Hockey League pre-season hockey game within the Facility prior to each hockey season and most likely within the latter two (2) weeks of September ; and
- (h) the personal use of one (twelve seat) suite during WPHL hockey events including hockey tickets, with Team to pay market rates for food and beverages to be served in its suite; and the right of first refusal (exercisable only up to fifteen (15) days prior to any particular event) to use such suite for all non-hockey events ticketed by Ticketer at the standard suite single-event prices; and
- (i) the right to market one party suite for each Team home game.

Section 2.9 Team's Obligations

Team shall have the following obligations to the City under this Agreement, in addition to all other Team Obligations and City rights hereunder:

- (a) Team agrees that the name "Allen Texas" and/or "Allen" will accompany the CHL name and will be included in all team references to the Facility. Team agrees that all of its marketing and promotional material will contain reference to the City of Allen and the Allen Event Center; and
- (b) Team agrees to work with City and the Manager, using its best efforts, to be awarded the CHL All Star Game within three years after the Facility opening.

ARTICLE 3

FINANCIAL TERMS

Section 3.1 Rent

In consideration of the exclusive Lease to use the Facility during Applicable Game Hours granted by City to Team hereunder, Team shall pay to City a fee in respect of each exhibition, regular season and play-off game played by Team in the Facility, as follows:

- (a) The sum of \$8,500 per game scheduled to be started between Friday afternoon and Sunday Evening (up to 6:05 p.m.) inclusive based on WPHL published schedule; and the sum of \$7,000 per game for all other games for each pre-season game, regular season game and playoff game (collectively the "**Lease Fee**"). The Lease Fee shall be fixed for the first two hockey seasons and thereafter shall be subject to annual increases at Manager's option, such increases shall not exceed CPI increases;
- (b) any fees, as described in Section 3.5, for additional ice time for Team's non-transferable use, if and when available at the Facility in the City's reasonable discretion;
- (c) One Dollar (\$1) per month per square foot, subject to annual CPI adjustment, for use of the Facility retail store. If Team is the only occupant of the retail store, Team shall be responsible for the supply and cost of appropriate staff and may contract with Manager for the provision thereof. If there is more than one occupant of the retail store, then Team shall pay its pro-rata share of the allocated rent to City plus its pro-rata share of the costs of appropriate staff to Manager for Manager's supply of the staff; such rent and cost proration to be based on space used and time used. City, Team and Manager shall mutually agree to the hours of operation of the retail store. During non Hockey Season, Team may choose to vacate the retail store; and
- (d) the Office Space, including common area maintenance and utilities; Team will be responsible for all other costs of occupancy and use such as

communications including voice and data equipment and transmission lines/cabling, furniture and office equipment.

Section 3.2 Revenue Sharing with Team

- (a) Suites. City shall retain \$3.50 and pay Team the remainder of the net price for each suite ticket sold for Team's home hockey games (e.g. if the seat is sold for \$27.00, then City will pay Team \$23.50);
- (b) Club and Loge Seats. City shall retain \$3.50, and pay Team the remainder of the net price for each club and loge seat ticket sold for Team's home hockey games (e.g. if the seat is sold for \$25.00, then City will pay Team \$21.50);
- (c) Ticket Prices. The gross ticket price for all non-Premium seats for hockey events shall not exceed thirty dollars (\$30.00) for the first two (2) hockey seasons;
- (d) Season Ticket Printing. Team shall pay the costs of printing all season ticket books; and
- (e) Concessions. Team will receive a percentage of the nightly City net Concession Revenue, from the main concourse and general seating Concessions (which does not include suite level sales), for each pre-season, regular season and playoff game as follows: game drop count of 0-2,500, 5%; game drop count of 2,501-4,000, 10%; game drop count of 4,001-5,000, 12%; and game drop count of 5,001 plus, 15% (e.g. if Concession Revenue totals \$5,000 and game drop count is 3,000, then Team will receive \$500); and Team will receive 5% of the nightly City net Concession Revenue from suite level Concessions sales for each pre-season, regular season and playoff game. Upon reasonable written notice, Team shall have the right to annually audit the applicable Concessions records.

Section 3.3 Building Inventory

- (a) Provided Team pays for all associated costs and expenses, Team shall have the right to sell and retain 100% of the revenues from the following inventory items at prices not inconsistent with those used by Marketer: all dasher boards, all penalty boxes, all player benches, up to ten (10) pairs of on-ice logos, and one (1) ice resurfacer display ("**Team Inventory**"). The terms of all such sales shall be subject to City approval, which shall not be unreasonably, delayed, conditioned or withheld;

- (b) Except for Team Inventory, City shall have the exclusive right to sell and retain all permanent and non-permanent advertising and signage and any other advertising; and
- (c) City and Team recognize the Facility and Team are in the same selling environment and as such certain accommodations will have to be made in case of cross promotional sales. The terms of any cross-promotional sale and revenue distribution thereof will be negotiated between Manager and Team on a facts and circumstances, case-by-case, good faith basis.

Section 3.4 Inclusions and Exclusions from the Lease Fee

In consideration of the Lease Fee outlined above in Section 3.1 or as later amended herein Team shall not be responsible to pay the following:

- (a) property taxes, if any, on the Facility except for any property taxes assessed the Team's leasehold interest in the Facility, if any;
- (b) the costs of normal janitorial services for the Facility, including, without limitation, general clean-up during and after Team's home games;
- (c) the costs of operating, maintaining and repairing the Facility in the ordinary course (but not repairs or maintenance required by reason of the negligence of, or deliberate misconduct by, Team or any person for whom in law or otherwise Team is responsible, or any invitee of Team, including spectators and visiting hockey teams);
- (d) the costs of basic utilities (power, lighting, water, sewer services);
- (e) the costs of normal preparation, maintenance and cleaning the ice surface before, during and after all games and practices; and
- (f) the costs of Facility personnel, the number of which shall be reasonably determined by Manager, after consultation with Team, in accordance with the standards in place in other similar facilities managed by Manager, during Applicable Game Hours as follows: ushers, ticket takers, security, maintenance staff, parking attendants, police, fire, EMT, video and studio technician, and receptionist.

In addition to the Lease Fee, Team shall be responsible for:

- (g) the costs of any personnel during Applicable Game Hours over and above the staff referenced in Section 3.4(f);

- (h) the costs of referees, linesmen, office officials, and forms of music & entertainment, to include ASCAP and other applicable licensing fees and reader board operators and associated usage fees;
- (i) its cost of the insurance referred to in Section 4.8;
- (j) the costs of repairs and maintenance required by reason of the negligence of or deliberate misconduct by Team, or any person for whom in law or otherwise Team is responsible for, or any invitee of Team, including spectators and visiting hockey teams; however, Team shall not be responsible for the costs of repair and maintenance occasioned solely by reason of ordinary wear and tear;
- (k) the cost of any additional electrical wiring or cable accessories related to computer, phone and other means of electronic communication for Team or associated with Team's games;
- (l) the cost of all furnishings and equipment, beyond normal and customary locker room furnishings and equipment, Team may require for the Team dressing rooms, training rooms and offices, and merchandise sales areas (kiosks);
- (m) the costs of normal janitorial services for the Facility, including, without limitation, general clean-up for any non-game Team event including pre- or post- game activities; and
- (n) any video or studio costs, including labor, that are beyond the normal use of the building AV equipment.

Section 3.5 Payment of Ice Time for Practices and Training Camp

Upon at least 60 days prior written notice to Manager, Team shall have the right to schedule 150 hours of free ice time for Team's use (subject to Facility schedule) during each hockey season (the "**Free Ice Hours**") without rollover. After Team has used its Free Ice Hours for the then-current hockey season, and upon at least 60 days prior written notice to Manager, Team shall have the right to schedule additional ice time (subject to Facility schedule) at the rate of \$100 per hour, adjusted annually for CPI, for the use of the ice surface for practices or training camp pursuant to Sections 2.5 and 2.6 (the "**Practice Hours**"), except for practice time on days on which Team is scheduled to play a game at the Facility, for which there shall be no charge. Manager may use the adjacent ice facility to fulfill the purposes of this Section 3.5. The grant of ice time (whether paid or not) to Team is non-transferrable, personal to Team, and Team may not sublet or otherwise allow any third party to use such ice time. Team may cancel any scheduled Free Ice Hours or Practice Hours at any time prior to 30 days before the scheduled time without charge; however, if Team cancels any such ice time

within 30 days of the scheduled time, then Team shall incur the loss of Free Ice Hours and/or shall pay the hourly amount originally applicable to the cancelled time.

Section 3.6 Retail Store Operations

City retains the sole right to provide space for the operation of a retail store in accordance with Section 2.8(d).

Section 3.7 Youth Hockey

Team may be awarded the right to operate a youth, recreational, or amateur hockey program in the Facility under a separate contract, and under terms and conditions, at the Manager's discretion.

Section 3.8 Revenue Not Subject to Sharing

City will be under no obligation to share, nor shall Team have any entitlement to receive any share of:

- (a) any revenues arising from or pertaining to events held at the Facility outside Applicable Game Hours or not directly related to Team;
- (b) licensing fees from the licensing of Premium Seats (including licensing fees of two "party suites" to be leased on an event by event basis) except as provided in Section 3.2;
- (c) any revenues from the sale of naming rights, vendor agreements or any proceeds of capital sponsorships made or obtained by City as contemplated in Section 2.7, however this does not include specific Team Inventory items as contemplated in Section 3.8(f) below; and
- (d) any other Facility revenues not referenced herein.

Team will be under no obligation to share, nor shall City have any entitlement to receive any share of:

- (e) Revenues arising from the sale of game night programs/magazines and sponsorship promotional items for Team's games in the Facility during Applicable Game Hours or from the sale of advertising space therein;
- (f) Revenues from the sale of Team Inventory items as contemplated in Section 3.3(a);
- (g) Revenues arising from or pertaining to the broadcasting on radio and/or television of Team's games played at the Facility.

Section 3.9 Payment

Where an amount is owed by City to Team hereunder, or by Team to City hereunder, in respect to any particular game played at the Facility, it shall be due and payable not later than the end of the second (2nd) business day after the week on which the game is played. Either party may, if the other party owes more to it than it owes to the other party, advise the other party in writing to deduct the amount owed to it from the amount payable to the first party and remit only the net amount. Any amounts payable under this Lease which are not paid when due, shall bear interest at the rate of one and one-half percent (1½%) per month, or the highest legal rate whichever is lower, until fully paid. Manager shall provide team with an applicable accounting statement in a form reasonably acceptable to Team and Manager.

Section 3.10 Audit Rights

City shall have the right to carry out an audit of the information given to it, or that is required to be given to it, in respect to any payment referred to herein. Team shall make available to the auditor such information as the auditor may reasonably require for the purposes thereof. The cost of the audit shall be borne by the City, unless the audit discloses that the amount in question owed was understated by more than three percent (3%), in which event Team shall pay the cost of the audit. Team shall have the right to request an audit in respect to payments made by City from Concessions sales during game nights.

Section 3.11 Letter of Credit

In addition to the letter of credit in the amount of One Hundred Thousand Dollars (\$100,000) that the Team Owner is required to provide the WPHL pursuant to the Hockey League License Agreement to guarantee performance of the Team, during the initial ten (10) year term of this Lease, but not after, Team shall provide an irrevocable letter of credit in a form reasonably acceptable to the City with a financial institution reasonably acceptable to City in the amount of One Hundred Fifty Thousand Dollars (\$150,000.00) capable of being drawn in the event of a termination of this Lease based on an uncured default by Team with any such draw proceeds being deposited in the operating account of the Facility. The Team shall provide the letter of credit on or before the earlier of: (i) sixty (60) days after the Opening Date of the Facility; and (ii) sixty days prior to first home game.

Section 3.12 No Other Rights Granted

Team shall have no other rights relative to its use of the Facility other than those rights specifically granted under this Lease.

ARTICLE 4

CERTAIN OPERATIONAL MATTERS

Section 4.1 Private VIP Suite and Club Seat Licensing.

No person may occupy or use (whether sitting or standing) Premium Seating during Applicable Game Hours unless such person:

- (a) is a licensee of City or a bona fide guest or invitee of a licensee of City; and
- (b) holds a ticket for the event in question issued by Team or WPHL in accordance with the provisions of this Lease.

In addition, it shall be a continuing condition of the holding of a private suite license that the holder thereof purchase a number of tickets for playoff home games equal to the number of fixed seats in such private suite.

Section 4.2 Ticket Prices

Except as otherwise provided herein, Team may, subject to WPHL and Manager approval, establish and revise ticket prices (not including any parking, ticket fee or ticket fee charged by the City or Manager) from time to time for admissions to Team's games played at the Facility. Notwithstanding the foregoing, however:

- (a) ticket prices shall be reasonable and competitive having regard to prices for similar tickets in other WPHL arenas;
- (b) a ticket price for a seat or an extra attendee in a private suite on a season's ticket basis shall not be higher than the current ticket price for tickets in the suite; and
- (c) the ticket price for a seat or an extra attendee in a private suite on a walk-up basis shall not be higher than the current ticket price for tickets in the suite.

Section 4.3 Complimentary Tickets

Team and the WPHL shall be entitled to 200 total complimentary tickets to each exhibition, regular season and play-off game played by Team in the Facility. WPHL ticketing programs such as "Grades for Blades" and other pre-approved WPHL programs are excluded for purposes of this Section 4.3. Complimentary tickets shall be counted for attendance purposes but shall not be taken into account for purposes of determining the revenue sharing due hereunder.

Section 4.4 Sponsorship and Signage Conflicts

Each sponsorship agreement will provide that City's obligation to permit the use and maintenance of any nonpermanent interior sign for or on behalf of an advertiser introduced by Team pursuant to Section 3.3(a) or otherwise shall be subject to the following:

- (a) no Team advertising shall be permitted by or on behalf of a person whom City believes in good faith to be:
 - (i) in competition with the person holding the naming rights to the Facility, to include, all types of related businesses or any other capital sponsor or vendor of a specific component of or item forming a part of the Facility;
 - (ii) in competition with any person with whom, prior to such time, City has entered into an agreement providing for advertising rights within the interior of the Facility during Applicable Game Hours if such agreement is still in force and effect; or
 - (iii) offensive, in breach of any law or regulation or otherwise likely to bring the Facility into disrepute;
- (b) the size, location or character of such signs shall require the prior written approval of Manager, such approval not to be unreasonably withheld, conditioned or delayed;
- (c) all such advertising is to be sold on fair market terms and conditions; and
- (d) within a reasonable time prior to the scheduled first hockey game of each hockey season, City, through Marketer, shall provide to Team a list of four (4) exclusive marketing or signing categories that Marketer has either entered into contracts with or is in negotiation with to assist Team with its permitted advertising and sponsorship sales efforts. City agrees that in any exclusive category, Team will receive compensation at market terms and conditions for Team's entire defined inventory sold by Marketer to an exclusive or offered to an exclusive as an inducement to enter into a contract with City.

Section 4.5 Parking

Team will be provided parking spaces in a defined area for use by Team's staff and Team's designated V.I.P.'s subject to Manager's reasonable approval. If additional costs are incurred, such as parking garage maintenance or cleaning, due to the costs of providing such parking spaces, then such additional costs shall be the responsibility of

Team and paid to the City based on a pro-rata share of Team;s parking spaces versus the total parking spaces in the maintained or cleaned area.

Section 4.6 Home Games at the Facility

Team shall, during the entire term of this Lease, play all its exhibition, regular season and play-off games where it is the home team at the Facility except for exhibition games which, for promotional purposes, Team wishes to play at a location other than the Facility or the home facility of another WPHL team, and for which Team has requested and received City's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed). Except as aforesaid, Team shall not, during any portion of the term of this agreement, play any WPHL exhibition, regular season or play-off game where it is the home team at any location other than the Facility.

Section 4.7 Professional Ice Hockey Exclusive

During the Term of this Lease, City shall not, without the prior written consent of Team in its sole discretion, permit the use of the Facility for the playing of regular collegiate, junior level or professional ice hockey except:

- (a) pursuant to Team's WPHL License Agreement; or
- (b) for periodic exhibition games and training camps (whether domestic or international and including, without limitation National Hockey League games). City will provide Team with a single right of first refusal to promote each such game/camp. Should Team decline, or fail to respond to the notice of such right of first refusal within seven calendar days from receipt thereof, City may pursue the event without compensation to Team.

Nothing in such provision will apply to the playing of ice hockey at the Facility other than at the professional level and Team shall have no right to object to the use of the Facility for youth, recreational, amateur, high school, collegiate tournament, world junior or Olympic hockey.

Section 4.8 Insurance

- (a) *Comprehensive General Liability.* Team shall obtain and maintain continuously in effect at all times during the Term hereof minimum comprehensive general liability insurance in the amounts of at least the following:

General Liability	\$1,000,000.00 per occurrence
	\$2,000,000.00 aggregate
Bodily Injury	\$500,000.00 per person
	\$1,000,000.00 per accident
Property Damage	\$2,000,000.00

This insurance policy shall protect City, Manager, Marketer and Ticketer against liability, which may accrue against any or all of them by reason of Team's wrongful conduct incident to the use of the Facility, resulting from any accident or event occurring on or about the Facility.

- (b) *Property Insurance.* Team shall also obtain and maintain continuously in effect at all times during the term hereof, casualty insurance upon the improvements in and appurtenant to the Facility in such amounts as to insure the repair or replacement thereof in the event of casualty.
- (c) *Excess Umbrella Insurance.* Team shall obtain and maintain continuously in effect at all times during the terms hereof, excess umbrella insurance in the amount of \$5,000,000 or the amount required by the WPHL, whichever is the greater.
- (d) *Workers' Compensation Insurance.* Team shall obtain and maintain continuously in effect at all times during the term hereof, statutory workers' compensation insurance in the amount of \$1,000,000 for each employee to protect Team, its employees, its contractors and its agents against all claims under applicable state Workers' Compensation laws. Team may obtain insurance coverage's providing like or similar coverage's to that of Statutory Workers' Compensation insurance or Non-Subscribers insurances.
- (e) *Additional Insureds.* With the exception of workers compensation, all insurance policies required herein shall be drawn in the name of Team, with City, the City Council, its officers and employees, Manager, Marketer, and Ticketer, and their respective employees named as additional insured's.
- (f) *Certificates.* Team shall furnish the City with certificates of insurance as evidence that all of the policies required herein are in full force and effect and provide the required coverages and limits of insurance. The certificates shall provide that any company issuing an insurance policy shall provide not less than 30-days advance notice in writing to City and Team of cancellation, non-renewal or material change in the policy of insurance to City and Team. In addition, Team shall immediately provide written notice to City upon receipt of notice of cancellation of an insurance policy, or of a decision to terminate or alter any insurance policy.

Section 4.9 Sale of Facility or Assignment of Facility Lease or Operating Rights

The City may sell the Facility and/or assign this Lease at anytime without the consent of the Team. In the event that City assigns its rights under this Lease, then provided such

third party enters into an agreement with Team assuming the obligations of City under this Lease as and from the date of sale or assignment, then City shall be released from all such obligations so assumed.

Section 4.10 Assignment

Team may not assign any of its rights, or delegate any of its obligations, in whole or in part without the prior written consent of City, which may be withheld in its sole and absolute discretion and for any or no reason. Any attempted assignment or delegation shall be null and void. In the event of an assignment to which the City has consented, the assignee shall be required to provide a letter of credit as set forth in Section 3.11.

Section 4.11 City Covenants

City covenants with Team that, throughout the Term of this Lease:

- (a) Team shall have quiet enjoyment of the Facility (other than the Excluded Areas) during Applicable Usage Hours and shall also have quiet enjoyment of the Office Space 24 hours per day, 365 days per year, except where otherwise specifically stated herein;
- (b) City will operate the Facility in compliance with all applicable laws, codes, by-laws and regulations;
- (c) City will apply any operating rules and procedures for the Facility that it may choose to devise and implement to Team and all other users of the Facility in a fair and non-discriminatory manner, such rules and procedures to be reasonable and in keeping with the intent of this Lease; and
- (d) City will maintain, repair and replace the Facility such that it is at all times in good and proper operating condition save and except for reasonable wear and tear and Team's obligations under this Lease.

Section 4.12 Team's Covenants

Team covenants with City that it shall, throughout the Term of this Lease, at its sole cost and expense:

- (a) operate Team in a manner consistent with the requirements and practices of the WPHL and its other member teams;
- (b) maintain the Office/Retail Areas in a tidy, clean and sanitary condition to include but not limited to daily janitorial, paint, maintenance, etc.; and
- (c) purchase and maintain insurance in accordance with Section 4.8.

Section 4.13 Team's Indemnity

TEAM SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS CITY, THE CITY COUNCIL, ITS OFFICERS, AGENTS, INVITEES, EMPLOYEES AND THE MANAGER, ITS OFFICERS, DIRECTORS, EMPLOYEES AND INVITEES FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, COSTS, EXPENSES, DAMAGES, CLAIMS OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY FEES FOR INJURY OR DEATH TO ANY PERSON OR INJURY, DAMAGE OR LOSS TO ANY PROPERTY RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS INCLUDING THE WPHL AND THE TEAM ARISING OUT OF OR OCCASIONED BY THE USE OF THE FACILITY BY THE WPHL AND TEAM AND THEIR RESPECTIVE AGENTS, OFFICERS, EMPLOYEES AND INVITEES PURSUANT TO THIS LEASE INCLUDING:

- (A) ANY BREACH OF THIS LEASE BY TEAM AND/ OR WPHL;
- (B) THE NEGLIGENCE OR WILLFUL ACT OF TEAM, OR ANY PERSON FOR WHOM TEAM IS IN LAW RESPONSIBLE;
- (C) THE NEGLIGENCE OR WILLFUL ACT OF ANY SPECTATOR OR OTHER INVITEE OF TEAM; AND
- (D) ANY OCCURRENCE IN OR ABOUT THE FACILITY DURING APPLICABLE USAGE HOURS, EXCEPT TO THE EXTENT SUCH IS DUE TO THE NEGLIGENCE OR WILLFUL MISCONDUCT OF CITY, ITS OFFICERS, DIRECTORS OR EMPLOYEES.

THIS INDEMNITY IS STRICTLY CONDITIONED ON PROMPT NOTICE, TENDER OF DEFENSE/SETTLEMENT AND REASONABLE COOPERATION BY CITY.

ARTICLE 5 MISCELLANEOUS

Section 5.1 Default

The following occurrences shall be considered "Events of Default":

- (a) Team shall fail to pay any amount due hereunder to City when due and such default shall continue for a period of more than fifteen (15) days after written notice thereof has been given to the party responsible for such payment;

- (b) Team shall fail to perform any other of its covenants or obligations hereunder and such default shall continue for a period of more than thirty (30) days after written notice thereof has been given to it; or
- (c) Team shall: (i) become insolvent or generally not pay its debts as such debts become due; (ii) admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or (iii) institute or have instituted against it any proceeding seeking (x) to adjudicate it a bankrupt or insolvent, (y) any liquidation, winding-up, reorganization, arrangement, adjustment, protection, relief or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or (z) the entry of an order for the appointment of a receiver, trustee or other similar official for it or for any substantial part of its assets, and in each such case such proceeding is not terminated, stayed or set aside within a period of sixty (60) days after it is instituted

If an Event of Default shall occur, City by written notice given to Team, the defaulting party, without prejudice to any other right or remedy that may be available to the non-defaulting party, whether under this Lease or otherwise at law or in equity, may terminate this Lease.

Section 5.2 Governing Law

This Lease shall be governed by and construed in accordance with the laws of the State of Texas without regard to conflict of law rules. Exclusive venue for any action shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

Section 5.3 Entire Agreement

This Lease represents the entire agreement of the parties hereto concerning the subject matter thereof to date and supersedes all previous documentation, agreements and correspondence between them pertaining to the same subject matter.

Section 5.4 Successors

This Lease shall inure to the benefit of and be binding upon the respective successors and permitted assigns of each of the parties hereto and of Manager, Ticketer and Marketer.

Section 5.5 Notices

Any notice required or permitted to be delivered hereunder shall sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or by courier or otherwise hand delivered and shall be deemed delivered on the date of actual receipt:

To City:

City of Allen
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

With a copy to Manager:

Global of Allen, LLC
Attn. General Counsel
1600 N. Desert Drive, Suite 301
Tempe, Arizona 85281

To Team:

Top Shelf, LLC
Attn: Douglas H. Miller
12388 Merit Drive, Suite 1700
Dallas, Texas 75251

or such other address as such party may from time to time designate by notice in writing to the other parties.

Section 5.6 Force Majeure

The performance of the respective parties hereto and their respective obligations hereunder shall be subject to force majeure, including, but not limited to, insurrections, riots, wars and warlike operations, explosions, epidemics, strikes, shortages of supply, fires, accidents, acts of any public enemy or any similar occurrence beyond such party's reasonable control, but the inability to make a monetary payment required by this Lease shall not of itself be an event of force majeure. Any party temporarily excused from performance hereunder by any such circumstance shall use its best efforts to avoid, remove or cure such circumstances and shall resume performance with the utmost dispatch when such circumstances cease to apply. Any party claiming force majeure as a reason for delay in performance shall give prompt notice in writing thereof to the other party or parties.

Section 5.7 Survival

Any of the representations, warranties, covenants and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following termination of this Agreement including Sections 4.13 and Article 5, shall survive expiration or termination of this Lease.

Section 5.8 Counterparts and Facsimile Execution

This Lease may be executed by the execution of one or more counterparts of the execution pages and the initialing of one or more counterparts of each page, which will be taken together and constitute the Lease, and one or more of such counterparts may be delivered by facsimile transmission.

Section 5.9 Recitals

The recitals to this Lease are incorporated herein.

Section 5.10 Counterparts

This Lease may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

Section 5.11 Exhibits

Any exhibits to this Lease are incorporated herein by reference for all purposes wherever reference is made to the same.

Section 5.12 Survival of Covenants

Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Lease shall survive termination.

Section 5.13 Representations

Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Lease.

(signature page to follow)

Executed on this _____ day of _____, 2009.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
Shelley George, City Secretary

AGREED AS TO FORM:

By: _____
Peter G. Smith, City Attorney

Executed on this _____ day of _____, 2009.

TOP SHELF, LLC

By: _____
Name: _____
Title: _____



CONDITIONAL ASSIGNMENT OF ARENA LEASE

THIS AGREEMENT is made effective this _____, 2009, among the **CITY OF ALLEN, TEXAS**, having its office at One Allen Civic Plaza, 305 Century Parkway, Allen, Texas 75013 ("Arena Owner")

AND

TOP SHELF, LLC, a Texas limited liability company, having its office at 12377 Merit Drive, Suite 1700, Dallas, Texas 75251 ("Team Owner")

AND

WESTERN PROFESSIONAL HOCKEY LEAGUE, INC. DBA/CENTRAL HOCKEY LEAGUE, a Texas Corporation, having its headquarters office at 1600 N. Desert Drive, Suite 301, Tempe, AZ 85281 ("WPHL")

WHEREAS:

- A. By that certain Amended and Restated Arena Lease agreement dated as of April 14, 2009 (the "Arena Lease"), the Team Owner did lease from the Arena Owner the premises therein described (the "Leased Premises") which have a civic address of 150 E. Stacy Road, Building 1350, Allen, Texas 75002.
- B. By a License Agreement made effective April 1, 2009 (the "WPHL License Agreement"), WPHL has granted or will grant a license to operate a Western Professional Hockey League ("WPHL") ice hockey team (the "Licensed Team") at the Leased Premises to the Team Owner.
- C. The WPHL License Agreement contains a condition that the Arena Owner, the Team Owner and the WPHL will execute this agreement concurrently, with the Team Owner executing the Arena License.

NOW THEREFORE, THIS AGREEMENT WITNESSES THAT for valuable consideration (the receipt and sufficiency of which are acknowledged by each of the parties), the parties agree as follows:

1. The Arena Owner acknowledges that execution of the WPHL License Agreement by the WPHLI constitutes a substantial indirect benefit to the Arena Owner in that revenue generated from operation of the Licensed Team at the Leased Premises will assist the Team Owner to pay amounts payable to the Arena Owner under the Arena Lease.
2. The Arena Owner and the Team Owner certify to the WPHLI that, as of the date hereof:
 - (a) No amendment or addition has been made to the Arena Lease and accordingly, that the executed copy of the Arena Lease herewith provided to WPHLI by the Arena Owner or the Team Owner constitutes the full agreement between the Arena Owner and the Team Owner with respect to use and occupation of the Leased Premises by the Team Owner;
 - (b) The Arena Lease is in full force and effect; and
 - (c) There is no existing default of the Arena Lease by the Arena Owner or the Team Owner.
3. The Team Owner covenants with WPHLI and the Arena Owner that the Team Owner will at all times observe and perform all provisions of the Arena Lease and that the Team Owner will not at any time agree to sublease, surrender, amend or add to the Arena Lease without obtaining the WPHL prior written consent thereto, which shall not be unreasonably withheld, denied or delayed
4. The Arena Owner agrees with the WPHLI that:
 - (a) In the event the Arena Owner sells, assigns or subleases, either in whole or in part, its interest in the Leased Premises or the Arena Lease the Arena Owner shall provide written notice thereof to WPHL at least 21 days prior to completion of such sale, assignment or sublease and such new owner or assignee shall agree in writing to this Conditional Assignment.

- (b) The Arena Owner will not agree to any amendment or addition to the Arena Lease without obtaining the prior written consent of the WPHLI thereto, such consent not to be unreasonably withheld, denied or delayed;
 - (c) The Arena Owner will not accept a surrender of the Arena Lease, or seek to terminate the Arena Lease without giving at least 21 days prior written notice thereof to the WPHLI, during which period the WPHLI may cure any default of the Team Owner and within such time period provided by the Arena Lease for cure by the Team Owner;
 - (d) If the Arena Owner at any time gives written notice of default of the Arena Lease (a "Default Notice") to the Team Owner, then the Arena Owner will concurrently give a copy of the Default Notice to the WPHLI; and
 - (e) In the event of default of the Arena Lease by the Team Owner (a "Default"), the Arena Owner will not accelerate future payments (if acceleration of future payments is provided for in the Arena Lease) until it has given the WPHL at least 21 days prior written notice and the opportunity, during such period, to cure the Default. In the event the WPHL does not cure the default during such time the WPHL may at its option become the Team Owner under the Arena Lease, and thus assume all obligations and liabilities of the Team Owner accruing under the Arena Lease after the effective date of such assumption. In no event shall WPHL be responsible or liable in any way for any obligation or liability of Team Owner whether or not such an assumption has occurred.
5. If the WPHLI, or a receiver, or receiver-manager appointed pursuant to the WPHL License Agreement takes possession of the Leased Premises pursuant to a Default of the WPHL License Agreement by the Team Owner, then the Arena Owner hereby irrevocably consents to an assignment of the Arena Lease to a purchaser whom the WPHLI approves to become its new licensee in place of the Team Owner, provided such purchaser/new team owner executes a written assumption, in a form reasonably approved by the Arena Owner, of the obligations and liabilities of the Team Owner under the Arena Lease, and upon such new licensee agreeing in writing to be bound by the

Arena Lease, the WPHLI and its receiver or receiver-manager (if applicable) will be released from further liability thereunder.

6. During any curative period, the Arena Owner will not distrain against or remove from the Leased Premises any chattels, equipment, furnishings or other property of the Team Owner without the prior written consent of the WPHLI.
7. Immediately upon receiving a Default Notice, the Team Owner will forward a copy of it to the WPHLI with a brief written explanation of what the Team Owner intends to do or not do regarding the Default or Defaults alleged thereby.
8. The Team Owner consents to all provisions of this agreement, which create rights and obligations between the Arena Owner and the WPHLI.
9. Any notice required or permitted to be given hereunder shall be in writing addressed to the party to whom it is to be given (the "intended recipient") and shall be delivered to the address of the intended recipient shown on page 1 of this agreement or to such other address in one of the continental states of the United States of America as the intended recipient may have specified by notice to the other parties given in the same manner. A notice shall be deemed to be received by the intended recipient on the business day in the State of receipt next following the day of delivery.
10. This agreement shall endure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, permitted successors and permitted assigns.
11. This agreement may be executed in two or three counterparts, each of which will constitute an original and all of which will constitute one and the same agreement. Any party may execute this agreement by utilizing facsimile transmission facilities and such execution shall constitute sufficient execution hereof by that party.
12. This Agreement shall be construed under the laws of the State of Texas, without regard to any conflict of law rules. Exclusive venue for any action under this Agreement shall be the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said court.

13. This Agreement may not be assigned without the prior written consent of the Arena Owner, which shall not be unreasonably withheld, denied or delayed.

IN WITNESS WHEREOF, the parties have executed this agreement as of the effective date first above written.

CITY OF ALLEN, TEXAS, the Arena Owner:

NAME: _____

SIGNATURE: _____

TOP SHELF, LLC, a Texas Limited Liability Company

NAME: _____

SIGNATURE: _____

**WESTERN PROFESSIONAL HOCKEY LEAGUE, INC.
DBA/CENTRAL HOCKEY LEAGUE**

NAME: _____

SIGNATURE: _____

FIRST AMENDMENT

to

MANAGEMENT AGREEMENT

This First Amendment to Management Agreement (this “**First Amendment**”) is made by and among the City of Allen Texas (the “**City**”), Global Entertainment Corporation (“**GEC**”), and Global of Allen, LLC, an Arizona limited liability company (the “**Manager**”) as assignee of Global Entertainment Corporation (“**GEC**”), acting by and through their authorized representatives.

RECITALS

WHEREAS, the City and GEC previously entered in to that certain Management Agreement for the Allen Event Center dated October 23, 2007 (the “**Management Agreement**”); and

WHEREAS, GEC assigned the Management Agreement to Manager by notice dated March 24, 2009, with GEC to remain fully responsible to perform pursuant to the terms of the Management Agreement and with GEC to remain fully liable for all defaults of Manager; and

WHEREAS, the parties desire to amend the Management Agreement as set forth herein; and

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. For the purposes of this First Amendment, unless the context indicates otherwise terms and phrases shall have the same meanings assigned by the Management Agreement.

2. Sections 2.5 and 16.15 of the Management Agreement are hereby amended to read in their entirety as follows:

“2.5 **Hockey Performance Reserve and Performance Pledge**. For the first ten years of the Management Agreement only, Manager shall fund a “Performance Reserve” and/or grant a “Performance Pledge” cumulatively totaling \$300,000 as follows:

<u>Performance Reserve</u>	<u>Performance Pledge</u>	<u>Hockey Season</u>
\$200,000	\$100,000	Prior to 2009/2010

\$150,000	\$150,000	Start of 2009/2010
\$100,000	\$200,000	Start of 2010/2011
\$50,000	\$250,000	Start of 2011/2012
\$zero	\$300,000	Start of 2012/2013 through start of 2018/2019

The Performance Reserve shall be in the form of cash deposited in the Facility Operating Account. Manager shall fully fund the Performance Reserve on or before November 1, 2009.

Manager shall cause GEMS to pledge its future commissions which would otherwise be payable under the Manager Agreement, up to the applicable amount of Performance Pledge.

The funds in the Performance Reserve shall be released to Manager, in the amounts and upon the occurrence of the following:

- (i) \$50,000 if and when the Hockey League Franchisee or equivalent plays its first league game of the 2009/2010 hockey season;
- (ii) \$50,000 if and when the Hockey League Franchisee or equivalent plays its first league game of the 2010/2011 hockey season;
- (iii) \$50,000 if and when the Hockey League Franchisee or equivalent plays its first league game of the 2011/2012 hockey season; and
- (iv) \$50,000 if and when the Hockey League Franchisee or equivalent plays its first league game of the 2012/2013 of the Hockey Season.

In the event the Hockey League Franchisee or equivalent does not play during a hockey season through the 2018/2019 season, then the Performance Reserve shall be forfeited to the Operating Account and Manager shall cause the Performance Pledge to accrue up to the applicable amount and forfeited until the earlier of: (i) the total funds forfeited equal \$300,000; or (ii) the Hockey League Franchisee or equivalent plays its next home game the Event Center. In any event, the total funds forfeited under this Section 2.5 shall not exceed \$300,000.

The Manager may provide the city with a performance bond of letter of credit in a form reasonably acceptable to the City in lieu of the Performance Reserve.

The obligations of Manager and GEMS under this Section 2.5 will terminate immediately if any of the Manager entities (Manager, Encore, GEMS, GetTix.Net) or their assigns are terminated from providing exclusive services for the City relative to the Event Center.”

“16.15 **Assignment.** Neither party may assign this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld or delayed; however, Manager may without the prior written consent of the City, with thirty (30) days prior written notice the City, assign this Agreement to an affiliate, parent or subsidiary of Manager under the control or common ownership of Manager, where such

assignment is intended to accomplish an internal corporate purpose of Global Entertainment Corporation or the Manager as opposed to materially and substantially altering the method of delivery of services to City; provided such assignee expressly assumes in writing the obligations and liabilities under this Agreement, such assumption to be in a form reasonably approved by the City; and further provided however such assignment shall not release the Global Entertainment Corporation or the Manager from the obligations, guarantees and liabilities under this Agreement. Notwithstanding any such assignment by Manager hereunder Global Entertainment Corporation shall remain fully responsible for the performance of this Agreement. Any purported assignment in contravention of this Section shall be null and void.”

3. The Management Agreement shall remain in full force and effect except as amended herein.

4. GEC represents and covenants that it shall cause all necessary action by its affiliates including but not limited to GEMS and the Manager that is required or contemplated by this First Amendment to Management Agreement. Notwithstanding the assignment of the Management Agreement to Global of Allen, LLC and anything to the contrary GEC shall be fully responsible for the performance of the services under the Management Agreement and shall be and remain fully liable for all defaults of Global of Allen, LLC including any of the obligations, guarantees and liabilities of the Manager under the Management Agreement.

5. This First Amendment may be executed in counterparts, each of which shall constitute an original, and all of which together shall constitute on and the same document.

Signature Page to follow

Executed this ____ day of April, 2009.

City of Allen, Texas

By: _____
Peter H. Vargas, City Manager

Attest:

By: _____
City Secretary

Agreed as to Form:

By: _____
City Attorney

Executed this ____ day of April, 2009.

Global of Allen, LLC

By: _____
Name: _____
Its: _____

Executed this ____ day of April, 2009.

Global Entertainment Corporation

By: _____
Name: _____
Title: _____

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Authorize the City Manager to Execute Agreement with The Village at Allen, LP for the Joint Use of a Digital Marquee Serving the Allen Event Center

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: October 2007 Economic Development Agreement with The Village at Allen LP

ACTION PROPOSED: Authorize the City Manager to enter into an agreement with The Village at Allen, LP for use of the digital marquee and bollard signs

BACKGROUND

The Allen Event Center project is a joint collaboration between the City of Allen, The MG Herring Group (Developer for The Village at Allen), Global Entertainment Corporation and International Coliseums Company.

The Economic Development Agreement with The Village at Allen LP provides for an Allen Event Center Digital Marquee to be constructed by The Village at Allen, LP along the frontage road of US 75 adjacent to The Village at Allen. The digital marquee will be owned by The Village at Allen, LP, but the City of Allen shall have a right to advertise events hosted at the Allen Event Center and other City events.

A summary of the items that The Village at Allen and the City of Allen agree to are as follows:

- 1 The Village at Allen will construct the marquee within one year of the effective date of agreement in compliance with appropriate governmental agencies' requirements and permit processes.
- 1 The marquee will have two-sides with a maximum height of 50 feet and a maximum width of 40 feet. (The digital display shall be approximately 28 feet wide and 16 feet tall.)
- 1 The marquee will have fixed panels and an LED display and be located adjacent to US 75 (see attached location map).
- 1 The LED display will be available to the City to advertise (at no cost) events hosted at the Event Center, other City events, Event Center sponsors and City public service announcements.

- 1 The LED display will be used for advertising venues, events or products located or sold at The Village at Allen.
- 1 There will be an equal message allowance between The Village at Allen and the City.
- 1 Income from the marquee will be reported to the City on a monthly basis to be applied to payment of the Grant pursuant to the Economic Development Agreement. Once the Grant has been paid, all revenue will be the property of The Village at Allen, LP.
- 1 The Village at Allen will maintain the marquee in a good state of repair and maintain appropriate insurance coverage.
- 1 There will be no display of political endorsements or advertisements and no advertisement of sexually explicit items.
- 1 Tobacco and alcohol products may be advertised as sponsors of events at the Event Center.

BUDGETARY IMPACT

There is no immediate budgetary impact. Revenue received from this agreement will be applied to outstanding Grant balance.

STAFF RECOMMENDATION

Authorize the City Manager to execute the agreement between The Village at Allen and the City of Allen.

MOTION

I make a motion to authorize the City Manager to execute an agreement with The Village at Allen, LP for the joint use of a digital marquee serving the Allen Event Center.

ATTACHMENT

Location Map
Agreement

SIGN AGREEMENT

This Sign Agreement ("Agreement") is made effective as of the _____ day of _____, 2009 ("Effective Date") by and between the City of Allen, Texas ("City"), a Texas home rule municipality, and The Village at Allen, LP, a Texas limited partnership ("Company"), acting by and through their respective authorized officers.

WHEREAS, on October 2, 2007, City and Company entered into an economic development agreement as amended on January 15, 2008 and further amended on March 4, 2008 (collectively "Economic Development Agreement") to provide incentives for the development of The Village at Allen ("Village") on the Land as defined in Exhibit "A", attached hereto and made a part hereof; and

WHEREAS, the Economic Development Agreement provides for an Event Center Sign ("Sign") to be constructed by the Company along the frontage road of U.S. 75 adjacent to The Village at Allen to be owned by the Company but which the City shall have a perpetual right to advertise events hosted at the Event Center and other City events pursuant to a separate agreement reasonably agreed to by the parties; and

WHEREAS, this Agreement sets forth the rights and obligations of the Company and City concerning the Sign and certain ad bollard signs; and

WHEREAS, this Agreement grants to Company the right to locate a certain detached premise sign to be located over a City easement;

NOW THEREFORE, in consideration of the terms and conditions contained herein and as set forth in the Economic Development Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and City agree as follows:

1. Construction of Event Center Sign. Within one year of the Effective Date, the Company shall obtain all necessary permits and approvals from applicable governmental agencies having jurisdiction over the Sign, and shall construct the Sign. The Sign shall be a two-sided sign with a maximum height of 50 feet and a maximum width of 40 feet. The Sign shall have fixed sign panels and a LED display and shall be in the location as generally shown on the plan attached hereto and made a part hereof and marked Exhibit "B".

2. Use of LED Display. For as long as the Sign is located in the Village, Company shall make the LED display available to the City to advertise at no cost to the City events hosted at the Event Center, other City events, Event Center sponsors and City public service announcements as reasonably determined by the City. The City shall not advertise Event Center sponsors on the Sign if the Event Center sponsor is a competing business with a tenant at the Village; provided however, the City may commence the advertisement of an Event Center sponsor on the Sign if a competitor thereafter locates at the Village. The Company shall utilize the LED display for advertising venues, events or products located or sold at the Village. City and Company agree not to display political endorsements or advertisements and not to

advertise sexually explicit items. The City and Company agree to limit the display of messages with alcohol and tobacco content to the extent they are related to major sponsorships of events, concerts or shows at the Event Center. The Company shall have the right to review and approve the add content related to tobacco and alcohol. Such review and approval shall not be unreasonably withheld. Company shall reasonably allocate the display of City and Company messages to allow for equal presentation of City and Company messages. The Company shall determine the hours of operation of the LED display utilizing reasonable business judgment.

3. Ownership and Use of Event Center Sign. Company shall own the Sign and shall reasonably operate the Sign. Since the sign will play a vital role in the success of the Event Center and the Village, Company may enter into an agreement with the Event Center Manager to operate or change programming and content structure, with City's and Company's approval. Company shall have the right to modify the Sign in accordance with City regulations. City shall have the right to use the Sign in accordance with the terms of this Agreement for a term of 25 years with automatic 10 year renewals thereafter unless this Agreement is terminated by the mutual agreement of Company and City.

4. Sign Revenues. All revenue generated from the Sign shall be certified true and correct by the party receiving the revenue and remitted to the City on a monthly basis to be applied for payment of the Grant pursuant to Section 7.3(d) of the Economic Development Agreement. The financial information related to the Sign shall be available for review by the parties upon reasonable notice. Upon payment of the Grant, 100% of the Sign revenue shall be paid to Company.

5. Sign Maintenance. Company shall maintain the Sign in a good state of repair except for reasonable wear and tear. Company shall reasonably repair or replace the Sign in the event of a casualty. Company shall remove the Sign in the event the Sign is destroyed by casualty, and Company and City mutually agree that the Sign should not be replaced.

6. Insurance.

(a) Company shall during the term of this Agreement obtain and maintain insurance with coverage in an amount reasonably sufficient to repair or replace the Sign in the event the Sign is damaged or destroyed, and the following insurance: (1) a policy of comprehensive general liability insurance for bodily injury, death and property damage insuring against all claims, demands or actions relating to the use of the licensed area by the Company pursuant to this Agreement with a minimum combined single limit of not less than \$1 Million Dollars per occurrence for injury to persons (including death), and for property damage with an aggregate of not less than \$1 Million Dollars; and (2) policy of automobile liability insurance covering any vehicles owned and/or operated by Company its officers, agents, and employees with a minimum of \$1 Million Dollars combined single limit.

(b) The insurance and certificate of insurance shall contain the following provisions: (1) name the City, its officers, agents and employees as additional insureds as to all applicable coverage; (2) provide for at least thirty (30) days prior written notice to the City for cancellation, nonrenewal, or material change of the insurance; (3) provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of insurance.

(c) All insurance companies providing the required insurance shall be authorized to transact business in Texas and rated at least "A" by AM Best or other equivalent rating service.

(d) A certificate of insurance evidencing the required insurance shall be submitted to the City prior to commencement of construction of the Sign.

(e) Without limiting any of the other obligations or liabilities of Company, the Company shall require its general contractors, at the general contractor's own expense, to maintain during the construction of the Sign, the required insurance including the required certificate and policy conditions as stated herein.

7. Ad Bollards. City grants to Company the right to locate three (3) ad bollard signs (the "Bollards") within the Event Center Site in a size and configuration substantially in accordance with the illustration attached as Exhibit "C" and made a part hereof. The Bollards will consist of a three faced sign with one face dedicated for the advertisement by the City of events hosted at the Event Center, other City events, Event Center sponsors and City public service announcements subject to restrictions in Paragraph 2 of this Agreement, one face dedicated to display of the project directory for the Village by the Company, and one face dedicated to the display by the Company for advertising venues, events or products located or sold at the Village subject to the restrictions in Paragraph 2 of this Agreement. The Bollards shall be placed in locations that are mutually agreeable to the City and Company, said agreement to not be unreasonably be withheld, conditioned, or delayed.

8. Right to Locate Premise Sign. City grants to Company the right to locate one detached premise sign within the City easement as generally shown on Exhibit "D", attached hereto and made a part hereof. Such location will be at the convenience of the City, and the Company does hereby release and hold the City harmless from any and all claims, costs, expenses and damages in the event the City is required or needs to maintain or reconstruct the waterline located within the easement and the Sign is damaged, destroyed or in the event the Sign must be removed. City shall give Company reasonable notice and opportunity to remove the Sign if City determines the water line must be repaired or replaced and such work will potentially cause damage to the Sign.

9. Indemnification by Company. CITY SHALL NOT BE LIABLE OR RESPONSIBLE FOR, AND SHALL BE INDEMNIFIED, DEFENDED, HELD

HARMLESS AND RELEASED BY COMPANY FROM AND AGAINST ANY AND ALL SUITS, ACTIONS, LOSSES, DAMAGES, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE, OR DESCRIPTION, INCLUDING ALL REASONABLE EXPENSES OF LITIGATION, COURT COSTS, AND ATTORNEY'S FEES FOR INJURY OR DEATH TO ANY PERSON, OR INJURY OR LOSS TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS, INCLUDING THE COMPANY, OR PROPERTY, ARISING OUT OF, OR OCCASIONED BY THE PERFORMANCE OF COMPANY UNDER THIS AGREEMENT. THE PROVISIONS OF THIS INDEMNIFICATION ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY. IT IS THE EXPRESSED INTENT OF THE PARTIES TO THIS AGREEMENT THAT THE INDEMNITY PROVIDED FOR IN THIS AGREEMENT IS AN INDEMNITY EXTENDED BY COMPANY TO INDEMNIFY AND PROTECT CITY FROM THE CONSEQUENCES OF COMPANY'S NEGLIGENCE, WHETHER SUCH NEGLIGENCE IS THE SOLE OR PARTIAL CAUSE OF ANY SUCH INJURY, DEATH, OR DAMAGE.

10. Binding Agreement. The terms and conditions of this Agreement are binding upon the successors and permitted assigns of all parties hereto. City Manager, or designee, shall be responsible for the administration of this Agreement for the City and shall have the authority to approve any amendments and any instruments on behalf of City related thereto.

11. Assignment. Company shall have the right to assign all of its rights, duties and obligations under this Agreement with the consent of the City Manager, which consent shall not be unreasonably withheld or delayed. Any assignment, transfer or sale of the Sign must be to an owner of property within the Village that will use the Sign and must be subject to all rights and benefits of the City under this Agreement. Company may assign this Agreement without the consent of the City provided the MG Herring Property Group LLC retains fifty percent (50%) or more of the ownership interest in the assignee (whether by stock, partnership or otherwise). Notwithstanding anything contained herein to the contrary, without the consent of City, Company may assign this Agreement to any construction lender ("Construction Lender") providing a construction loan to Company to pay the costs of constructing the Village or any part thereof, and Construction Lender shall be entitled to succeed to Company's rights under this Agreement, if Construction Lender obtains title to the Land then owned by Company by foreclosure or deed in lieu of foreclosure. Construction Lender may assign any rights so acquired to a purchaser of the Land then owned by Company from Construction Lender following any such foreclosure or deed in lieu of foreclosure (a "Subsequent Owner"); provided, however, that such assignment by Construction Lender to a Subsequent owner shall be subject to City's consent, which consent shall not be unreasonably withheld or delayed. As a condition to the exercise by Construction Lender or any Subsequent Owner of Company's rights under this Agreement, Construction Lender or Subsequent Owner, as applicable, must satisfy all of Company's obligations under this Agreement which are conditions to the exercise of any such rights.

12. Limitation on Liability. It is acknowledged and agreed by the parties that the terms hereof are not intended to and shall not be deemed to create a partnership or joint venture among the parties. It is understood and agreed between the parties that Company, in satisfying the conditions of this Agreement, has acted independently, and City assumes no responsibilities or liabilities to third parties in connection with these actions.

13. Authorization. Each party represents that it has full capacity and authority to grant all rights and assume all obligations that is granted and assumed under this Agreement.

14. Notice. Any notice required or permitted to be delivered hereunder shall be deemed received three (3) days thereafter sent by United States Mail, postage prepaid, certified mail, return receipt requested, addressed to the party at the address set forth below or on the day actually received when sent by courier or otherwise hand delivered.

If intended for City, to:

City of Allen
Attn: City Manager
305 Century Parkway
Allen, Texas 75013

With a copy to:

Peter G. Smith
Nichols, Jackson, Dillard,
Hager & Smith, L.L.P.
1800 Lincoln Plaza
500 North Akard
Dallas, Texas 75201

If intended for Company:

The Village at Allen, L.P.,
c/o The MGHerring Group
Attention: Gar Herring
5710 LBJ Freeway
Suite 450
Dallas, Texas 75240-6399

With a copy to:

Barry R. Knight
Winstead PC
5400 Renaissance Tower
1201 Elm Street
Dallas, Texas 75270

15. Entire Agreement. This Agreement is the entire Agreement between the parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written Agreement between the parties that in any manner relates to the subject matter of this Agreement.

16. Governing Law. The Agreement shall be governed by the laws of the State of Texas; and venue for any action concerning this Agreement shall be in the State District Court of Collin County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of said Court.

17. Amendment. This Agreement may be amended by the mutual written agreement of the parties.

18. Legal Construction. Defined terms are as set forth in this Agreement and the Economic Development Agreement. In the event 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 other provisions, and it is the intention of the parties to this Agreement that in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

19. Recitals. The recitals to this Agreement are incorporated herein.

20. Counterparts. This Agreement may be executed in counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.

21. Rights of Lenders and Interested Parties.

(a) Notice. The City is aware that financing for acquisition, development and/or construction of the Improvements may be provided, in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders, major tenants, equity partners and purchasers or developers of portions of the Property (collectively, "Interested Parties"). In the event of default by Company, the City shall provide a copy of the notice of such event of default at the same time notice is provided to Company, to any Interested Parties previously identified in writing to the City. If any Interested Parties are permitted under the terms of its agreement with the Company to cure the event of default and/or to assume Company's rights and obligations under this Agreement, the City shall recognize such rights of any Interested Parties and otherwise permit such Interested Parties to assume in writing all of the rights and obligations of the Company under this Agreement.

(b) Estoppel. The City shall, at any time upon reasonable request by the Company, provide to any Interested Party an estoppel certificate or other document evidencing that this Agreement is in full force and effect, that no event of default by the Company exists hereunder (or, if appropriate, specifying the nature and duration of any existing event of default), the status of completion of the Improvements, Infrastructure and/or Event Center Project, the payment of the Grant and/or any other obligations set forth in this Agreement.

22. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the parties, as well as any rights and benefits of the parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

CITY OF ALLEN, TEXAS

By: _____
Peter H. Vargas, City Manager

ATTEST:

By: _____
City Secretary

AGREED AS TO FORM:

By: _____
City Attorney

The Village at Allen LP
a Texas limited partnership

By: HERRING VILLAGE AT ALLEN GP INC.,
a Texas corporation,
its general partner

By: _____
Gar Herring, President

EXHIBIT "A"
VILLAGE AT ALLEN
TRACT 1

BEING a tract of land situated in the F.C. Wilmeth Survey, Abstract No. 999, the Henry Wetsel Survey, Abstract No. 1026 and the L.K. Pegues Survey, Abstract No. 702, Collin County, Texas and also being all of the same tract of land conveyed to The Village At Allen, LP, by deed recorded in Document No. 20070118000075960, and being more particularly described as follows:

BEGINNING at a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner at the north corner of said The Villages At Allen, LP tract, said iron rod being at the intersection of the East right-of-way line of U.S. Highway No. 75 (variable width R.O.W.) and the West right-of-way line of the Dallas Area Rapid Transit Rail line (D.A.R.T., 100' R.O.W.), as recorded in Volume 5443, Page 5532, Deed Records, Collin County, Texas (D.R.C.C.T.), said iron rod also being the beginning of a curve to the left having a radius of 2914.79 feet;

THENCE along said curve to the left and the west right-of-way line of said D.A.R.T. tract, an arc distance of 1229.06 feet through a central angle of 24 degrees 09 minutes 35 seconds and a chord bearing and distance of South 25 degrees 35 minutes 06 seconds West, to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner;

THENCE South 11 degrees 57 minutes 57 seconds West, continuing along the West right-of-way line of said D.A.R.T. tract, a distance of 364.39 feet to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner;

THENCE North 53 degrees 56 minutes 59 seconds West, leaving the west right-of-way line of said D.A.R.T. tract, a distance of 417.87 feet to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner in the East right-of-Way line of aforementioned U.S. Highway No. 75 (variable width R.O.W.);

THENCE North 32 degrees 59 minutes 39 seconds East, following the East right-of-way line of said U.S. Highway No. 75, a distance of 236.94 feet to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner;

THENCE North 28 degrees 55 minutes 21 seconds East, continuing along the East right-of-way line of said U.S. Highway No. 75, a distance of 104.65 feet to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner;

THENCE North 35 degrees 32 minutes 57 seconds East, continuing along the East right-of-way line of U.S. Highway No. 75, a distance of 347.15 feet to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner;

THENCE North 37 degrees 18 minutes 28 seconds East, continuing along the East right-of-way line of said U.S. Highway No. 75, a distance of 347.06 feet to a 5/8 inch iron rod with yellow cap stamped "BDD" found for corner;

THENCE North 43 degrees 53 minutes 51 seconds East, along said East right-of-way line, a distance of 502.50 feet to the POINT OF BEGINNING and containing 266,575 square feet or 6.120 acres of land, more or less.

EXHIBIT "A"
VILLAGE AT ALLEN
TRACT 2

BEING a tract of land situated in the Henry Wetsel Survey, Abstract No. 1026, the F.C. Wilmeth Survey, Abstract No. 999 and the L. Pegues Survey, Abstract No. 702 and being all of the same tract of land conveyed to The Village At Allen, LP, by deed recorded under Document No. 20070308000319470, Deed Records of Collin County, Texas (D.R.C.C.T.), all of the same tract of land conveyed to The Village At Allen, LP, by deed recorded under Document No. 20070305000304230, D.R.C.C.T., a portion of Allen Station Business Park, an addition to the City of Allen according to the plat thereof recorded in Cabinet R, Slide 229, Plat Records, Collin County, Texas, and a portion of the remainder of a tract conveyed to LLG Lands, Inc. (Tract 4) by deed recorded under County Clerk's File No. 93-0102562, D.R.C.C.T., and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found for corner at the intersection of the southeasterly right-of-way line of the D.A.R.T. rail (100' R.O.W.) and the south right-of-way line of FM 2786 (Stacy Road, 120' R.O.W.), said 5/8" iron rod also being the northwest corner of said The Villages At Allen, LP tract (Doc. ID# 20070308000319470);

THENCE S89°49'56"E, along the south right-of-way line of said FM 2786, a distance of 441.73 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 5669.58 feet;

THENCE continuing along said south right-of-way line and said curve to the right, an arc distance of 119.90 feet through a central angle of 01°12'42" and a chord bearing and distance of S89°13'32"E, 119.90 feet to a 5/8" iron rod found for corner;

THENCE S88°37'14"E, continuing along said south right-of-way line, a distance of 1648.53 feet to a 5/8" iron rod found for corner at the northeast corner of aforementioned The Villages At Allen, LP tract (Doc. ID# 20070305000304230) and being in the west line of a tract of land conveyed to North Allen Investments, Ltd., by deed recorded in Volume 4223, Page 2317, D.R.C.C.T. and filed under County Clerk's File No. 98-0084894;

THENCE S00°34'49"W, leaving the south right-of-way line of said FM 2786 and along the east line of said The Villages At Allen tract (Doc. ID# 20070305000304230) and the west line of said North Allen Investments tract, a distance of 581.25 feet to a 1/2" iron rod found for corner, said iron rod being a northeast corner of said The Villages At Allen tract (Doc. ID# 20070305000304230) and a northwest corner of the Reid Farm, Phase II Addition an addition to the Town of Fairview according to the plat thereof recorded in Volume 4799, Page 1229, Plat Records of Collin County, Texas (P.R.C.C.T.);

THENCE S20°42'29"W, along the east line of said The Villages At Allen tract (Doc. ID# 20070305000304230), a distance of 1420.88 feet to a 1/2" iron rod found for corner at the

southwest corner of Reid Farm Addition, Phase I as recorded in Volume 4560, Page 495, and the northwest corner of the Spring Meadows Addition, an addition to the Town of Fairview according to the plat thereof recorded in Volume 4852, Page 87, P.R.C.C.T., and filed under County Clerk's File No. 2001-0014054;

THENCE S20°54'44"W, along the east line of said The Villages At Allen tract (Doc. ID# 20070305000304230) and the west line of said Spring Meadow Addition, a distance of 1281.13 feet to a 1/2" iron found for corner at the southeast corner of said Yarbrough tract and being an inner ell corner for said Spring Meadow addition;

THENCE N66°01'53"W, along a north line of said Spring Meadow Addition and the south line of said The Villages At Allen, LP tract (Doc. ID# 20070305000304230), a distance of 1132.16 feet to a 5/8" iron rod found for corner, said 5/8" iron rod being in the west line of said Spring Meadows Addition and the east line of a tract of land conveyed to LLG Lands, Inc., by document filed under County Clerk's File No. 93-0102562;

THENCE N00°28'13"E, along the east line of said LLG Lands tract and the west line of said The Villages At Allen, LP tract (Doc. ID# 20070305000304230), a distance of 73.32 feet to a 1/2" iron rod found for corner, said 1/2" iron rod being in the west line of said The Villages At Allen, LP tract (Doc. ID# 20070305000304230);

THENCE N88°19'05"W, along the north line of said LLG Lands tract, a distance of 416.72 feet to a capped iron rod found for corner;

THENCE N88°49'56"W, continuing along said north line, a distance of 444.52 feet to a 5/8" capped iron rod with yellow cap stamped "BDD" set for corner, said capped iron rod being in the northwesterly right-of-way line of proposed Allen Station Parkway (variable width R.O.W.);

THENCE S23°39'47"W, leaving said north line and along said proposed northwesterly right-of-way line, a distance of 58.44 feet to a capped iron rod with yellow cap stamped "BDD" set for corner and the beginning of a curve to the right having a radius of 595.00 feet;

THENCE along said curve to the right and the proposed northwesterly right-of-way line of said Allen Station Parkway, an arc distance of 104.86 feet through a central angle of 10°05'51" and a chord bearing and distance of S28°42'43"W, 104.72 feet to a capped iron rod with yellow cap stamped "BDD" set for corner, said capped iron rod also being the east end of a corner clip at the intersection of the proposed northwesterly right-of-way line of said Allen Station Parkway and the proposed northeasterly right-of-way line of Village At Allen Drive (variable width R.O.W.);

THENCE S82°35'36"W, along said proposed corner clip, a distance of 33.69 feet to a capped iron rod with yellow cap stamped "BDD" set for corner in the proposed northeasterly right-of-way line of said Village At Allen Drive;

THENCE N49°45'59"W, along said proposed northeasterly right-of-way line, a distance of 64.68 feet to a capped iron rod with yellow cap stamped "BDD" set for corner and the beginning of a curve to the left having a radius of 1155.00 feet;

THENCE along said curve to the left and continuing along said proposed northeasterly right-of-way line, an arc distance of 124.51 feet through a central angle of 06°10'36" and a chord bearing and distance of N52°51'17"W, 124.45 feet to a capped iron rod with yellow cap stamped "BDD" set for corner;

THENCE N63°32'41"W, continuing along the proposed northeasterly right-of-way line of said Village At Allen Drive, a distance of 88.94 feet to a capped iron rod with yellow cap stamped "BDD" set for corner, said capped iron rod being in the north line of aforementioned Allen Station Business Park;

THENCE N88°49'56"W, along the north line of said of Allen Station Business Park, a distance of 801.36 feet to a capped iron rod found for corner in the southeasterly right-of-way line of aforementioned D.A.R.T. rail and the beginning of a non-tangent curve to the right having a radius of 2814.79 feet;

THENCE along the southeasterly right-of-way line of said D.A.R.T. rail right-of-way and said non-tangent curve to the right, an arc distance of 1003.99 feet through a central angle of 20°26'12" and a chord bearing and distance of N27°44'26"E, 998.68 feet to a 5/8" iron rod found for corner;

THENCE N38°04'40"E, continuing along said southeasterly right-of-way line, a distance of 2144.45 feet to the POINT OF BEGINNING and containing 7,925,311 square feet or 181.940 acres of land.

EXHIBIT B

Plans Showing General Location and Design of Sign

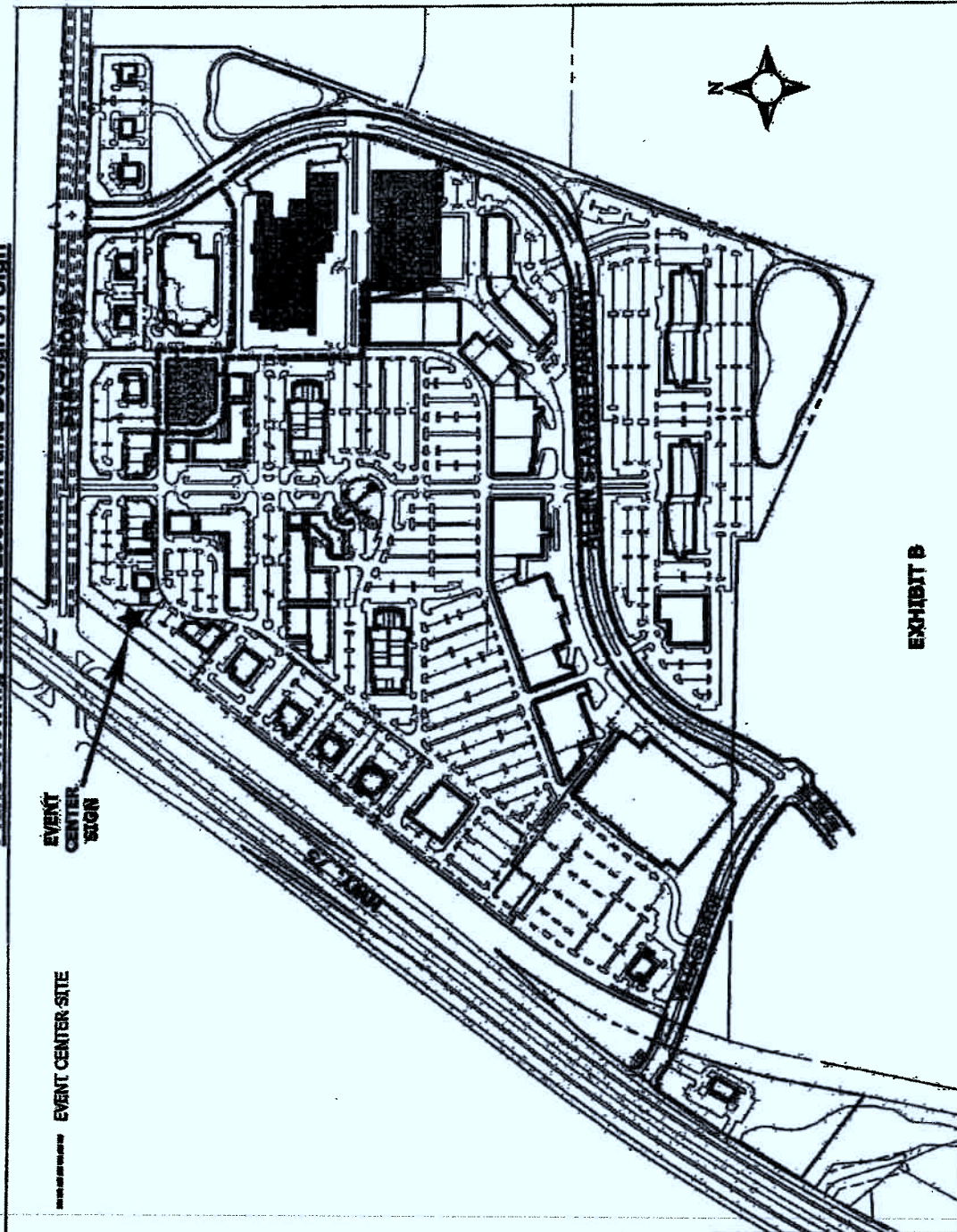


EXHIBIT B

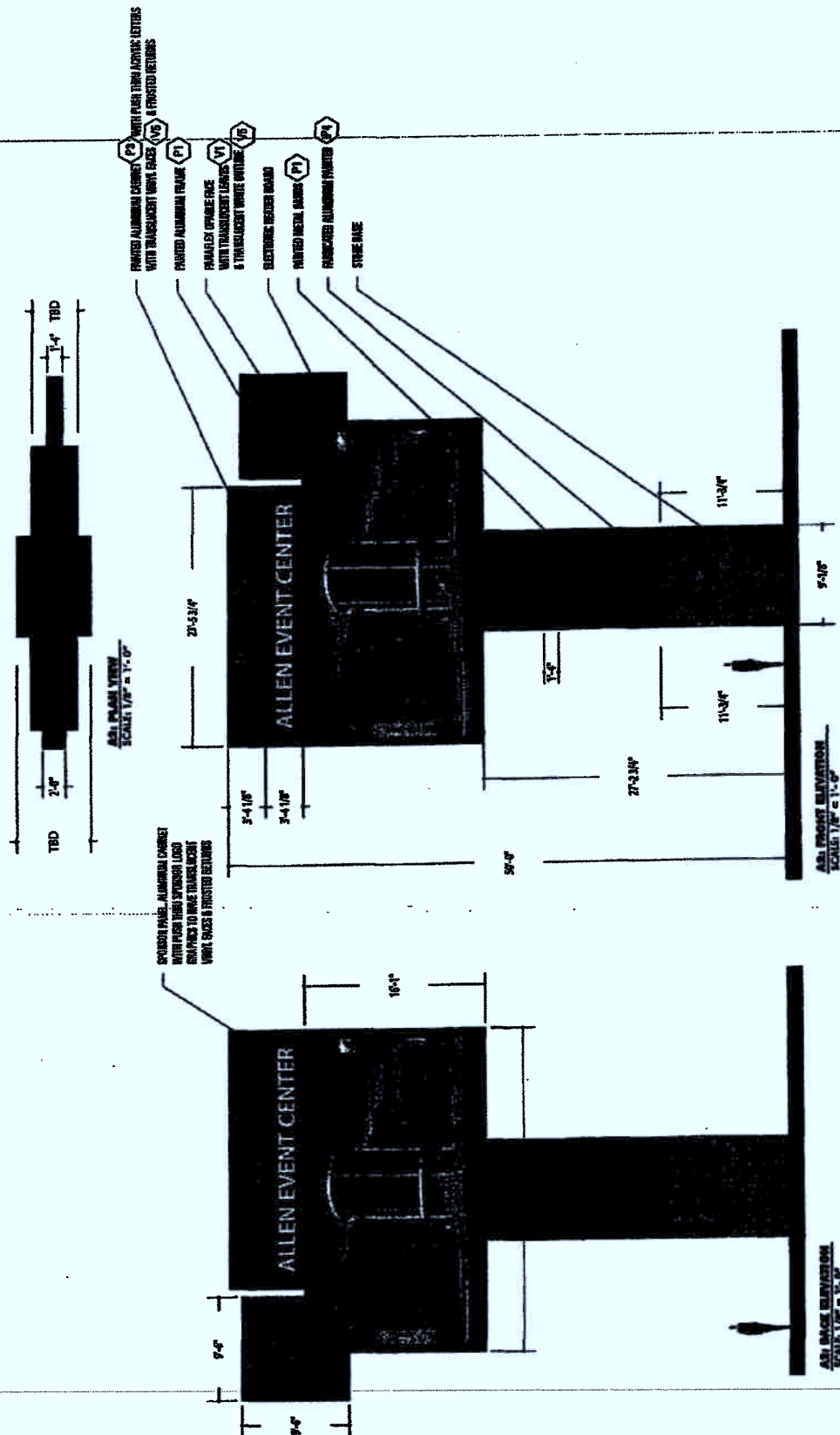
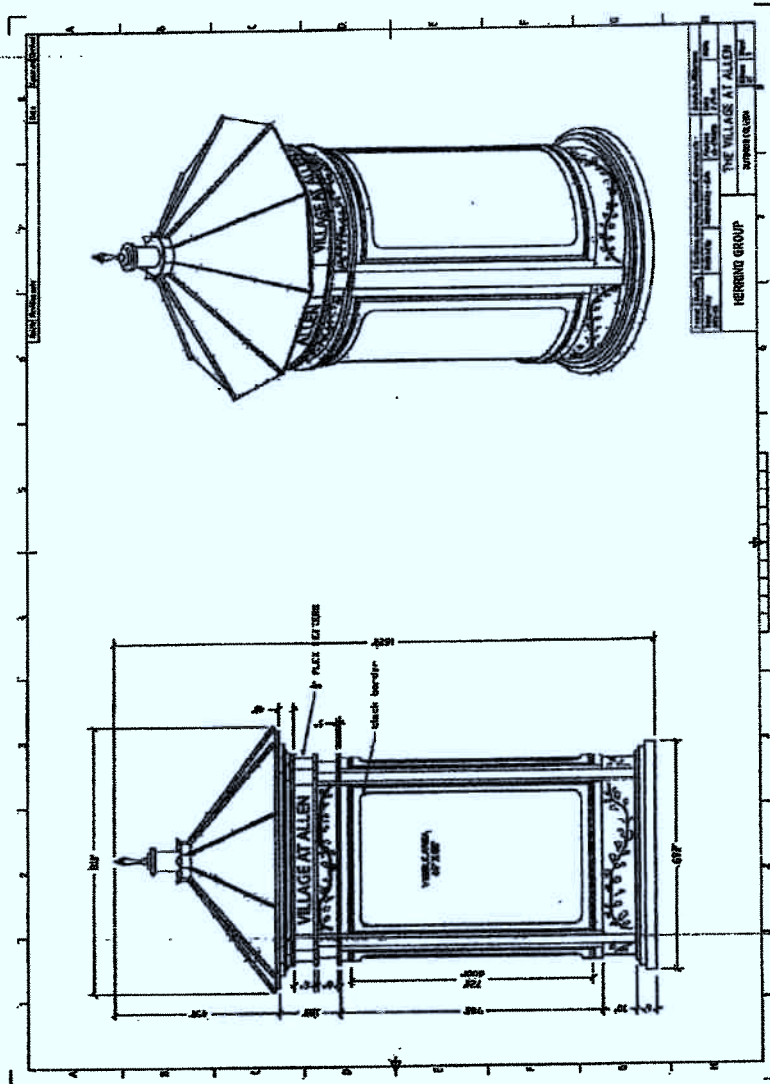
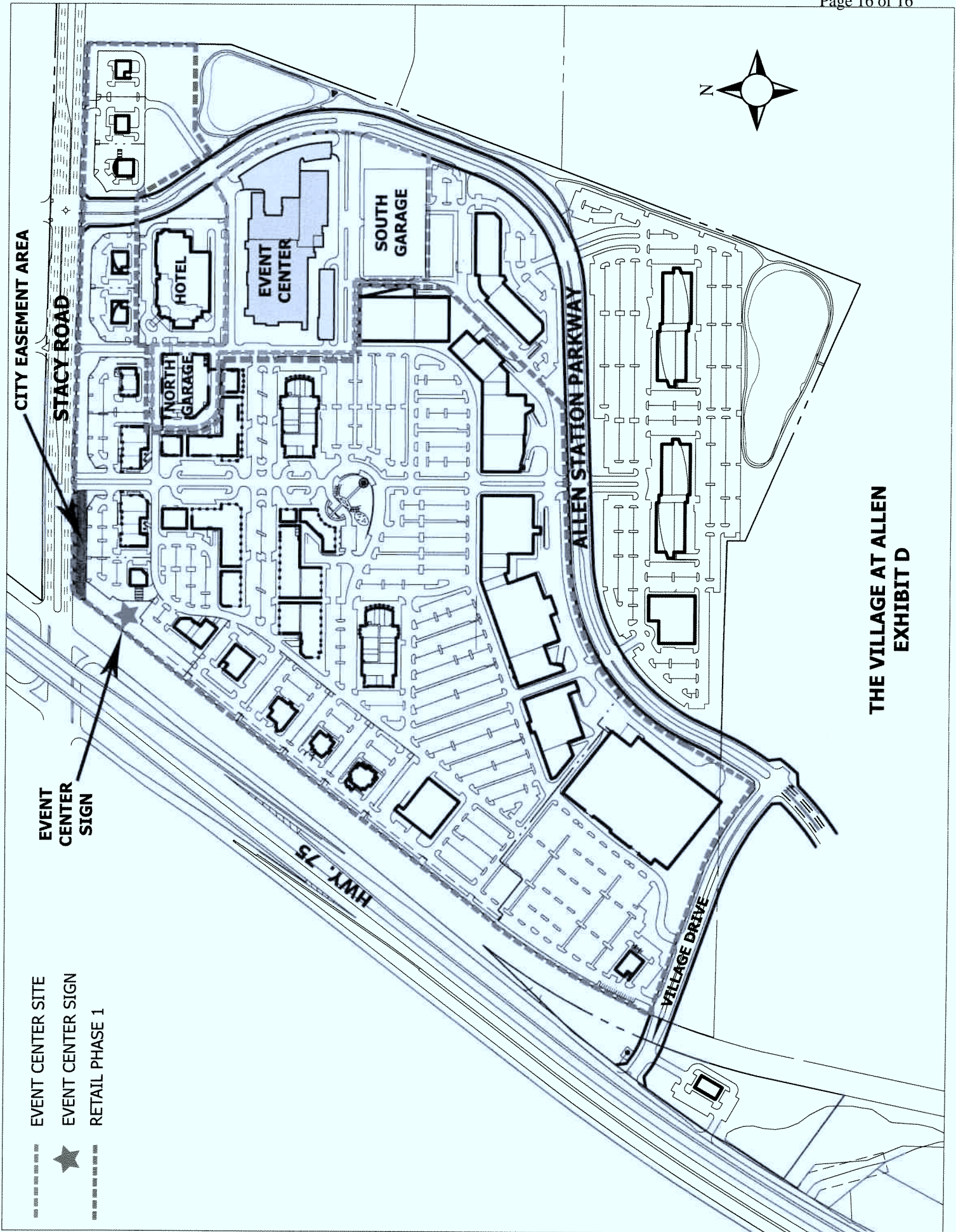


EXHIBIT B - Page 2



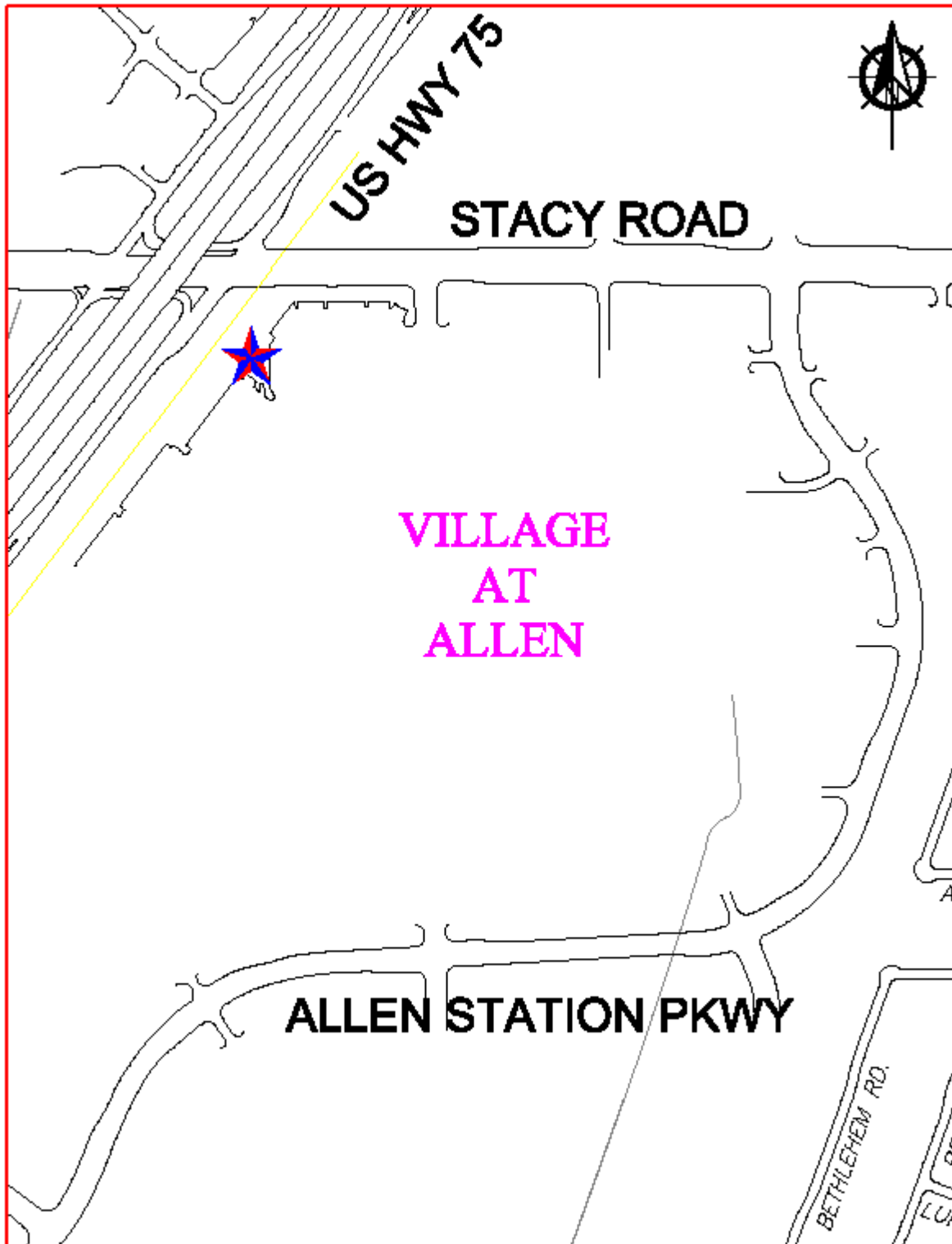
PROJECT	THE VILLAGE AT ALLEN	OWNER TITLE AND ORGANIZATION	DATE	REVISIONS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
PROJECT	THE VILLAGE AT ALLEN	OWNER TITLE AND ORGANIZATION	DATE	REVISIONS	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

EXHIBIT C - Solo Page



**THE VILLAGE AT ALLEN
EXHIBIT D**

LOCATION MAP
Allen Event Center Marquee



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE: April 14, 2009

SUBJECT: Ridgeview Drive Alignment Study from Alma Drive to Watters Road - (CIP# ST0902)

STAFF RESOURCE: John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION: None

ACTION PROPOSED: Authorize the City Manager to execute a professional engineering services contract with Teague, Nall & Perkins for the alignment of Ridgeview Drive from Alma Drive to Watters Road and establish the project budget

BACKGROUND

Ridgeview Drive is a six-lane divided thoroughfare serving as a zoning boundary between residential development and commercial use and will ultimately extend from US 75 to Custer Road. This major arterial runs parallel to SH 121, with segments of the roadway being built as development progresses along the corridor. The firm of Teague, Nall & Perkins was selected to establish the right-of-way for Ridgeview Drive, from Alma Drive to Watters Road. The first segment of the study is for the Alma Drive to Stacy Road portion (approximately 5,600 linear feet), and the second segment is from Stacy Road to Watters Road (approximately 3,600 linear feet). The scope of this contract includes alignment studies (horizontal and limited vertical) and preparation of right-of-way documents.

This project will also provide legal descriptions and exhibits for Watters Creek Community Park, an acquisition proposed by the City of Allen Parks and Recreation Department. The portion between Alma Drive and Stacy Road crosses Watters Branch and is not developed to the north. East of Stacy Road, development currently does not exist north of Saddleridge. The resulting design for Ridgeview Drive will either be used to direct the development community (should development occur) or as a basis for capital improvement projects to build this segment of roadway.

BUDGETARY IMPACT

The fee breakdown, as proposed by the consultant, is as follows:

Description	Amount
Boundary Surveying for ROW and Horizontal Surveying for Alignment	\$25,000
Right-of-Way Documents Assume eight @ \$1,000 each	\$8,000
Engineering Design	\$17,000
Additional Services	\$1,000
TOTAL	\$51,000

It is proposed to transfer **\$60,000** from Ridgeview Drive (Custer to Alma Drive) ST0801 to fund this contract.

STAFF RECOMMENDATION

Staff recommends that the City Council authorize the City Manager to execute a contract with Teague, Nall & Perkins for engineering services in connection with the alignment of Ridgeview Drive from Alma Drive to Watters Road and establish the project budget.

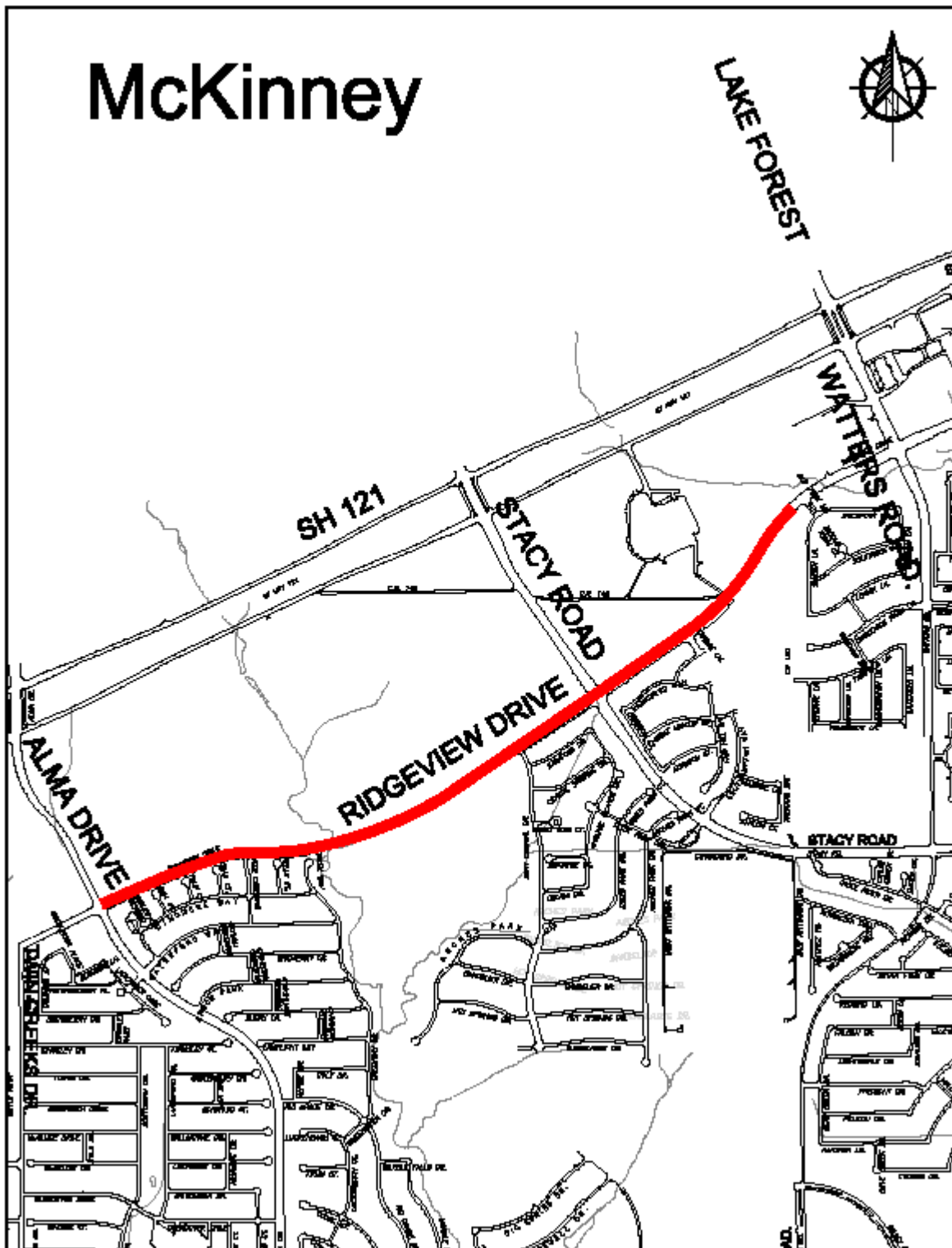
MOTION

I make a motion to authorize the City Manager to execute a consultant agreement with Teague, Nall & Perkins, for engineering services in connection with the alignment of Ridgeview Drive from Alma Drive to Watters Road and establish the project budget in the amount of \$60,000.

ATTACHMENT

Location Map
Consultant Agreement

Location Map
Ridgeview/Chelsea Alignment



**CONTRACT FOR A CONSULTANT
AN AGREEMENT BETWEEN
THE CITY OF ALLEN, TEXAS
AND
TEAGUE NALL AND PERKINS, INC.
FOR
RIDGEVIEW DRIVE ALIGNMENT STUDY
(ALMA DRIVE TO WATTERS ROAD)**

THE STATE OF TEXAS §

§ KNOW ALL MEN BY THESE PRESENTS:

COUNTY OF COLLIN §

THIS AGREEMENT, entered into as of the _____ day of _____, 2009, by and between the CITY OF ALLEN, Collin County, Texas, (hereinafter called "City"), and **TEAGUE NALL AND PERKINS, INC.**, (hereinafter called Consultant);

W I T N E S S E T H:

That, WHEREAS, the City desires to engage the Consultant to render professional engineering services for the preparation of horizontal alignment options, exhibits, and final documents for the acquisition of right-of-way for **RIDGEVIEW DRIVE (ALMA DRIVE TO WATTERS ROAD)**.

NOW, THEREFORE, the parties hereby do mutually agree as follows:

I.

Employment of Consultant: The City hereby agrees to engage the Consultant, and the Consultant hereby agrees to perform the services hereinafter set forth.

II.

SCOPE OF SERVICES:

The scope of this project generally entails the study of potential alignment for Ridgeview Drive, and the preparation of right-of-way (ROW) documents for a portion of the agreed upon alignment. Ridgeview Drive is to be a 6-lane divided thoroughfare within a 120' right-of-way (M6D), ultimately extending from US 75 to Custer Road. Portions of this road are built, and future segments will be constructed by the City or developers. The first segment of study for this contract shall be from the Alma Drive to Stacy Road (approx 5,600 linear feet). The second segment is from Stacy Road to Watters Road (approx. 3,600 linear feet).

Part I: A. Survey for Right-of-Way Descriptions

- a) Research the ownership and obtain deeds from the Collin County Courthouse.
- b) Prepare right-of-entry letters prior to starting field work.
- c) Prepare a deed sketch to be used by field crews in performing the boundary surveys of the tracts listed in item f) below.
- d) Locate adjoining properties as required by Texas Board of Land Surveying.
- e) Establish the existing right-of-way of Ridgeview Drive.
- f) Prepare a total of up to eight (8) right-of-way documents consisting of Exhibit A (Parcel Description) and Exhibit B (Parcel Map) for right-of-way acquisition, as shown below:
 - Johnson Centre (3 tracts): three documents, one of which will show approximate floodplain area on the Exhibit B Map
 - Elkin Bush: two documents (park and ROW), both of which will show approximate floodplain area on the Exhibit B Map
 - State of Texas: one document
 - Glarneau Family Trust: one document
 - Wine Family Trust: one document
- g) The City of Allen's GPS monuments will be used for control.

B. Horizontal Survey for Alignment Study

- a) Prepare schematic level horizontal survey at the following locations:
- intersection of Ridgeview and Alma
 - intersection of Ridgeview and Stacy
 - completed stub-out segment near Creekway Drive
 - completed stub-out segment near Benton Drive
 - completed stub-out segment near Waltham Lane
 - completed stub-out segment near Old York Lane
- b) Provide limited topographic survey at the anticipated crossing of Watters Creek to confirm aerial contours provided by City.
- c) Within the survey alignment corridor, locate and tie visible markers or structures indicating the location of the existing 24" water main and existing storm drain lines. Alignments of lines and related easements shall be shown on the plan based solely upon record drawings provided by City and survey data described above.

C. Engineering – Alignment Study

- a) Using standard typical sections for the roadway designation (M6D), and utilizing City standard geometric criteria, develop preliminary horizontal centerline alignments for the roadway, and evaluate a vertical profile for the Watters Creek culvert crossing. Alignments are to limit impacts by crossing, and minimize disruption to environmentally sensitive areas. Exhibits shall show known utility crossings and nearby adjacent utilities, and other topographic features identified from aerial photograph and field survey. Two (2) options shall be prepared for evaluation purposes by the City.
- b) Meet with the City of Allen staff to discuss preliminary alignments. Revise alignments by incorporating comments from the City of Allen, and proceed to finalizing one (1) agreed upon alignment.
- c) For the one final alignment, provide the City with up to ten (10) color full size (1"=200' scale) prints, as well as color PDFs in full and reduced scale (11"x17"). Exhibit is to include major features including proposed edges of roadway, dimensions, and median openings.

Part II: Additional Services

- a) Additional plots and other direct cost items, as requested by the City.

Part III: Exclusions

The intent of this scope of services is to include only the services specifically listed herein and none others. Services specifically excluded from this scope of services include, but are not necessarily limited to the following:

- A. Preparation of construction plans and documents.
- B. Additional horizontal alignment options and vertical profiles beyond those described.
- C. Additional field survey or parcel descriptions other than that described above.
- D. Preparation of construction cost estimates.
- E. Tree surveys, removal permits, mitigation plans.
- F. Environmental impact statements, assessments, or cleanup.
- G. Construction related services.
- H. Services in connection with condemnation hearings and public meetings.
- I. Detailed engineering reports.
- J. Traffic engineering report or study.
- K. Geotechnical evaluations or reports.
- L. Subsurface Utility Engineering.
- M. Abstractor and property title/easement research.
- N. Preparation of hydrologic or hydraulic studies (or FEMA submittals).

Part IV: Fee Schedule

Opinion of probable construction cost is not applicable at this time.

The maximum overall fee established herein shall not be exceeded without written authorization from the City of Allen, justified by increased scope of services. The following is a summary of the estimated charges for the various elements of the proposed services:

Part I: Basic Fee (lump sum)

A. Boundary Surveying for ROW and

Horizontal Surveying For Alignment.....\$ 25,000

B. Right-of-Way Documents (Exh. A -Legal and Exh. B -Map).

Assume eight @ \$1,000 each \$ 8,000

C. Engineering Design.....\$ 17,000

Subtotal: \$ 50,000

Part II: Additional Services (plots and other direct cost items, as requested) \$ 1,000

Maximum Fee Not to Exceed: \$ 51,000

COMPLETION SCHEDULE

Award Engineering Contract by City Council	
Notice to Proceed	
Preliminary Meeting with City to Obtain Record Information	
Begin Field Surveys	within 5 days of Notice to Proceed
Complete Field (Topo and Boundary) Surveys	60 days
Submit Preliminary Alignments to City for Review	21 days after survey
Receive Review Comments from City	
Complete Final Alignment	14 days after review complete
Begin Right-of-Way Parcel Preparation	Upon approval of final alignment
Finish Right-of-Way Parcel Preparation	30 days
Provide Color Graphic of Final Alignment	7 days after final ROW parcels

Note: Regarding performance schedule, the above timeline is provided as a basis of reference and no damages for delay will be imposed by the City of Allen or Consultant.

III.

Conflict of Interest: The Consultant hereby represents and covenants that neither it nor any of its employees or representatives, has or shall have, directly or indirectly, any agreement or arrangement with any party that would constitute a conflict of interest in regard to the work being performed by the City during the terms of this agreement. Consultant will inform the City of other assignments undertaken on behalf of neighboring communities or governmental agencies that may constitute a conflict of interest.

IV.

Indemnity and Liability: The Consultant agrees the City of Allen will not be held liable for any personal or real property damages occurring from acts of agents during the tenure of said agreement.

V.

General Indemnity: Consultant agrees to indemnify and save City harmless from and against all losses, claims, demands, damages, and causes of action resulting from the negligent acts or omissions of the Consultant, its officers, agents, or employees. Such obligations shall not be construed or negate, oblige, or otherwise reduce any other rights or obligations of indemnity which would otherwise exist as to any part or persons described in this paragraph. Notwithstanding any of the above, neither party to this agreement shall be liable for any indirect, remote, or consequential damages.

VI.

Entirety of Agreement: This agreement consists of this document, upon which the parties have affixed their signatures, and those documents specifically incorporated herein by reference. This agreement as so constituted is the entire agreement between the parties, with respect to the subject matter hereof, and supersedes all other pervious statement, communications, or agreements, whether oral or written. No modification, alteration, or waiver of any provision hereof shall be binding upon the parties unless evidenced in writing and signed by both parties.

VII.

Termination of Contract: The City or Consultant may terminate this contract at any time by giving written notice to the other of such termination and specifying the effective date thereof, at least seven (7) days before the effective date of such termination. In the event, all finished or unfinished documents, and other materials, should be at the option of the City to become its property. If the contract is terminated as provided herein, the Consultant fee would be paid in an amount which bears the same ratio to the total compensation as the services actually performed bears to the total services of the Consultant covered by this contract.

VIII.

Personnel: The Consultant represents that it has or will secure at its own expense all personnel required to perform the Services covered by this contract.

IX.

Data and Assistance to be Furnished to Consultant: It is agreed that the City of Allen will provide all necessary project information to include:

1. Web-based access to GIS shape files for existing right-of-way and boundary lines.
2. Current aerial photographs and topographic contours in digital format.
3. Assistance in obtaining digital files for planned or completed improvements and studies on adjacent properties from third party developers or consultants.

X.

Ownership and Use of Materials: All materials prepared by the Consultant shall become the property of the City. The City shall have unrestricted authority to publish, disclose, distribute, and otherwise use, in whole or in part, any reports, data, or other materials prepared under this contract in accordance with the Texas Engineering Practice Act.

XI.

Independent Contractor: Consultant certifies that the firm is an independent contractor, and none of its contractors, employees, agents, or independent workmen shall be deemed an employee of the City of Allen for any purpose whatsoever.

XII.

Representations: Both the Consultant and the City represent that they have full capacity and authority to grant all rights and assume all obligations that they have granted and assumed under this Agreement.

XIII.

Governing Law: The validity of the Agreement and any of its terms or provisions, as well as the rights and duties of the parties, shall be governed by the law of the State of Texas and any venue for any action concerning the Agreement shall be in Collin County, Texas.

XIV.

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

XV.

Sub-consultants: The Consultant may employ sub-consultants to perform the duties outlined in the scope of services in Section II. All sub-consultants must have prior approval of the City before the beginning of work.

XVI.

Notices: All notices to the parties shall be in writing and shall be sent to the address of the party as it appears in this Agreement.

Owner

City of Allen
Peter H. Vargas, City Manager
305 Century Parkway
Allen, Texas 75013

Consultant

Teague Nall and Perkins, Inc.
Mark J. Holliday, Principal
12160 N. Abrams Rd, Ste 508
Dallas, Texas 75243

IN WITNESS WHEREOF, the parties hereto have affixed their signatures, the date and year first above written.

CITY OF ALLEN, TEXAS

TEAGUE NALL AND PERKINS, INC.

By: _____
Peter H. Vargas, City Manager

By: _____
Mark J. Holliday, Principal

Date: _____

Date: _____

ATTEST:

ATTEST:

Shelley George, City Secretary

CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:

Award Bid and Authorize the City Manager to Execute a Contract with Durable Specialties, Inc. to Purchase Equipment and Installation of Four Traffic Signals within the City of Allen for an Amount of \$471,658.40 and Establish a Project Budget in the Amount of \$710,644

STAFF RESOURCE:

John Baumgartner, Director of Engineering

PREVIOUS COUNCIL ACTION:

On November 25, 2008, City Council authorized the City Manager to approve multiple purchases for signal upgrade equipment and to amend the project budget.

On December 9, 2008, the City Council authorized the City Manager to approve two contracts for the purchase of signal upgrade equipment for the Signal Upgrade Project (ST0312), the Traffic Signal Retiming Project (ST0810) and the 2009 Traffic Signal Project (ST0811).

ACTION PROPOSED:

Award bid and authorize the City Manager to execute a contract with Durable Specialties, Inc. to purchase equipment and installation of four traffic signals within the City of Allen for an amount of \$471,658.40 and establish a project budget in the amount of \$710,644

BACKGROUND

Included in this project are four new traffic signals located at –

- ¹ Alma Drive and Comanche Drive
- ¹ Exchange Parkway and Bray Central Drive
- ¹ Exchange Parkway and Allen Station Parkway
- ¹ McDermott Drive and Cedar Drive

On April 9, 2009 a total of 5 bids were received for this project.

The table below summarizes bids received for this work:

Contractor	Calendar Days	Bid Amount
Durable Specialties	180	\$471,658.40
Roadway Solutions	185	\$489,800.00
Republic ITS	232	\$495,058.90
Battson Contracting	92	\$504,905.73
Mel's Electric	180	\$526,525.05

These four new traffic signals will be integrated with the traffic signals that have been upgraded and will be standardized with our traffic signal system hardware, remote management with the traffic signal operations from a central control center, and be updated with traffic signal timing plans.

BUDGETARY IMPACT

This project will be funded from a variety of funding sources and reprogramming of funds from completed projects.

Estimated project budget is as follows:

Description	Cost
Engineering Services	\$50,975.00
Equipment	\$111,040.00
Installation and Equipment	\$471,658.40
Contingency	\$76,970.60
TOTAL	\$710,644.00

Project funding sources are as follows:

Description	Amount
FY08 Budget	\$300,000
Fund 001 – 1801 Strategic	\$150,000
Closed project ST0809 (Bethany Traffic Signals)	\$5,500
Closed project ST0601 (Fire Stations 2 & 3 Emergency Traffic Signals)	\$4,782
Closed project ST0702 (Exchange Parkway Signals)	\$10,362
Closed Facilities Agreement-Bethany	\$190,000
Fund 550 (School Safety)	\$50,000
TOTAL	\$710,644

STAFF RECOMMENDATION

Staff recommends that Council authorize the City Manager to execute a contract with Durable Specialties for equipment and installation of four traffic signals in the amount of \$471,658.40 and establish a project budget.

MOTION

I make a motion to authorize the City Manager to execute a contract with Durable Specialties, Inc. for equipment and installation of four (4) traffic signals within the City for an amount of \$471,658.40 and establish a project budget in the amount of \$710,644.

ATTACHMENT

Location Map
Standard Form Agreement

STANDARD FORM OF AGREEMENT

STATE OF TEXAS }

COUNTY OF COLLIN }

THIS AGREEMENT, made and entered into this _____ day of _____, A.D. 2009, by and between _____ The City of Allen, Texas, a municipal corporation, of the County of _____ Collin _____ and State of Texas, acting through _____ Its City Manager _____ thereunto duly authorized so to do, Party of the First Part, hereinafter termed OWNER, and _____

_____ of the City of _____, County of _____ and State of _____, Party of the Second Part, hereinafter termed CONTRACTOR.

WITNESSETH: That for and in consideration of the payments and agreements hereinafter mentioned, to be made and performed by the Party of the First Part (OWNER), and under the conditions expressed in the bond bearing even date herewith, the said Party of the Second Part (CONTRACTOR), hereby agrees with the said Party of the First Part (OWNER) to commence and complete the construction of certain improvements described as follows:

CIP No. ST0811 – CONSTRUCTION OF NEW TRAFFIC SIGNALS BID # 2009-2-96

and all extra work in connection therewith, under the terms as stated in the General Conditions of the Agreement and at his (or their) own proper cost and expense to furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said construction, in accordance with the conditions and prices stated in the Proposal attached hereto, and in accordance with the Notice to Contractors, General and Special Conditions of Agreement, Plans and other drawings and printed or written explanatory matter thereof, and the Specifications and addenda therefor, as prepared by **City of Allen, 305 Century Parkway, Allen, TX 75013** herein entitled the ENGINEER, each of which has been identified by the CONTRACTOR and the ENGINEER, together with the CONTRACTOR'S written Proposal, and the General Conditions of the Agreement hereto attached; all of which are made a part hereof and collectively evidence and constitute the entire contract.

The CONTRACTOR hereby agrees to commence work within ten (10) days after the date written notice to do so shall have been given to him, and to substantially complete the same within _____ **calendar days** after the date of the written notice to commence work, subject to such extensions of time as are provided by the General and Special Conditions.

THE OWNER agrees to pay the CONTRACTOR in current funds the price or prices shown in the proposal, which forms a part of this contract, such payments to be subject to the General and Special Conditions of the contract.

IN WITNESS WHEREOF, the parties to these presents have executed this Agreement in the year and day first above written.

CITY OF ALLEN, TEXAS
Party of the First Part (OWNER)

By: _____
Peter H. Vargas, City Manager

Attest: _____
Shelley B. George, City Secretary

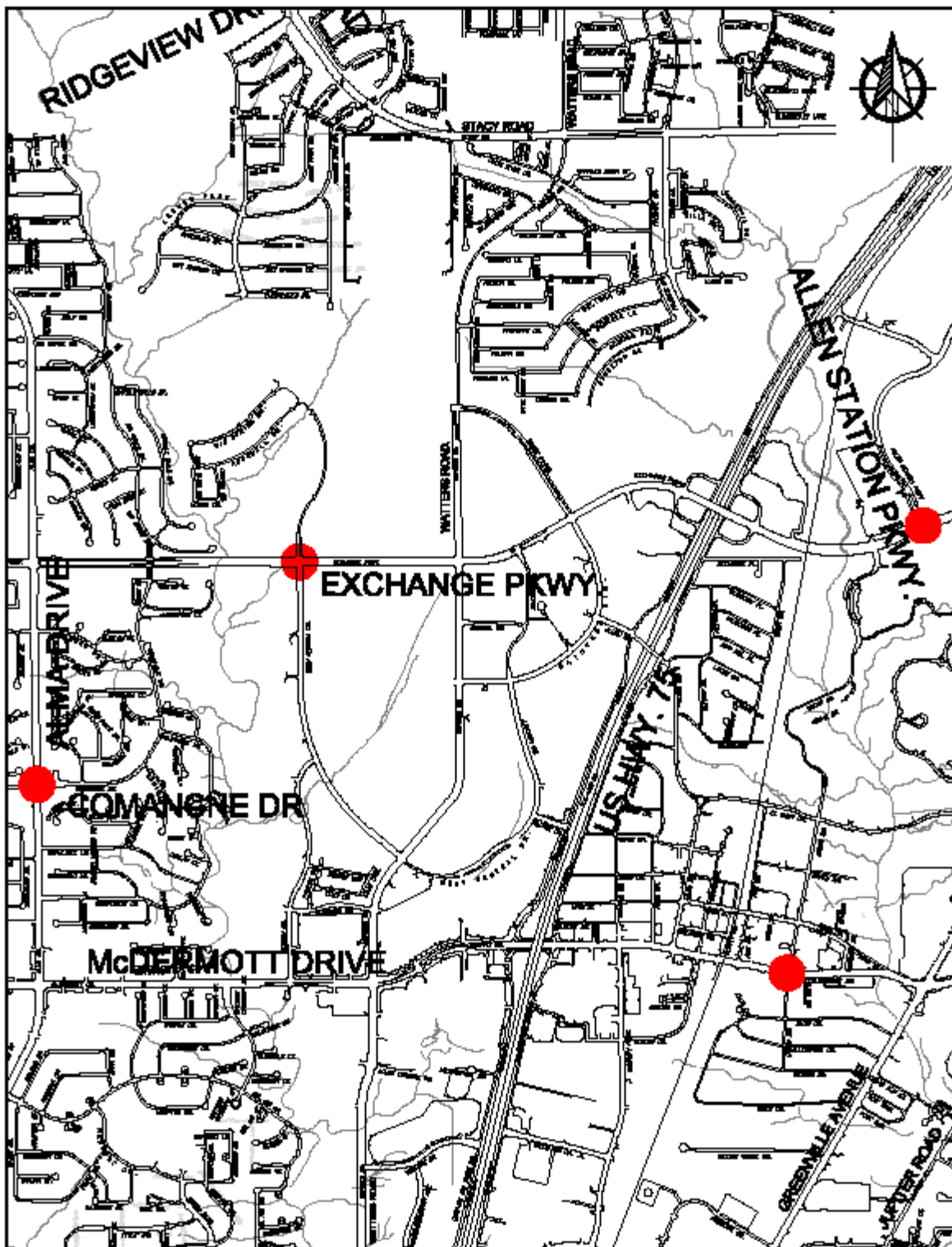
Party of the Second Part (CONTRACTOR)

By: _____

Attest: _____

(THIS PAGE LEFT INTENTIONALLY BLANK)

Location Map



CITY COUNCIL AGENDA COMMUNICATION
--

AGENDA DATE:

April 14, 2009

SUBJECT:

Conduct a Public Hearing and Adopt an Ordinance Considering a Request for an Amendment to PD Planned Development No. 73 for SC Shopping Center Uses, for an Amendment to the Sign Plan for the Development of 167± Acres for The Village at Allen Located at the Southeast Corner of US 75 and Stacy Road

STAFF RESOURCE:

Ogden "Bo" Bass
Director of Planning and Development

BOARD/COMMISSION ACTION:

A Public Hearing was held at the Planning and Zoning Commission meeting on April 7, 2009. The Planning and Zoning Commission voted unanimously to recommend approval of the zoning amendment.

ACTION PROPOSED:

Conduct a Public Hearing and Adopt an Ordinance Considering a Request for an Amendment to PD Planned Development No. 73 for SC Shopping Center Uses, for an Amendment to the Sign Plan for the Development of 167± Acres for The Village at Allen Located at the Southeast Corner of US 75 and Stacy Road

BACKGROUND

The property is located at the southeast corner of US 75 and Stacy Road. The property to the north of Stacy Road, is the Town of Fairview. The property to the east is zoned R-5 Residential; the property to the south is zoned R-5 and R-7 Residential, and PD Planned Development No. 58 for LI Light Industrial. To the west is US 75.

A sign plan accompanied the original ordinance for this development. At that time some of the actual signage had not been designed yet; therefore a number of signs in the plan were conceptual. Design of this development's signage is now complete. The purpose of the amendment is to modify the original sign plan by providing specific sign details, dimensions

and types for all of the signs in this development.

This item was discussed at the April 7, 2009 Planning and Zoning Commission meeting and a public hearing was held. The Planning Commission recommended approval of the zoning amendment at that meeting.

PUBLIC NOTICE

Notices mailed to property owners within 200 ft. – March 27, 2009.

Newspaper notice published - March 26, 2009.

Public hearing sign installed – March 27, 2009.

STAFF RECOMMENDATION

Staff concurs with the recommendation of the Planning and Zoning Commission.

MOTION

I make a motion to adopt Ordinance No. _____ amending PD Planned Development No. 73 to amend the Sign Plan for The Village at Allen development.

ATTACHMENT

Existing Sign Plan

Property Notice Information

Minutes from 4/7/09 P&Z Meeting

Ordinance

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, AMENDING THE ALLEN LAND DEVELOPMENT CODE ZONING REGULATIONS AND ZONING MAP, AS PREVIOUSLY AMENDED, BY AMENDING “PD” PLANNED DEVELOPMENT NO. 73, ORDINANCE NO. 2577-11-06, AS AMENDED BY ORDINANCE NO. 2668-10-07, BY AMENDING EXHIBIT “B” “DEVELOPMENT REGULATIONS,” SECTION 9, “SIGN REGULATIONS” RELATING TO THE USE AND DEVELOPMENT OF THE VILLAGE AT ALLEN, BEING 168.286± ACRES OUT OF THE HENRY WETSEL SURVEY, ABSTRACT NO. 1026, AND THE F.C. WILMETH SURVEY, ABSTRACT NO. 999, DESCRIBED IN EXHIBIT “A” ATTACHED HERETO; PROVIDING A REPEALING CLAUSE; PROVIDING A RATIFICATION CLAUSE; PROVIDING A SEVERABILITY CLAUSE; PROVIDING A PENALTY OF FINE NOT TO EXCEED \$2000.00; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Planning and Zoning Commission and the governing body of the City of Allen, in compliance with the laws of the State of Texas and the ordinances of the City of Allen, have given the requisite notices by publication and otherwise, and after holding due hearings and affording a full and fair hearing to all the property owners generally and to all persons interested and situated in the affected area, and in the vicinity thereof, and in the exercise of its legislative discretion, have concluded that the Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, as previously amended, should be amended.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, THAT:

SECTION 1. The Allen Land Development Code Zoning Regulations and Zoning Map of the City of Allen, Collin County, Texas, be amended by amending “PD” Planned Development No. 73, Ordinance No. 2557-11-06, as amended by Ordinance No. 2668-10-07, regarding the regulation of the use and development of 168.286± acres out of the Henry Wetsel Survey, Abstract No. 1026, and the F.C. Wilmeth Survey, Abstract No. 999 more particularly described in Exhibit “A” attached hereto and incorporated herein by reference for all purposes (“the Property”), by amending Exhibit “B” “Development Regulations,” Section 9 “Sign Regulations” by replacing the previously adopted “Sign Type” and “Sign Location Plan” to read in their entirety as set forth in Appendix “A,” attached hereto and incorporated herein by reference.

SECTION 2. Upon the effective date of this Ordinance, the Property shall be used and development only in the manner and for the purposes provided for in the Allen Land Development Code of the City of Allen, Texas, as amended, and “PD” Planned Development No. 73, Ordinance No. 2557-11-06, as amended by Ordinance No. 2668-10-07 and this ordinance.

SECTION 3. All ordinances of the City of Allen in conflict with the provisions of this ordinance shall be, and the same are hereby, repealed; provided, however, that all other provisions of said ordinances not in conflict herewith shall remain in full force and effect.

SECTION 4. Planned Development No. 73, Ordinance No. 2557-11-06, as amended by Ordinance No. 2668-10-07, shall continue in full force and effect, except as amended herein.

SECTION 5. Should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance, or of the Allen Land Development Code, as amended hereby, be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance or the Allen Land Development Code, as amended hereby, which shall remain in full force and effect.

SECTION 6. An offense committed before the effective date of this ordinance is governed by prior law and the provisions of the Allen Land Development Code Zoning Regulations, as amended, in effect when the offense was committed and the former law is continued in effect for this purpose.

SECTION 7. Any person, firm or corporation violating any of the provisions or terms of this ordinance shall be subject to the same penalty as provided for in Allen Land Development Code Zoning Regulations as previously amended, and upon conviction shall be punished by a fine not to exceed the sum of Two Thousand Dollars (\$2,000) for each offense.

SECTION 8. This ordinance shall take effect immediately from and after its passage and publication of the caption in accordance with the provisions of the Charter of the City of Allen, and it is accordingly so ordained.

DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF ALLEN, COLLIN COUNTY, TEXAS, ON THIS THE 14TH DAY OF APRIL, 2009.

APPROVED:

Stephen Terrell, MAYOR

APPROVED AS TO FORM:

ATTEST:

Peter G. Smith, CITY ATTORNEY

Shelley B. George, TRMC, CITY SECRETARY

EXHIBIT "A"
LEGAL DESCRIPTION

BLOCK A

BEING a tract of land situated in the Henry Wetsel Survey, Abstract No. 1026 and the F.C. Wilmeth Survey, Abstract No. 999, and being all of Lots 1-7, Block A, The Village At Allen Addition, an addition to the City of Allen, according to the plat thereof recorded in Cabinet 2008, Page 124, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found for corner at the intersection of the southeasterly right-of-way line of the D.A.R.T. rail (100' R.O.W.) and the south right-of-way line of Stacy Road, (variable width R.O.W.), said 5/8" iron rod also being the northwest corner of said Lot 7, Block A, The Village At Allen Addition;

THENCE along the south right-of-way line of said Stacy Road, the following:

S89°50'24"E, a distance of 21.19 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 239.50 feet;

Along said curve to the right, an arc distance of 19.85 feet through a central angle of 04°44'58" and a chord bearing and distance of S87°28'26"E, 19.85 feet to a 5/8" iron rod found for corner;

S85°05'58"E, a distance of 96.15 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 260.50 feet;

Along said curve to the left, an arc distance of 21.52 feet through a central angle of 04°43'58" and a chord bearing and distance of S87°27'57"E, 21.51 feet to a 5/8" iron rod found for corner;

S89°49'56"E, a distance of 284.86 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 5658.08 feet;

Along said curve to the right, an arc distance of 68.57 feet through a central angle of 00°41'40" and a chord bearing and distance of S89°29'03"E, 68.57 feet to a 5/8" iron rod found for corner;

N00°45'14"E, a distance of 11.50 feet to a 5/8" iron rod found for corner and the beginning of a non-tangent curve to the right having a radius of 5669.58 feet;

Along said non-tangent curve to the right, an arc distance of 51.21 feet through a central angle of 00°31'03" and a chord bearing and distance of S88°52'43"E, 51.21 feet to a 5/8" iron rod found for corner;

S88°37'14"E, a distance of 10.04 feet to a 5/8" iron rod found for corner;

S83°43'05"E, a distance of 123.41 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 260.50 feet;

Along said curve to the left, an arc distance of 22.29 feet through a central angle of $04^{\circ}54'09''$ and a chord bearing and distance of $S86^{\circ}10'09''E$, 22.28 feet to a $5/8''$ iron rod found for corner;

$S88^{\circ}37'14''E$, a distance of 314.53 feet to a $5/8''$ iron rod found for corner;

$N01^{\circ}22'46''E$, a distance of 11.50 feet to a $5/8''$ iron rod found for corner;

$S88^{\circ}37'14''E$, a distance of 74.56 feet to a $5/8''$ iron rod found for corner;

$S83^{\circ}44'38''E$, a distance of 124.18 feet to a $5/8''$ iron rod found for corner and the beginning of a curve to the left having a radius of 260.50 feet;

Along said curve to the left, an arc distance of 22.17 feet through a central angle of $04^{\circ}52'36''$ and a chord bearing and distance of $S86^{\circ}10'56''E$, 22.17 feet to a $5/8''$ iron rod found for corner;

$S88^{\circ}37'14''E$, a distance of 192.51 feet to a $5/8''$ iron rod found for corner at the intersection of the south right-of-way line of said Stacy Road and the westerly right-of-way line of Allen Station Parkway (variable width R.O.W.);

THENCE leaving the south right-of-way line of said Stacy Road and along the westerly right-of-way line of said Allen Station Parkway the following:

$S43^{\circ}37'14''E$, a distance of 43.50 feet to a $5/8''$ iron rod found for corner;

$S01^{\circ}22'46''W$, a distance of 76.18 feet to a $5/8''$ iron rod found for corner and the beginning of a curve to the left having a radius of 518.50 feet;

Along said curve to the left, an arc distance of 150.13 feet through a central angle of $16^{\circ}35'22''$ and a chord bearing and distance of $S06^{\circ}54'55''E$, 149.60 feet to a $5/8''$ iron rod found for corner;

$N74^{\circ}47'24''E$, a distance of 10.00 feet to a $5/8''$ iron rod found for corner and the beginning of a non-tangent curve to the left having a radius of 508.50 feet;

Along said non-tangent curve to the left, an arc distance of 114.59 feet through a central angle of $12^{\circ}54'40''$ and a chord bearing and distance of $S21^{\circ}39'56''E$, 114.34 feet to a $5/8''$ iron rod found for corner and the beginning of a reverse curve to the right having a radius of 238.00 feet;

Along said reverse curve to the right, an arc distance of 19.93 feet through a central angle of $04^{\circ}47'50''$ and a chord bearing and distance of $S25^{\circ}43'21''E$, 19.92 feet to a $5/8''$ iron rod found for corner and the beginning of a reverse curve to the left having a radius of 379.50 feet;

Along said reverse curve to the left, an arc distance of 38.68 feet through a central angle of $05^{\circ}50'21''$ and a chord bearing and distance of $S26^{\circ}14'37''E$, 38.66 feet to a $5/8''$ iron rod found for corner;

$S29^{\circ}09'47''E$, a distance of 33.64 feet to a $5/8''$ iron rod found for corner and the beginning of a curve to the left having a radius of 261.50 feet;

Along said curve to the left, an arc distance of 25.67 feet through a central angle of $05^{\circ}37'29''$ and a chord bearing and distance of $S31^{\circ}58'32''E$, 25.66 feet to a $5/8''$ iron rod found for corner;

$S34^{\circ}47'16''E$, a distance of 173.07 feet to a $5/8''$ iron rod found for corner;

$N55^{\circ}12'44''E$, a distance of 10.00 feet to a $5/8''$ iron rod found for corner;

S34°47'16"E, a distance of 65.53 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 620.00 feet;

Along said curve to the right, an arc distance of 77.68 feet through a central angle of 07°10'43" and a chord bearing and distance of S31°11'55"E, 77.63 feet to a 5/8" iron rod found for corner and the beginning of a compound curve to the right having a radius of 188.00 feet;

Along said compound curve to the right, an arc distance of 59.29 feet through a central angle of 18°04'06" and a chord bearing and distance of S18°34'30"E, 59.04 feet to a 5/8" iron rod found for corner;

S09°32'27"E, a distance of 111.00 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 272.50 feet;

Along said curve to the left, an arc distance of 7.19 feet through a central angle of 01°30'40" and a chord bearing and distance of S10°17'47"E, 7.19 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the right having a radius of 599.00 feet;

Along said reverse curve to the right, an arc distance of 232.21 feet through a central angle of 22°12'42" and a chord bearing and distance of S00°03'13"W, 230.76 feet to a 5/8" iron rod found for corner;

S78°50'26"E, a distance of 21.00 feet to a 5/8" iron rod found for corner and the beginning of a non-tangent curve to the right having a radius of 620.00 feet;

Along said non-tangent curve to the right, an arc distance of 103.33 feet through a central angle of 09°32'55" and a chord bearing and distance of S15°56'01"W, 103.21 feet to a 5/8" iron rod found for corner;

S20°42'29"W, a distance of 76.10 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 238.50 feet;

Along said curve to the right, an arc distance of 26.13 feet through a central angle of 06°16'38" and a chord bearing and distance of S23°50'48"W, 26.12 feet to a 5/8" iron rod found for corner;

S26°59'07"W, a distance of 64.04 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 261.50 feet;

Along said curve to the left, an arc distance of 28.65 feet through a central angle of 06°16'38" and a chord bearing and distance of S23°50'48"W, 28.64 feet to a 5/8" iron rod found for corner;

S20°42'29"W, a distance of 184.29 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 522.00 feet;

Along said curve to the left, an arc distance of 3.62 feet through a central angle of 00°47'35" and a chord bearing and distance of S59°58'25"W, 3.62 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the right having a radius of 512.00 feet;

Along said reverse curve to the right, an arc distance of 161.18 feet through a central angle of 18°02'11" and a chord bearing and distance of S68°35'43"W, 160.51 feet to a 5/8" iron rod found for corner;

S12°23'12"E, a distance of 10.00 feet to a 5/8" iron rod found for corner and the beginning of a non-tangent curve to the right having a radius of 522.00 feet;

Along said non-tangent curve to the right, an arc distance of 94.63 feet through a central angle of $10^{\circ}23'12''$ and a chord bearing and distance of $S82^{\circ}48'24''W$, 94.50 feet to a 5/8" iron rod found for corner;

$S88^{\circ}00'00''W$, a distance of 542.91 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 238.50 feet;

Along said curve to the right, an arc distance of 25.83 feet through a central angle of $06^{\circ}12'18''$ and a chord bearing and distance of $N88^{\circ}53'51''W$, 25.82 feet to a 5/8" iron rod found for corner;

$N85^{\circ}47'42''W$, a distance of 65.42 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 261.50 feet;

Along said curve to the left, an arc distance of 28.32 feet through a central angle of $06^{\circ}12'18''$ and a chord bearing and distance of $N88^{\circ}53'51''W$, 28.31 feet to a 5/8" iron rod found for corner;

$S88^{\circ}00'00''W$, a distance of 170.97 feet to a 5/8" iron rod found for corner;

$S02^{\circ}00'00''E$, a distance of 10.00 feet to a 5/8" iron rod found for corner;

$S88^{\circ}00'00''W$, a distance of 259.95 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 795.00 feet;

Along said curve to the left, an arc distance of 200.22 feet through a central angle of $14^{\circ}25'47''$ and a chord bearing and distance of $S80^{\circ}47'07''W$, 199.69 feet to a 5/8" iron rod found for corner;

$S77^{\circ}24'38''W$, a distance of 59.32 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 261.50 feet;

Along said curve to the left, an arc distance of 54.56 feet through a central angle of $11^{\circ}57'12''$ and a chord bearing and distance of $S71^{\circ}26'02''W$, 54.46 feet to a 5/8" iron rod found for corner and the beginning of a compound curve to the left having a radius of 805.00 feet;

Along said compound curve to the left, an arc distance of 154.81 feet through a central angle of $11^{\circ}01'07''$ and a chord bearing and distance of $S59^{\circ}56'52''W$, 154.57 feet to a 5/8" iron rod found for corner;

$S35^{\circ}33'41''E$, a distance of 10.00 feet to a 5/8" iron rod found for corner and the beginning of a non-tangent curve to the left having a radius of 795.00 feet;

Along said non-tangent curve to the left, an arc distance of 405.69 feet through a central angle of $29^{\circ}14'17''$ and a chord bearing and distance of $S39^{\circ}49'10''W$, 401.30 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the right having a radius of 238.50 feet;

Along said reverse curve to the right, an arc distance of 24.35 feet through a central angle of $05^{\circ}50'55''$ and a chord bearing and distance of $S28^{\circ}07'29''W$, 24.34 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the left having a radius of 1011.50 feet;

Along said reverse curve to the left, an arc distance of 130.39 feet through a central angle of $07^{\circ}23'10''$ and a chord bearing and distance of $S27^{\circ}21'22''W$, 130.30 feet to a 5/8" iron rod found for corner;

$S23^{\circ}39'47''W$, a distance of 69.28 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 595.00 feet;

Along said curve to the right, an arc distance of 104.86 feet through a central angle of $10^{\circ}05'50''$ and a chord bearing and distance of $S28^{\circ}42'49''W$, 104.72 feet to a 5/8" iron rod found for corner at the intersection of the westerly right-of-way line of said Allen Station Parkway and the northerly right-of-way line of Village Drive (variable width R.O.W.);

THENCE along the northerly right-of-way line of said Village Drive the following;

$S82^{\circ}35'56''W$, a distance of 33.70 feet to a 5/8" iron rod found for corner;

$N49^{\circ}45'59''W$, a distance of 59.75 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 1155.00 feet;

Along said curve to the left, an arc distance of 129.29 feet through a central angle of $06^{\circ}24'48''$ and a chord bearing and distance of $N52^{\circ}43'43''W$, 129.22 feet to a 5/8" iron rod found for corner;

$N63^{\circ}32'19''W$, a distance of 133.98 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 1145.00 feet;

Along said curve to the left, an arc distance of 149.75 feet through a central angle of $07^{\circ}29'36''$ and a chord bearing and distance of $N66^{\circ}20'33''W$, 149.64 feet to a 5/8" iron rod found for corner;

$N70^{\circ}17'10''W$, a distance of 563.22 feet to a 5/8" iron rod found for corner at the intersection of the northerly right-of-way line of said Village Drive and the southeasterly right-of-way line of D.A.R.T. rail (100' R.O.W.), said 5/8" iron rod also being the beginning of a non-tangent curve to the right having a radius of 2814.79 feet;

THENCE continuing along said southeasterly right-of-way line and said non-tangent curve to the right, an arc distance of 733.43 feet through a central angle of $14^{\circ}55'45''$ and a chord bearing and distance of $N30^{\circ}29'39''E$, 731.36 feet to a 5/8" iron rod found for corner;

THENCE $N38^{\circ}04'40''E$, continuing along said southeasterly right-of-way line, a distance of 2142.07 feet to the POINT OF BEGINNING and containing 5,442,628 square feet or 124.945 acres of land, more or less.

BLOCK B

BEING a tract of land situated in the Henry Wetsel Survey, Abstract No. 1026 and the F.C. Wilmeth Survey, Abstract No. 999, and being all of Lots 1 and 2, Block B, The Village At Allen Addition, an addition to the City of Allen, according to the plat thereof recorded in Cabinet 2008, Page 124, Plat Records, Collin County, Texas (P.R.C.C.T.), and being more particularly described as follows:

BEGINNING at a 5/8" iron rod found for corner at the northwesterly corner of said Lot 1, Block B, The Village At Allen Addition, said iron rod also being at the intersection of the south right-of-way line of Stacy Road (variable width R.O.W.) and the easterly right-of-way line of Allen Station Parkway (variable width R.O.W.);

THENCE $S88^{\circ}37'14''E$, leaving the easterly right-of-way line of said Allen Station Parkway and along the south right-of-way line of said Stacy Road, a distance of 600.02 feet to a 5/8" iron rod found for corner at the northeast corner of said Lot 1, Block B;

THENCE along the easterly lines of said Lot 1 and Lot 2, Block B, the following:

$S00^{\circ}34'49''W$, a distance of 581.25 feet to a 1/2" iron rod found for corner;

S20°42'29"W, a distance of 1420.88 feet to a 1/2" iron rod found for corner;

S20°54'44"W, a distance of 1281.13 feet to a 1/2" iron rod found for corner and the southeasterly corner of said Lot 2, Block B;

THENCE along the southerly line of said Lot 2, Block B, the following;

N66°01'53"W, a distance of 1132.16 feet to a 5/8" iron rod found for corner;

N00°28'13"E, a distance of 73.32 feet to a 1/2" iron rod found for corner;

N88°19'05"W, a distance of 416.72 feet to a capped iron rod found for corner;

N88°49'56"W, a distance of 328.45 feet to a 5/8" iron rod found for corner in the easterly right-of-way of aforementioned Allen Station Parkway;

THENCE along the easterly right-of-way line of said Allen Station Parkway the following:

N18°56'57"E, a distance of 78.16 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 238.50 feet;

Along said curve to the right, an arc distance of 18.65 feet through a central angle of 04°28'48" and a chord bearing and distance of N21°11'21"E, 18.64 feet to a 5/8" iron rod found for corner and the beginning of a compound curve to the right having a radius of 705.00 feet;

Along said compound curve to the right, an arc distance of 212.62 feet through a central angle of 17°16'46" and a chord bearing and distance of N32°04'08"E, 211.81 feet to a 5/8" iron rod found for corner and the beginning of a compound curve to the right having a radius of 238.50 feet;

Along said compound curve to the right, an arc distance of 26.35 feet through a central angle of 06°19'50" and a chord bearing and distance of N48°08'43"E, 26.34 feet to a 5/8" iron rod found for corner;

N51°18'38"E, a distance of 70.09 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 261.50 feet;

Along said curve to the left, an arc distance of 9.11 feet through a central angle of 01°59'46" and a chord bearing and distance of N50°18'45"E, 9.11 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the right having a radius of 695.00 feet;

Along said reverse curve to the right, an arc distance of 146.80 feet through a central angle of 12°06'07" and a chord bearing and distance of N55°21'55"E, 146.52 feet to a 5/8" iron rod found for corner;

N28°35'01"W, a distance of 10.00 feet to a 5/8" iron rod found for corner and the beginning of a non-tangent curve to the right having a radius of 705.00 feet;

Along said non-tangent curve to the right, an arc distance of 327.10 feet through a central angle of 26°35'01" and a chord bearing and distance of N74°42'29"E, 324.18 feet to a 5/8" iron rod found for corner;

N88°00'00"E, a distance of 90.08 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 238.50 feet;

Along said curve to the right, an arc distance of 26.13 feet through a central angle of 06°16'38" and a chord bearing and distance of S88°51'41"E, 26.12 feet to a 5/8" iron rod found for corner;

S85°43'22"E, a distance of 64.04 feet to a 5/8" iron rod found for corner and the beginning of a curve to the left having a radius of 261.50 feet;

Along said curve to the left, an arc distance of 28.65 feet through a central angle of 06°16'38" and a chord bearing and distance of S88°51'41"E, 28.63 feet to a 5/8" iron rod found for corner;

N88°00'00"E, a distance of 170.81 feet to a 5/8" iron rod found for corner;

N02°00'00"W, a distance of 10.00 feet to a 5/8" iron rod found for corner;

N88°00'00"E, a distance of 654.67 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 238.50 feet;

Along said curve to the right, an arc distance of 44.05 feet through a central angle of 10°34'57" and a chord bearing and distance of S86°42'32"E, 43.99 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the left having a radius of 261.50 feet;

Along said reverse curve to the left, an arc distance of 72.13 feet through a central angle of 15°48'14" and a chord bearing and distance of S89°19'10"E, 71.90 feet to a 5/8" iron rod found for corner and the beginning of a compound curve to the left having a radius of 622.00 feet;

Along said compound curve to the left, an arc distance of 194.55 feet through a central angle of 17°55'15" and a chord bearing and distance of N73°49'05"E, 193.76 feet to a 5/8" iron rod found for corner;

N25°08'32"W, a distance of 10.00 feet to a 5/8" iron rod found for corner and the beginning of a non-tangent curve to the left having a radius of 612.00 feet;

Along said non-tangent curve to the left, an arc distance of 471.58 feet through a central angle of 44°08'59" and a chord bearing and distance of N42°46'58"E, 460.00 feet to a 5/8" iron rod found for corner;

N20°42'29"E, a distance of 210.65 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 698.00 feet;

Along said curve to the right, an arc distance of 82.95 feet through a central angle of 06°48'31" and a chord bearing and distance of N24°06'44"E, 82.90 feet to a 5/8" iron rod found for corner and the beginning of a reverse curve to the left having a radius of 720.00 feet;

Along said reverse curve to the left, an arc distance of 752.17 feet through a central angle of 59°51'21" and a chord bearing and distance of N02°24'41"W, 718.43 feet to a 5/8" iron rod found for corner;

N33°30'38"W, a distance of 29.49 feet to a 5/8" iron rod found for corner;

N34°47'16"W, a distance of 190.50 feet to a 5/8" iron rod found for corner;

S55°12'44"W, a distance of 10.00 feet to a 5/8" iron rod found for corner;

N34°47'16"W, a distance of 130.35 feet to a 5/8" iron rod found for corner and the beginning of a curve to the right having a radius of 189.00 feet;

Along said curve to the right, an arc distance of 54.42 feet through a central angle of $16^{\circ}29'46''$ and a chord bearing and distance of $N26^{\circ}32'23''W$, 54.23 feet to a $5/8''$ iron rod found for corner and the beginning of a compound curve to the right having a radius of 411.86 feet;

Along said compound curve to the right, an arc distance of 80.72 feet through a central angle of $11^{\circ}13'46''$ and a chord bearing and distance of $N12^{\circ}40'37''W$, 80.59 feet to a $5/8''$ iron rod found for corner and the beginning of a reverse curve to the left having a radius of 261.50 feet;

Along said reverse curve to the left, an arc distance of 16.80 feet through a central angle of $03^{\circ}40'51''$ and a chord bearing and distance of $N08^{\circ}54'10''W$, 16.80 feet to a $5/8''$ iron rod found for corner and the beginning of a reverse curve to the right having a radius of 408.50 feet;

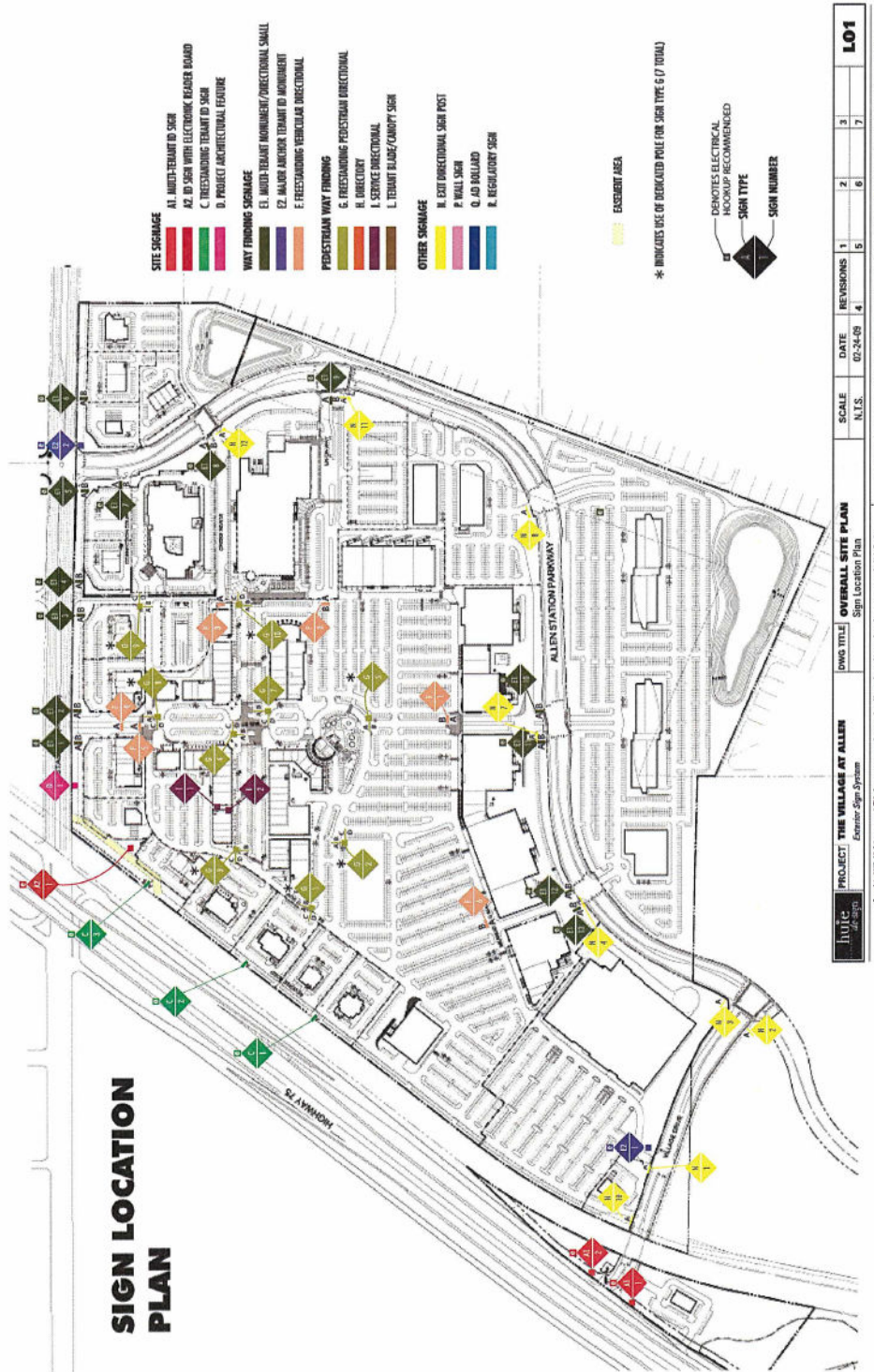
Along said reverse curve to the right, an arc distance of 86.43 feet through a central angle of $12^{\circ}07'21''$ and a chord bearing and distance of $N04^{\circ}40'55''W$, 86.27 feet to a $5/8''$ iron rod found for corner;

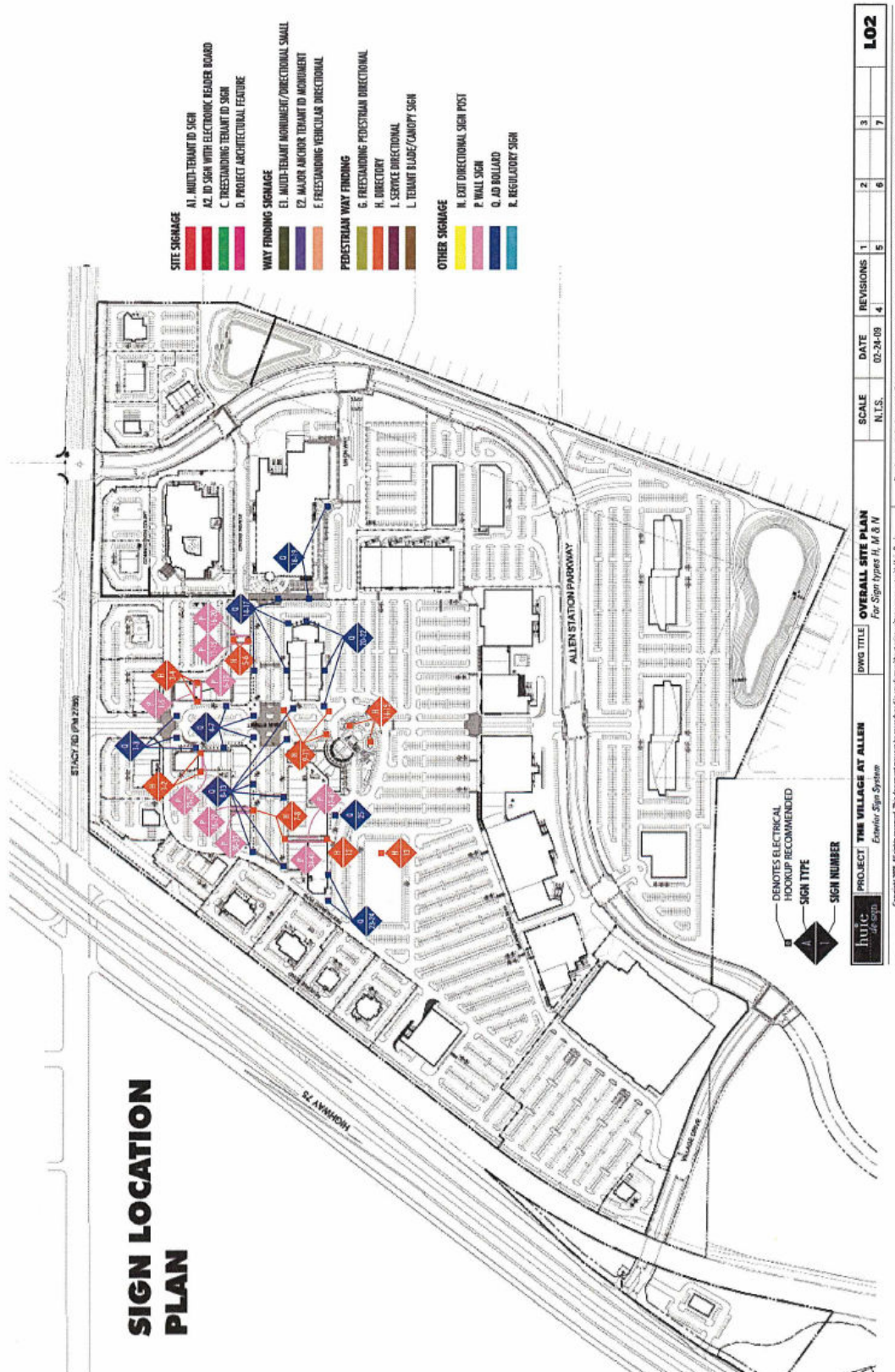
$N01^{\circ}22'46''E$, a distance of 93.43 feet to a $5/8''$ iron rod found for corner;

$N46^{\circ}22'46''E$, a distance of 35.37 feet to the POINT OF BEGINNING and containing 1,918,631 square feet or 43.341 acres of land, more or less.

EXHIBIT "B"
DEVELOPMENT REGULATIONS

APPENDIX "A"
SIGN PLAN





SIGN TYPE	Maximum Height	Maximum Copy Area (Square Feet Per Side)	Max. Structure (Includes copy area)	Maximum Number	Minimum Spacing	Front Yard Setback (min. in feet) Typical is 8-10 ft from curb	Permit Required	Additional Provisions/Comments
VILLAGE AT ALLEN								
A1: MULTI-TENANT ID SIGN (Pylon)	50 FT	400 SF	1500 SF	2	60	N/A		
A2: ID SIGN W/ ELECTRIC MESSAGE BRD	50 FT	700 SF	1800 SF	1	60	N/A		
C: FREESTANDING TENANT ID SIGN	20FT	100SF	160 SF	3	60	8		
D: PROJECT ARCHITECTURAL FEATURE	35 FT	80 SF	280 SF	1	60	3		
E1: MULTI TENANT/DIRECTIONAL MONUMENT	6 - 10 FT	30 SF	64 SF	25	60	5		
E2: TENANT ID/DIRECTIONAL MONUMENT	4 - 8 FT	30 SF	64 SF	2	60	5		
F: FREESTANDING VEHICULAR DIRECTIONAL	14 SF	12 SF	56 SF	9	60	N/A		
G: FREESTANDING PEDESTRIAN DIRECTIONAL	14 FT	12 SF	N/A	11	10	N/A		
H: DIRECTORY	10 FT	25 SF	61 SF	15	30	N/A		
I: SERVICE DIRECTIONAL	4 FT	10 SF	*16 SF	N/A	N/A	N/A		*Total structure area does not include bracket
L: TENANT BLADE/CANOPY SIGN	4 FT	16 SF	*24 SF	*1	N/A	N/A		*Does not include bracket
								*1 per store front Minimum clearance of 7'-6"
								*Does not include bracket
								*2 per store front Minimum clearance of 7'-6"
N: EXIT DIRECTIONAL SIGN POST	8 FT	7 SF	18 SF	12	N/A	N/A		
P: WALL SIGN	8 FT*	25 SF	40 SF	45	N/A	N/A		*MAX HEIGHT OF SIGN FROM TOP TO BOTTOM
Q: AD BOLLARD	13.5 FT	25 SF	91 SF	25	30	N/A		
R: REGULATORY SIGN	N/A	N/A	N/A	N/A	N/A	N/A		Typical DOT post & panel
** LOGO DOES NOT COUNT AS PART OF THE MAXIMUM COPY AREA ON ANY SIGN TYPE**								

PREPARED BY HUIE DESIGN, INC.

130 KROG ST., STUDIO C ATLANTA, GA 30307

404-892-0677

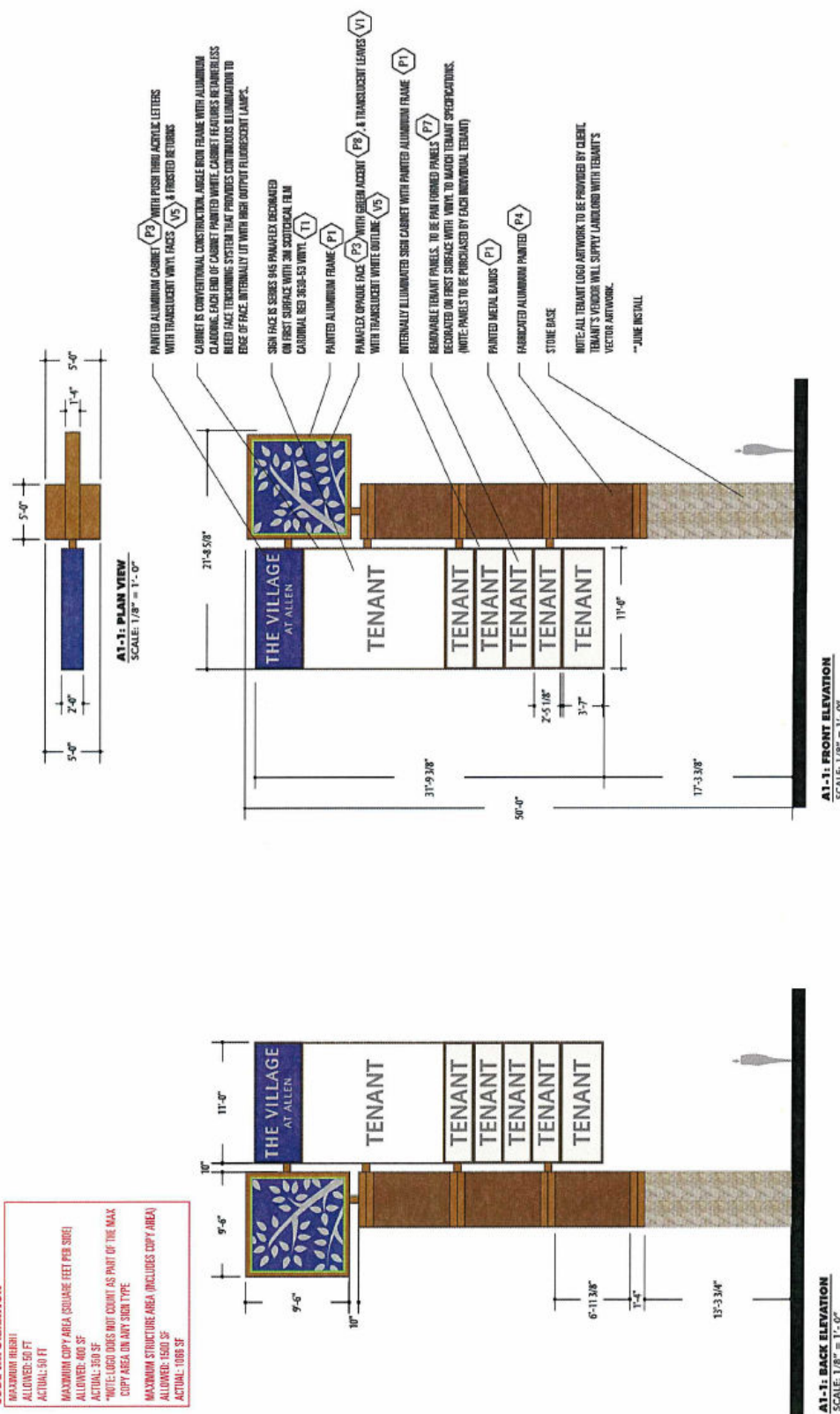
CODE INFORMATION

MAXIMUM HEIGHT:
ALLOWED: 50 FT
ACTUAL: 50 FT

MAXIMUM COPY AREA (SQUARE FEET PER SIDE):
ALLOWED: 400 SF
ACTUAL: 399 SF

*NOTE: LOGO DOES NOT COUNT AS PART OF THE MAX COPY AREA ON ANY SIGN TYPE

MAXIMUM STRUCTURE AREA (INCLUDES COPY AREA):
ALLOWED: 1500 SF
ACTUAL: 1086 SF



JWC:	PROJECT	DWG TITLE	SCALE	DATE	REVISED	1	2	3	10
de sign	THE VILLAGE AT ALLEN	MULTI-TENANT ID SIGN / PYLON	1/8"=1'-0"	02-24-09		5	6	7	
		<i>Sign Type A?</i>			4				

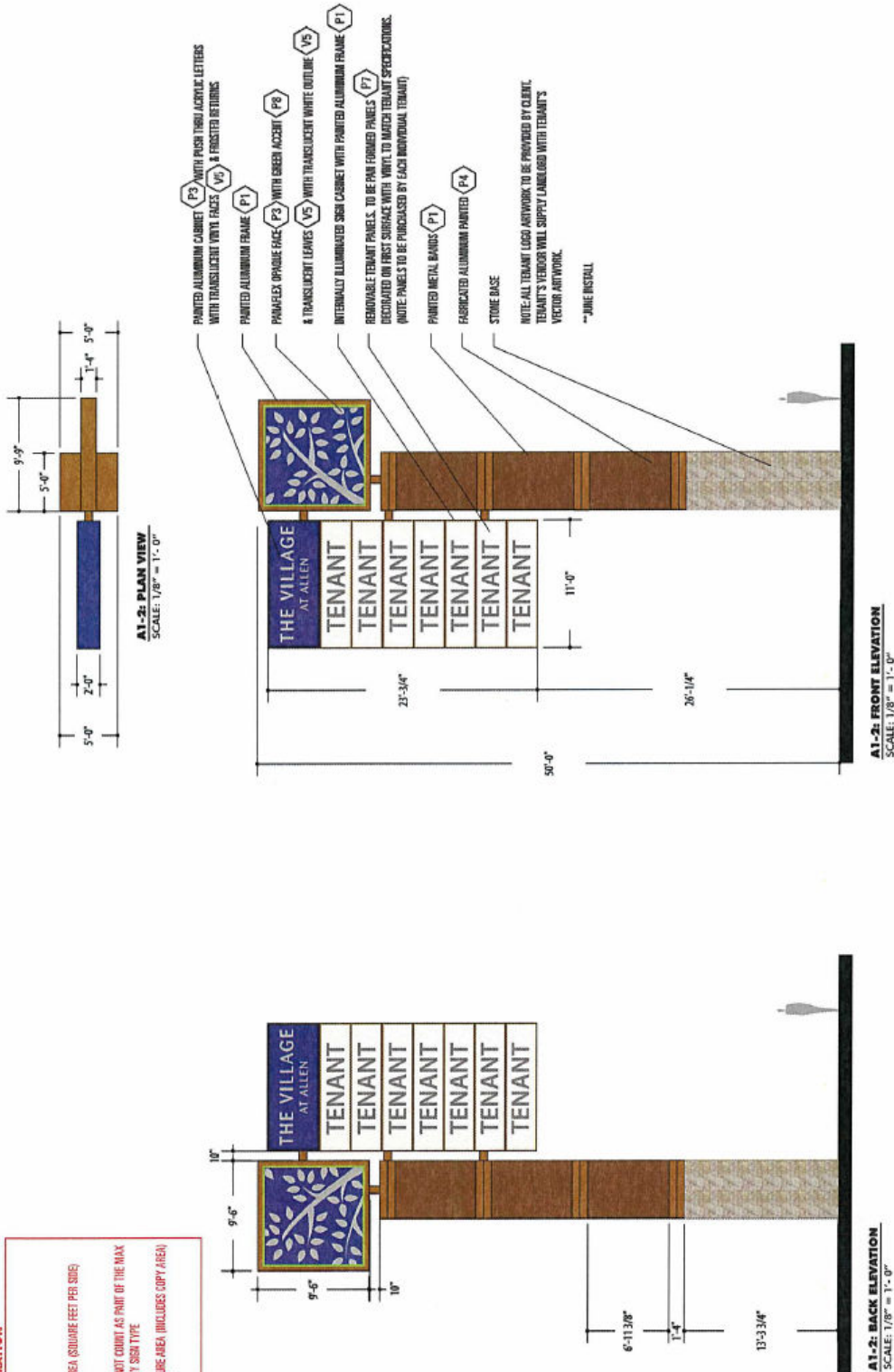
CODE INFORMATION

MAXIMUM HEIGHT
ALLOWED: 50 FT
ACTUAL: 50 FT

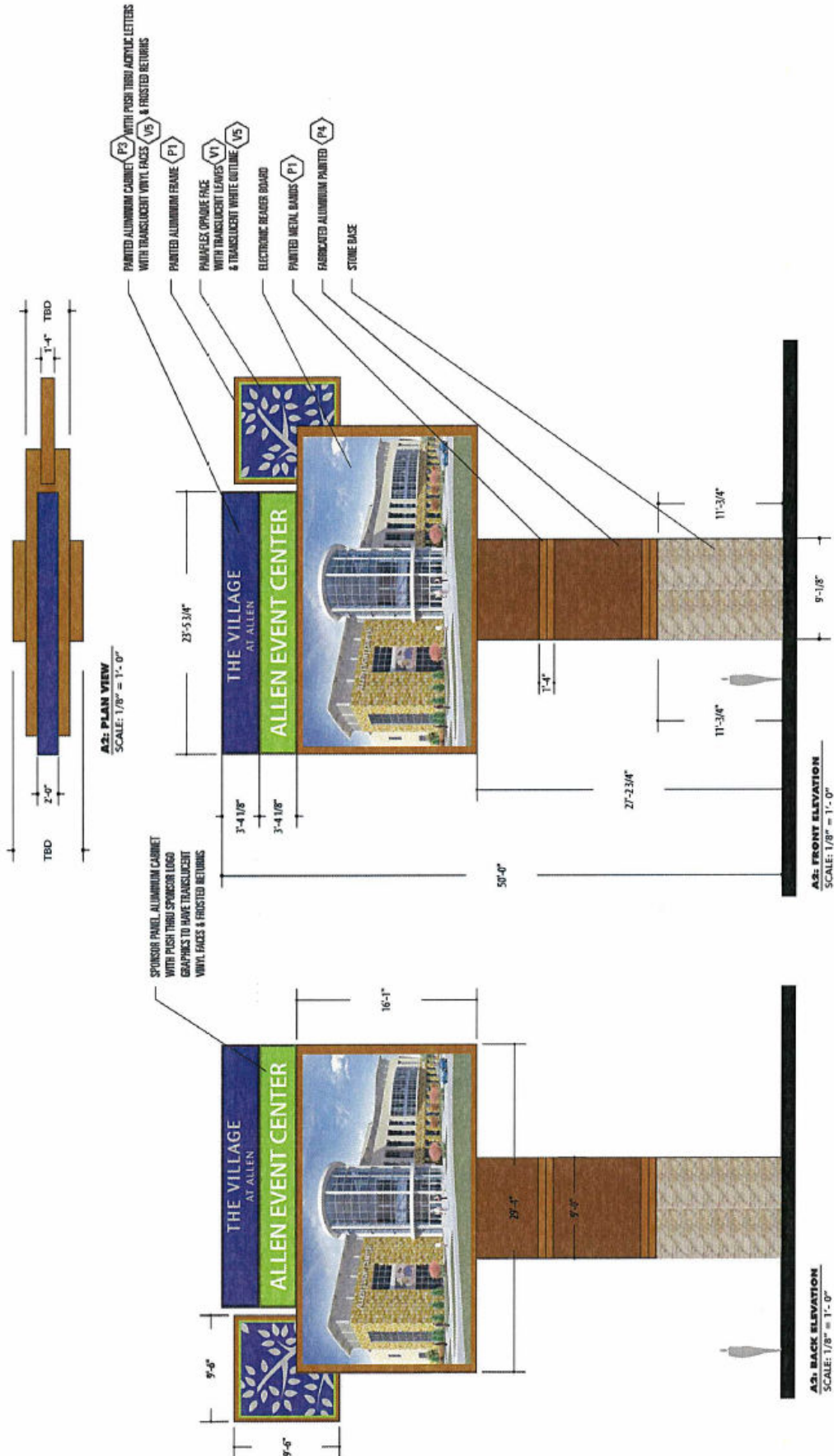
MAXIMUM COPY AREA (SQUARE FEET PER SIDE)
ALLOWED: 400 SF
ACTUAL: 254 SF

***NOTE: LOGO DOES NOT COUNT AS PART OF THE MAX COPY AREA ON ANY SIGN TYPE**

MAXIMUM STRUCTURE AREA (INCLUDES COPY AREA)
ALLOWED: 1500 SF
ACTUAL: 1069 SF

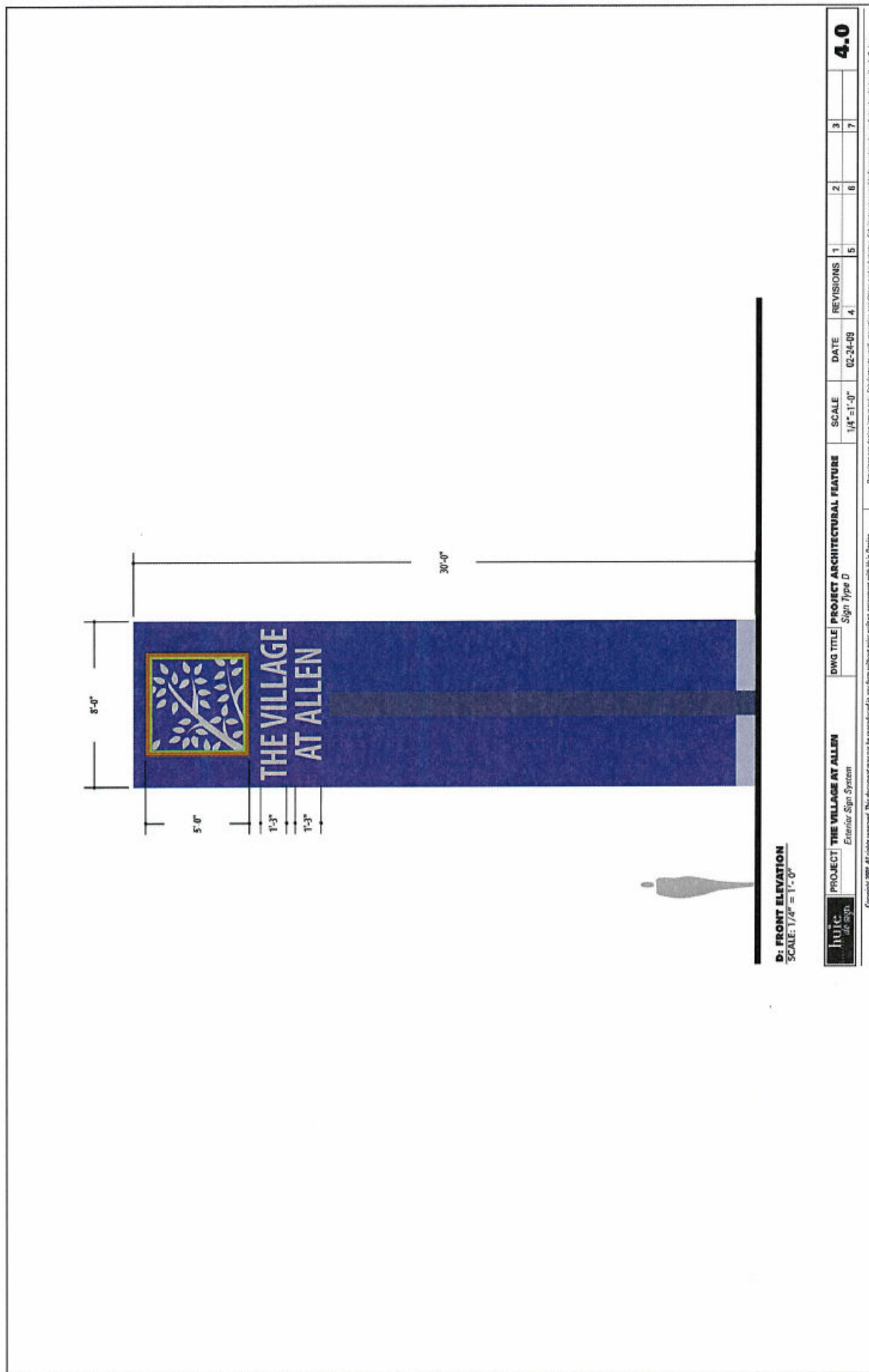


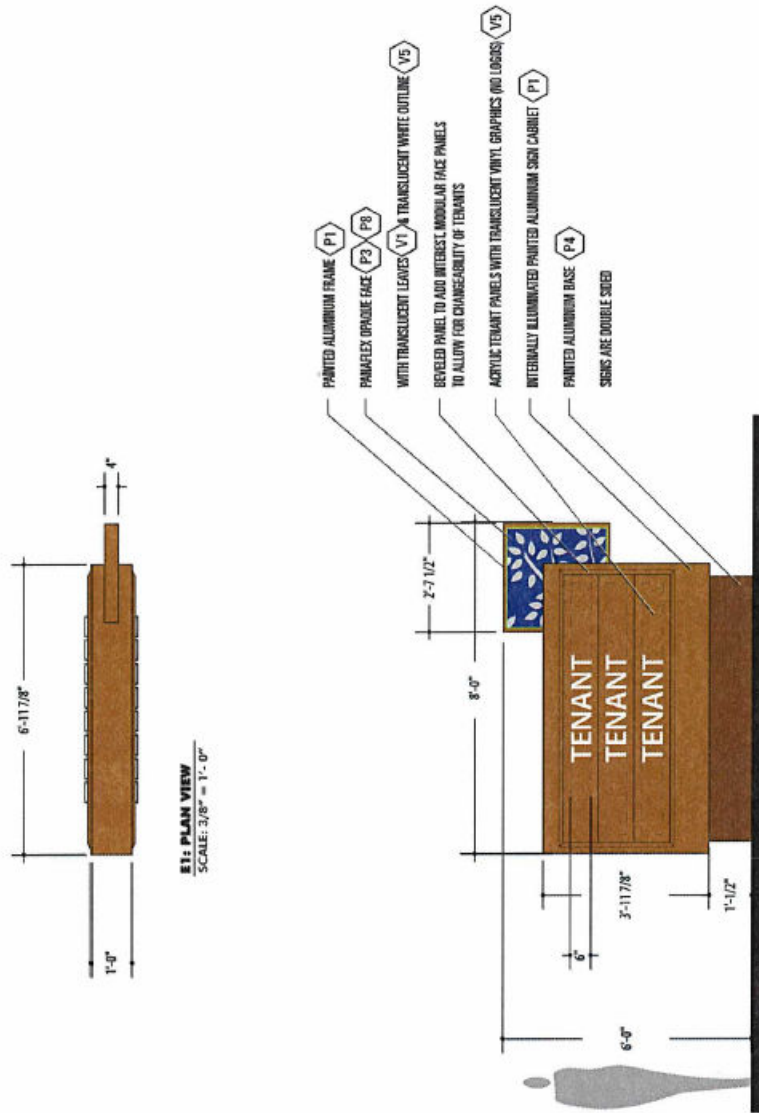
	PROJECT	THE VILLAGE AT ALLEN			
		Exterior Sign System			
	DWG TITLE	MULTI-TINANT ID SIGN/PYLON			
		Sign Type A1			
	SCALE	1/8" = 1'-0"			
	DATE	02-24-09			
	REVISIONS	4.	5	6	7
Copyright 2009 All rights reserved. This document may not be reproduced or used in whole or in part without written consent from Hutic Design. <small>Hutic Design Inc. 1000 West 1st Street, Suite 100, San Jose, CA 95128 Telephone: 408.281.1111 Fax: 408.281.1112 Email: info@huticdesign.com Website: www.huticdesign.com</small>					




	PROJECT	THE VILLAGE AT ALLEN	DWG TITLE	ID WITH ELEC. READER BOARD	REVISIONS						
				Sign Type A2							
				Exterior Sign System							
				Scale: 1/8" = 1'-0"							
				1/8" = 1'-0"							
					2.0						

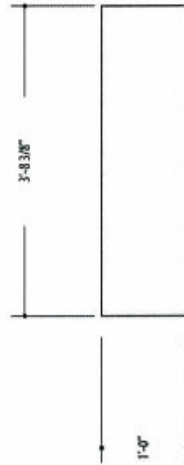
Copyright 2009. All rights reserved. This document may not be reproduced or copied in any form without prior written permission of the design firm. The design firm is not responsible for any errors or omissions in this document. The design firm is not responsible for any errors or omissions in this document. The design firm is not responsible for any errors or omissions in this document.





 huc the sign	PROJECT	THE VILLAGE AT ALLEN <i>Exterior Sign System</i>	DWG TITLE	MULTI-TENANT MONUMENT S.M. <i>Sign Type E1</i>	SCALE	3/8" = 1'-0"	REVISIONS				5.0
							1	2	3		
							4	5	6	7	
DATE							02-24-09				

Copyright 2008. All rights reserved. This document may not be reproduced or any form without prior written agreement with Huc Design. Drawings are design concept only. Fabricator to verify existing conditions and substrates. Fabricator responsible for engineering and structural integrity of all signs.



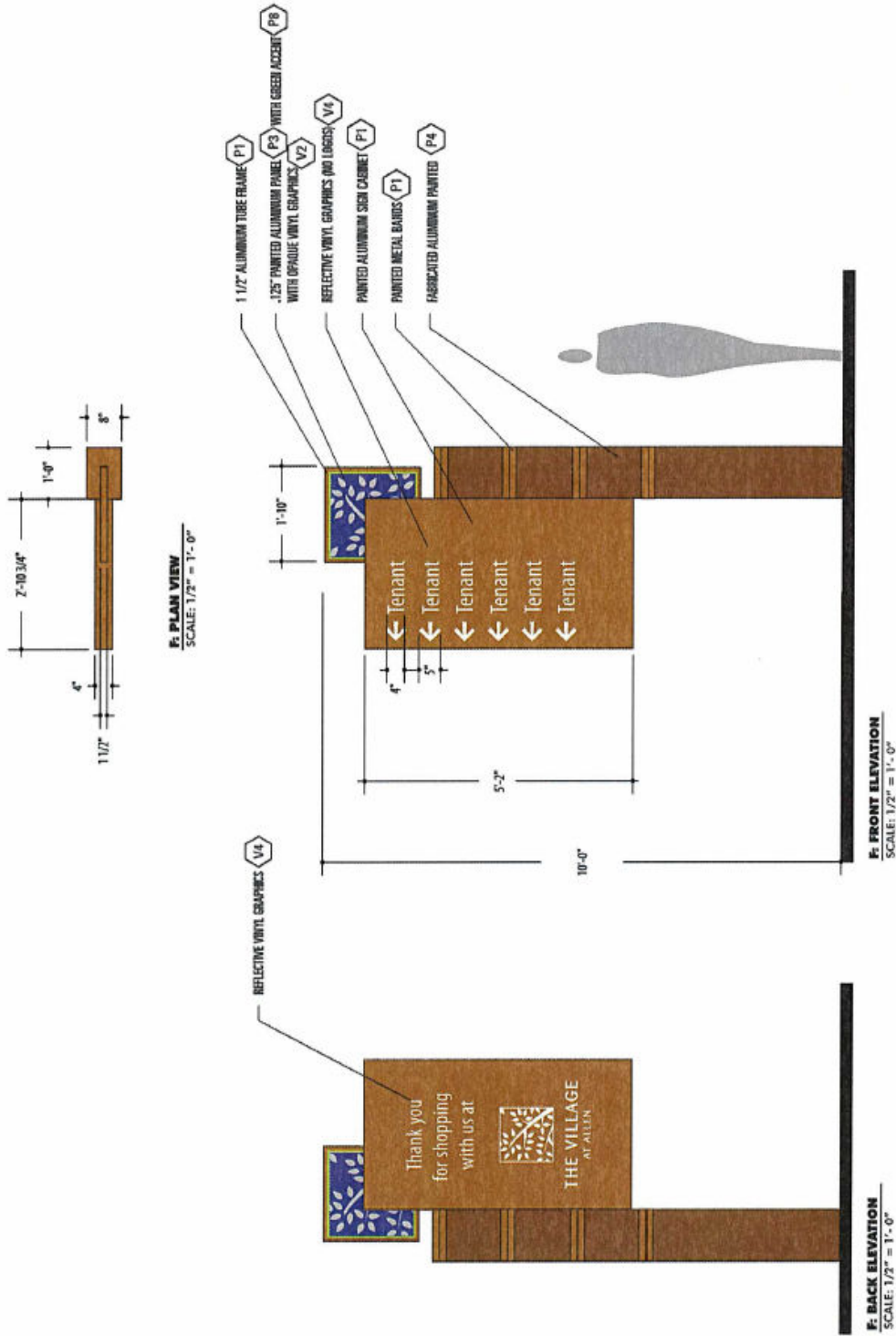
E2: PLAN VIEW
SCALE: 3/4" = 1'-0"




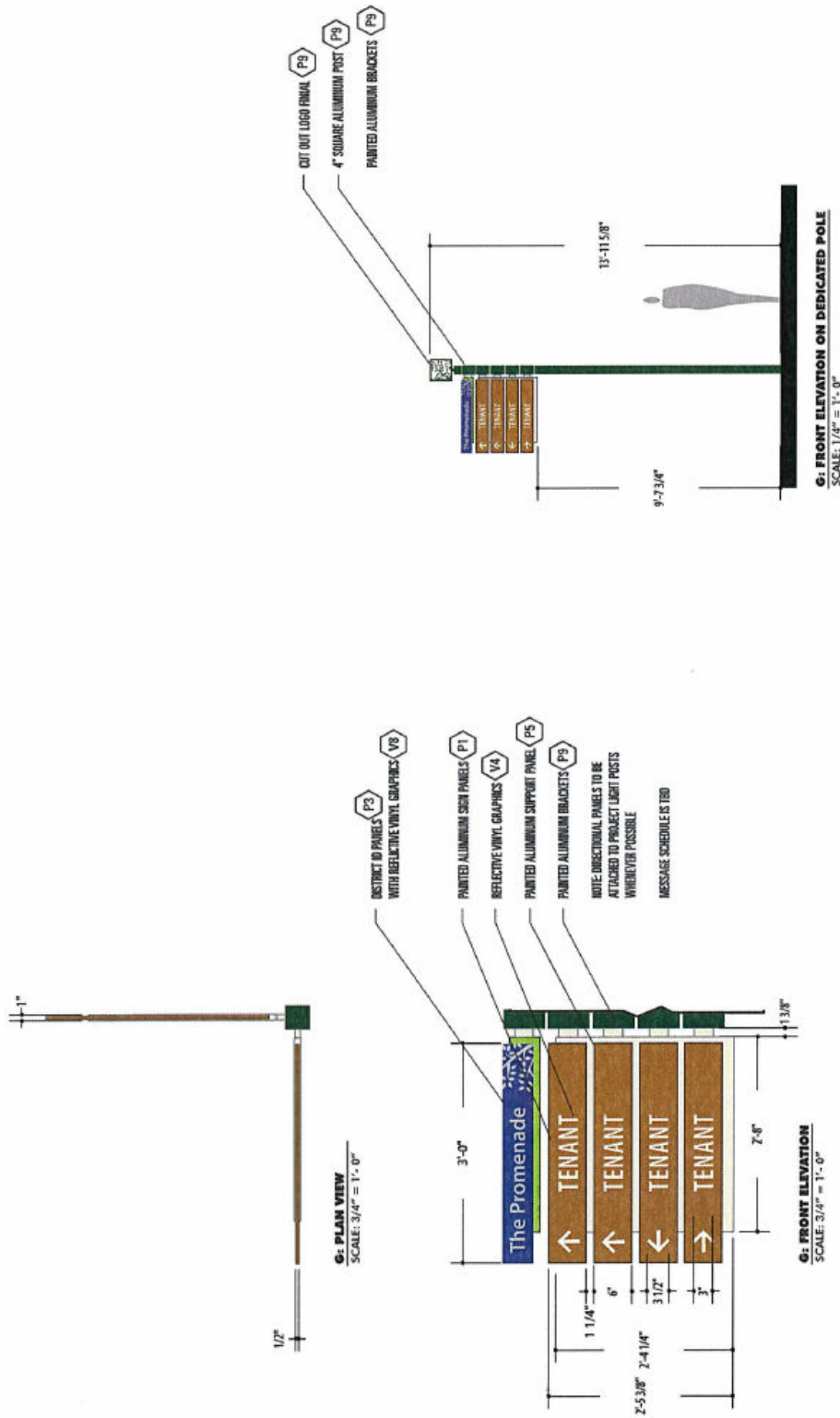
E2: FRONT ELEVATION
SCALE: 3/4" = 1'-0"


huc J&S	PROJECT	THE VILLAGE AT ALLEN <i>Exterior Sign System</i>	DWG TITLE	MJR ANCHOR TENANT ID <i>Sign Type E2</i>	SCALE	DATE	REVISIONS		1	2	3
					3/4" = 1'-0"	02-24-09	4	5	6	7	
							6.0				

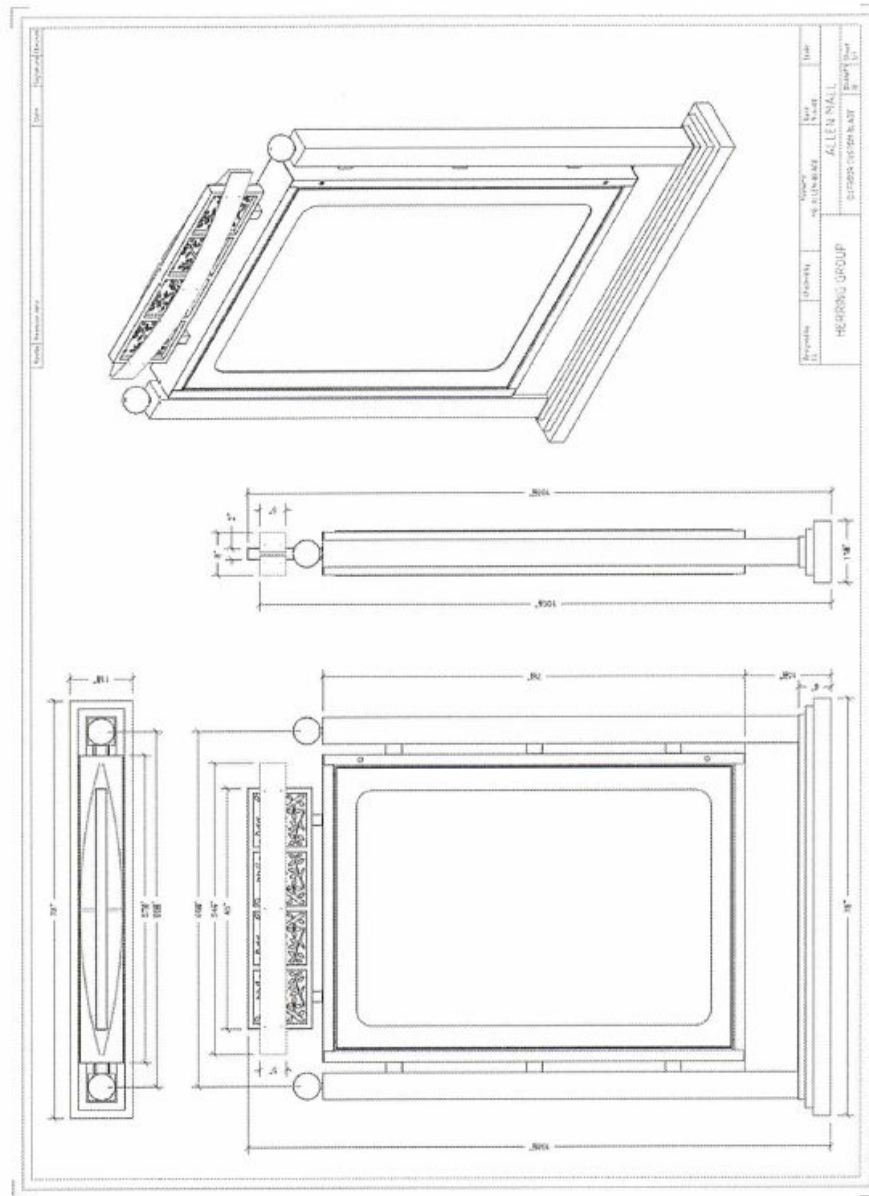
Copyright 2008. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hult Design.
Drawing for design intent only. Fabricator to verify existing conditions and dimensions. Fabricator responsible for engineering and accuracy of all pages.



	PROJECT	THE VILLAGE AT ALLEN Exterior Sign System	DWG TITLE	VEHICULAR DIRECTIONAL Sign Type F				SCALE	DATE	REVISIONS		7.0
				1	2	3						
				4	5	6	7					
Copyright 2009. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hute Design.												



	PROJECT	THE VILLAGE AT ALLEN	DWG TITLE	PEDESTRIAN DIRECTIONAL		SCALE	AS NOTED		DATE	REVISIONS		1	2	3	4	5	6	7	8	9	10																			
	Sign Type G																																							
	Sign Type G																																							
Copyright 2009. All rights reserved. This document may not be reproduced in any form without prior written agreement with HKS Design.																																								
Drawings are design sheets only. They are not to be used for construction without approval of HKS Design.																																								
8.0																																								

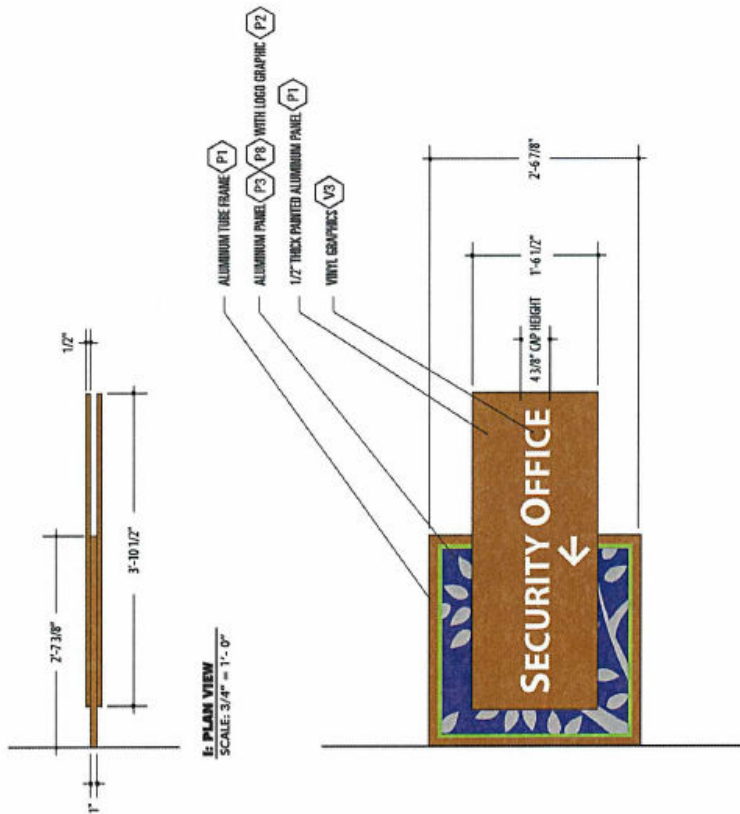


<div> <div>huc</div> <div>design</div> </div>	<div> <div>PROJECT</div> <div>THE VILLAGE AT ALLEN</div> <div>Exterior Sign System</div> </div>	<div> <div>DWG TITLE</div> <div>DIRECTORY</div> <div>Sign Type H</div> </div>	<div> <div>SCALE</div> <div>AS NOTED</div> </div>		<div> <div>DATE</div> <div>02-24-09</div> </div>	<div> <div>REVISIONS</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> </div>		<div> <div>GRADE</div> <div>9.0</div> </div>	
			<div> <div>AS NOTED</div> </div>		<div> <div>DATE</div> <div>02-24-09</div> </div>	<div> <div>REVISIONS</div> <div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div> <div>6</div> <div>7</div> </div>		<div> <div>GRADE</div> <div>9.0</div> </div>	

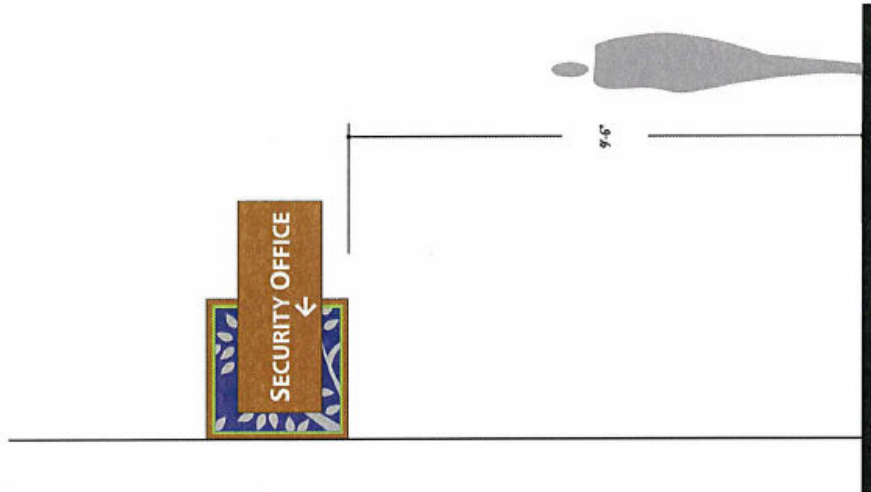
Copyright 2008. All rights reserved. This document may not be reproduced in any form without prior written agreement with Allen Design. Drawings are design intent only. Fabricator to verify mounting conditions and substrate. Fabricator responsible for engineering and structural integrity of all signs.



J1: SIDE B
SCALE: 1/2" = 1'-0"




I: PLAN VIEW
SCALE: 3/4" = 1'-0"

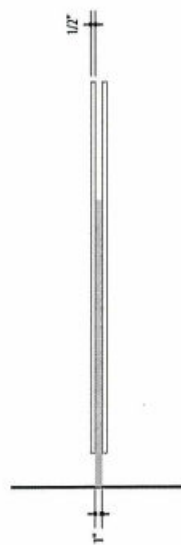


I: FRONT ELEVATION
SCALE: 1/2" = 1'-0"

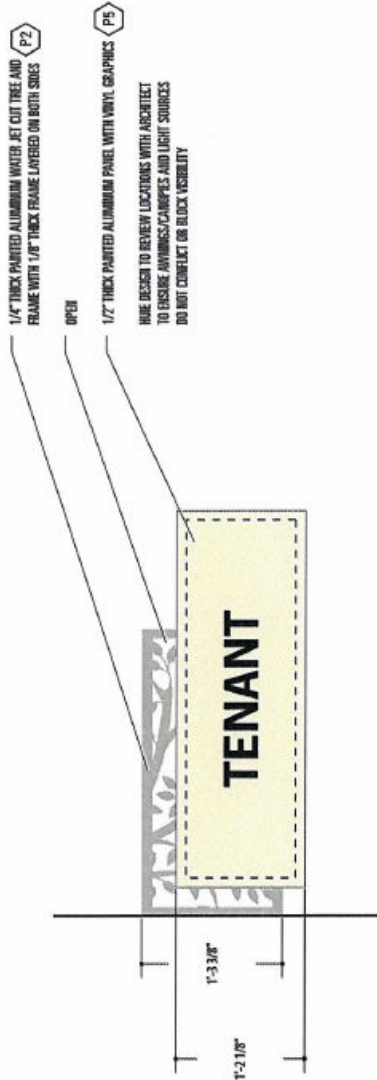
II: FRONT ELEVATION - SIDE A
SCALE: 3/4" = 1'-0"

	PROJECT	THE VILLAGE AT ALLEN <i>Exterior Sign System</i>	DWG TITLE	SERVICE DIRECTIONAL				SCALE	DATE	REVISIONS				10.0
				Sign Type I	AS NOTED	03-24-09	4	5	6	7	8	9	10	

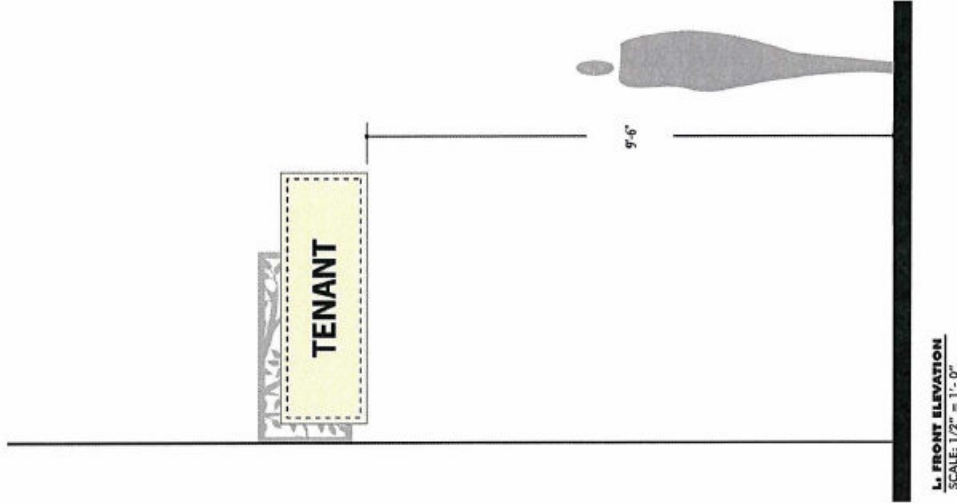
Copyright 2008. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hute Design. Drawings are design ideas only. Fabricator is solely responsible for engineering and structural integrity of all signs.




L: PLAN VIEW
SCALE: 3/4" = 1'- 0"



L: FRONT ELEVATION
SCALE: 3/4" = 1'- 0"

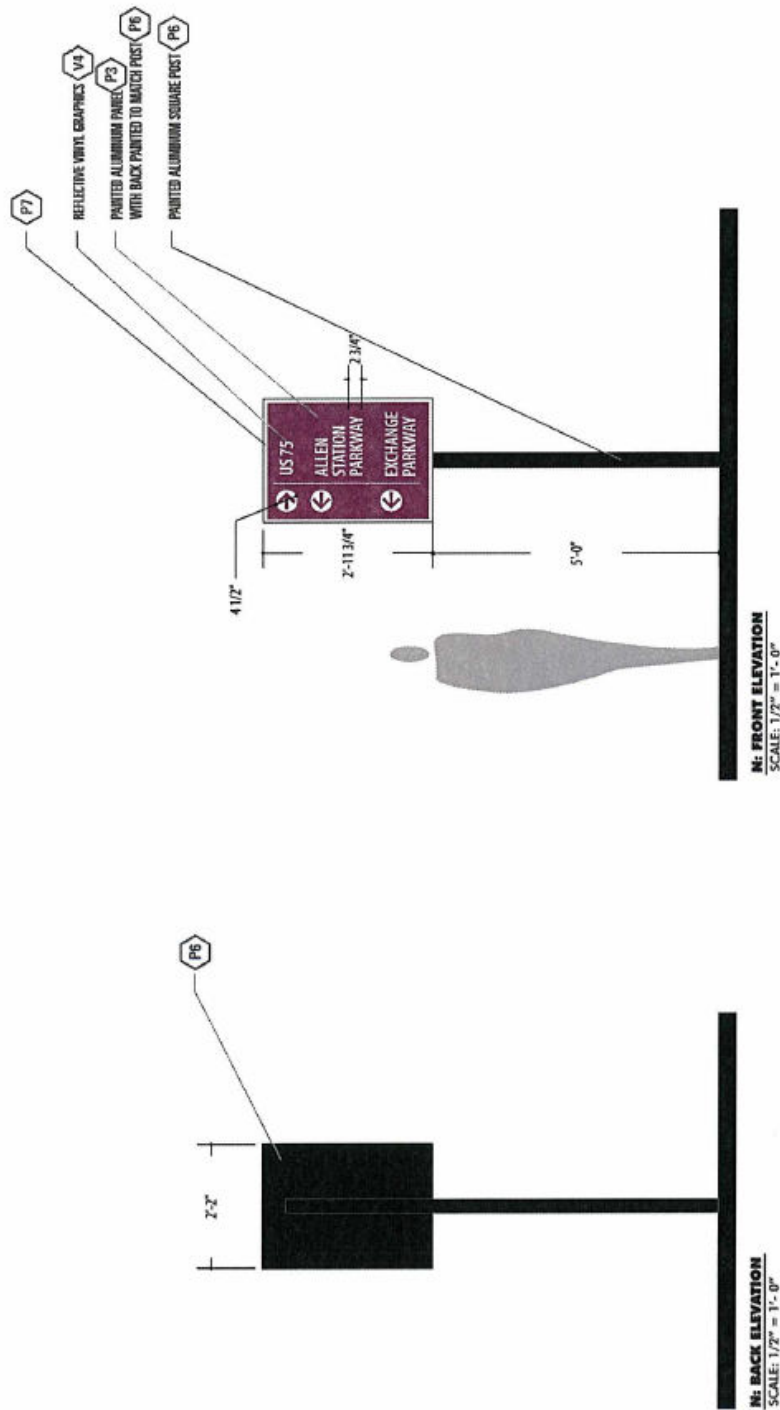



L: FRONT ELEVATION
SCALE: 1/2" = 1'- 0"

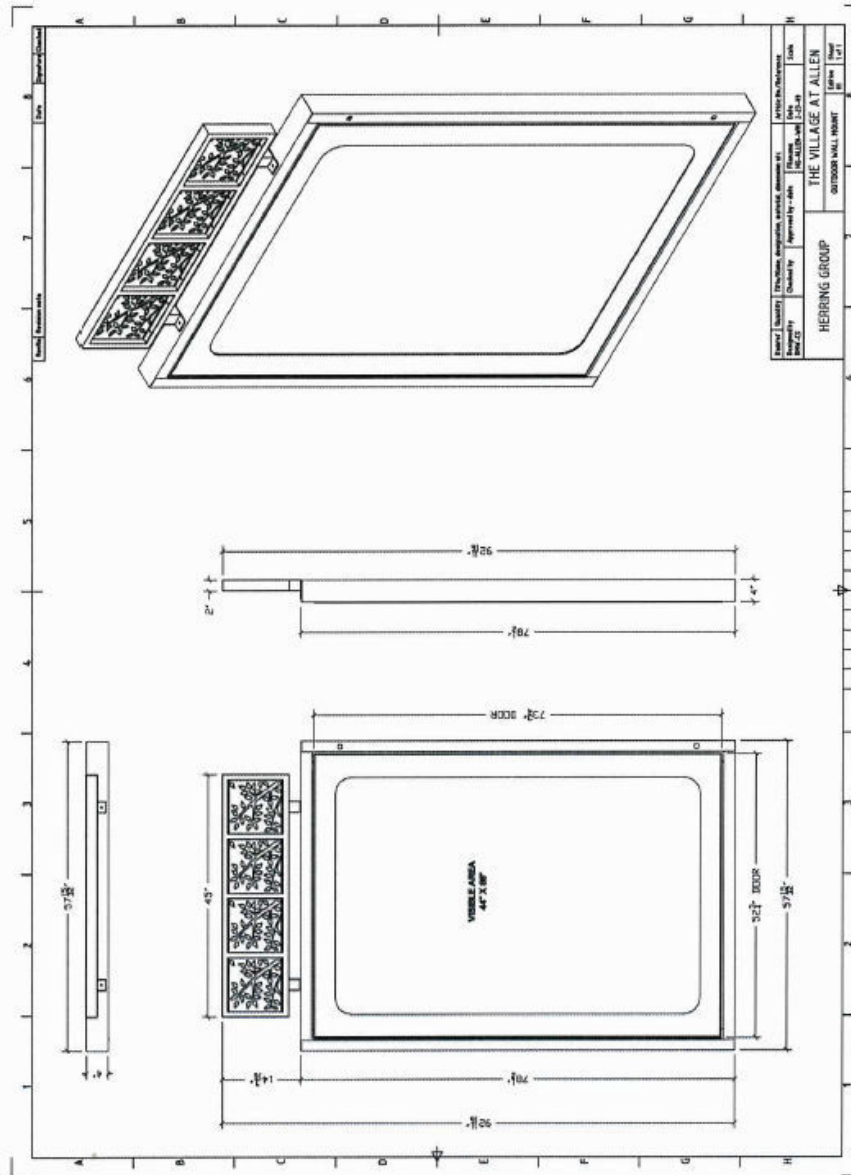
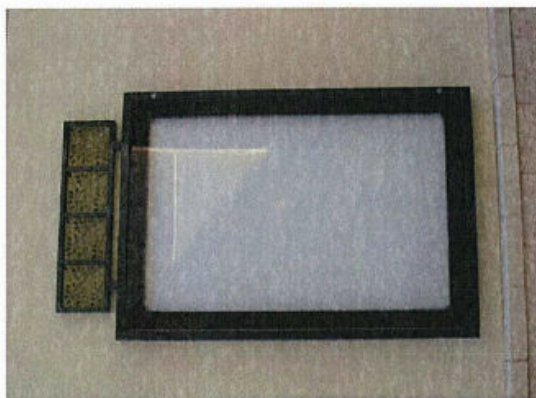
	PROJECT	THE VILLAGE AT ALLEN <i>Exterior Sign System</i>	DWG TITLE	TENANT BLADE/CANOPY SIGN <i>Sign Type L</i>	SCALE AS NOTED	DATE 02-24-09	REVISIONS		11.0	
							1	2	3	
							4	5	6	7

Copyright 2009. All rights reserved. This document may not be reproduced in any form without written permission from Hite Design.

Copyright 2008. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hite Design. Drawings are a design intent only. Fabricator to verify mounting conditions and materials. Fabricator responsible for engineering and structural integrity of all signs.



	PROJECT THE VILLAGE AT ALLEN Exitway Sign System	DWG TITLE	EXIT DIRECTIONAL SIGN POST Sign Type N	SCALE	DATE	REVISIONS													
						1	2	3	4	5	6	7							
				1/2"=1'-0"	03-24-09														
Copyright © 2009. All rights reserved. No document may be reproduced in any form without prior written consent from HUC Design.						Provisions are deemed void with alterations without consultation with HUC Design.									12.0				

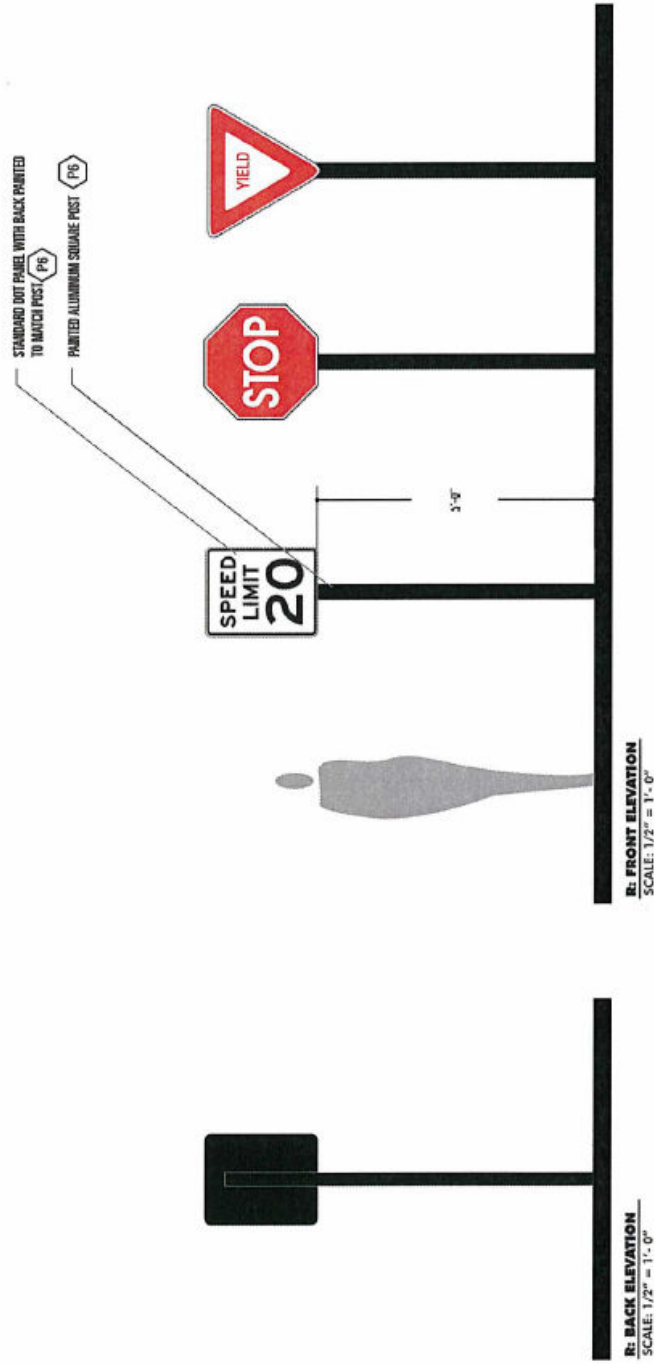


	PROJECT THE VILLAGE AT ALLEN Exterior Sign System	DWG TITLE WALL SIGN Sign Type P	SCALE AS NOTED	DATE 02-24-09	REVISIONS		13.0	
					1	2	3	

Copyright 2004. All rights reserved. This document is the property of hue design, Inc. All other marks are the property of their respective owners.

Copyright 2009. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hue Design. Drawings are design intent only. Fabricator is solely responsible for producing and fabricating. Fabricator responsible for engineering and structural integrity of all signs.

	PROJECT THE VILLAGE AT ALLEN <i>Exterior Sign System</i>	DWG TITLE AD BOLLARD <i>Sign Type Q</i>	SCALE	DATE	REVISIONS	1	2	3
			AS NOTED	02-24-09	4	5	6	7
Copyright 2009. All rights reserved. This document may not be reproduced in any form without prior written permission with Huit Design.			Drawing not for construction. Each revision must be approved by the architect. Each revision must be approved by the architect. Each revision must be approved by the architect.			14.0		



	PROJECT	THE VILLAGE AT ALLEN Exterior Sign System	DWG TITLE	REGULATORY SIGN Sign Type B	SCALE	DATE	REVISIONS							
							1	2	3					
							4	5	6	7				
15.0														

Example 2018. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hufc Design.

DWGNO: an design type only. DWGNO: to only respect (condition and statement). DWGNO: responsible for property and purchased materials at all signs.

Copyright 2022. All rights reserved. This document may not be reproduced in any form without prior written agreement with Hufc Design. Drawings are design types only. Applicant is solely responsible for engineering and structural integrity of all signs.

Agenda Item #10: Public Hearing – Conduct a Public Hearing and consider a request for an amendment to PD Planned Development No. 73 for SC Shopping Center uses for an amendment to the Sign Plan for the development. The property is 167.7 ± acres in the Village of Allen, Allen, Texas, located at the southeast corner of US75 and Stacy Road.

Ogden “Bo” Bass, Director of Planning and Development, presented the item to the Commission. The Village at Allen project has been fluid in its design. In 2007 the City Council approved a sign plan for the Village at Allen. However, at that time it did not include all of the sign types for the development. The revised sign plan reflects all the sign types for the development including ones that are currently on the ground.

Chairman Wendland opened the Public Hearing.

With no one wishing to speak, Chairman Wendland closed the Public Hearing.

The following people submitted a written statement in support of the request:
Andrews Family Property, Exchange Parkway and Allen Station Drive, Allen, Texas

The following people submitted a written statement in opposition of the request:
Randall Wheeland, 1615 Wood Creek Lane, Allen, Texas

Chairman Wendland stated that since this development is so large, without adequate signage it would be difficult to communicate ones way around. The proposed signage makes sense.

Motion: Upon a motion by Commissioner Mangrum, and a second by Commissioner Rushing, the Commission voted 7 IN FAVOR, 0 OPPOSED, to approve Item 10. The motion carried.

09.11.07

SIGN TYPE	Maximum Height	Maximum Copy Area (Square Feet Per Side)	Max. Structure (includes copy area)	Maximum Number	Minimum Spacing	Front Yard Setback (min. in feet) Typical is 8-10 ft from curb	Permit Required	Additional Provisions/Comments
VILLAGE AT ALLEN								
A1: MULTI-TENANT ID SIGN (Pylon)	50 FT	400 SF	1500 SF	2	60	N/A		
A2: ID SIGN W/ ELECTRONIC MESSAGE BRD	50 FT	400 SF	1500 SF	1	60	N/A		
B: FREESTANDING TENANT ID SIGN	20FT	100SF	160 SF	3	60	8		
C: REGULATORY SIGN	NA	NA	NA	NA	NA	NA		Typical DOT panel on project specific post Center ID at I-75 & Stacy Rd/integrated into landscape wall
D: PROJECT ARCHITECTURAL FEATURE	25 FT	100 SF	600 SF	1	60	8		Internal Directional
E1: MULTI TENANT/DIRECTIONAL MONUMENT	6 - 10 FT	30 SF	64 SF	25	60	5		
E2: TENANT ID/DIRECTIONAL MONUMENT	4 - 8 FT	30 SF	64 SF	2	60	8		
F: FREESTANDING VEHICULAR DIRECTIONAL	14 SF	12 SF	56 SF	9	60	NA		Directional panels - 8'-6" clearance
G: FREESTANDING PEDESTRIAN DIRECTIONAL	14 FT	12 SF	NA	11	10	NA		Pole mounted / pole is 14ft tall - panels have 8'-6" clearance
H: DIRECTORY	10 FT	45 SF	55 SF	6	30	NA		*Total structure area does not include bracket
I: SERVICE DIRECTIONAL	4 FT	10 SF	*16 SF	NA	NA	NA		*Does not include bracket *1 per store front Minimum clearance of 7'-6"
L: TENANT BLADE/CANOPY SIGN	4 FT	16 SF	*24 SF	*1	NA	NA		*Does not include bracket *2 per store front Minimum clearance of 7'-6"
		12 SF	*20 SF	*2	NA	NA		
** LOGO DOES NOT COUNT AS PART OF THE MAXIMUM COPY AREA ON ANY SIGN TYPE**								

TheVillageatAllen_PD_73 Property Notices Log

file_as_na	addr_line1	addr_line2	addr_city	addr_state	addr
.ARTY TH		403 ARROWHEAD DR	ALLEN	TX	7500
MYERS SU		1521 BETHLEHEM RD	ALLEN	TX	7500
AHMADI-T	AHMADI-TEHRANI MEHRNAZ	1518 BETHLEHEM RD	ALLEN	TX	7500
SOUTH SC		402 ST ANDREWS DR	ALLEN	TX	7500
LASTER CH		1512 BETHLEHEM RD	ALLEN	TX	7500
HON RON		1509 BETHLEHEM RD	ALLEN	TX	7500
BROSSEAU		1510 BETHLEHEM RD	ALLEN	TX	7500
STEPHENS		1529 BETHLEHEM RD	ALLEN	TX	7500
SHEPHERD		430 ST ANDREWS DR	ALLEN	TX	7500
LUNDE JO		1609 WOOD CREEK LN	ALLEN	TX	7500
GLASS PHI		425 ST ANDREWS DR	ALLEN	TX	7500
SAWYER		1532 BETHLEHEM RD	ALLEN	TX	7500
HEFTER MI		407 DEER BROOKE DR	ALLEN	TX	7500
SHANKLE J		408 LONG COVE CT	ALLEN	TX	7500
HORN CHR	HORN CATHERINE A	1603 WOOD CREEK LN	ALLEN	TX	7500
ANG BIN		15 MASTERS LN	MILFORD	CT	0646
CURRY NO		400 ARROWHEAD DR	ALLEN	TX	7500
POWELL C		1501 BETHLEHEM RD	ALLEN	TX	7500
HARTSELL		1535 BETHLEHEM RD	ALLEN	TX	7500
EVANS PA		405 ST ANDREWS DR	ALLEN	TX	7500
CORBAN V		1519 BETHLEHEM RD	ALLEN	TX	7500
WOOD MI		1631 WOOD CREEK LN	ALLEN	TX	7500
CARMICH		429 ST ANDREWS DR	ALLEN	TX	7500
MBAH MA		424 SAINT ANDREWS DR	ALLEN	TX	7500
NGUYEN L	LAM ANNA	416 SPRING LEAF CT	ALLEN	TX	7500
TRAN HIE	VO HONG THI	435 ST ANDREWS DR	ALLEN	TX	7500
CASAVANT		1515 BETHLEHEM RD	ALLEN	TX	7500
BOYER AR		1513 BETHLEHEM RD	ALLEN	TX	7500
SADEGHIG	MEMARSADEGHI HAMID R	1520 BETHLEHEM RD	ALLEN	TX	7500
AQARIDEN		1633 WOOD CREEK LN	ALLEN	TX	7500
.OBERTS		1627 WOOD CREEK LN	ALLEN	TX	7500
CALDWELL		1507 BETHLEHEM RD	ALLEN	TX	7500

file_as_na	addr_line1	addr_line2	addr_city	addr_state	addr
SCRIVENE		1605 WOOD CREEK LN	ALLEN	TX	7500
WIDEMAN		405 SHADY VALLEY	ALLEN	TX	7500
WICKFORD		1613 WOOD CREEK LN	ALLEN	TX	7500
SENDERSO		1530 BETHLEHEM RD	ALLEN	TX	7500
LEWIS PA		1505 BETHLEHEM RD	ALLEN	TX	7500
LINACRE D		404 FOX TRL	ALLEN	TX	7500
GRAHAM J		1617 WOOD CREEK LN	ALLEN	TX	7500
BALDRIDG		1625 WOOD CREEK LN	ALLEN	TX	7500
BUCK AAR		411 ST ANDREWS DR	ALLEN	TX	7500
GRAHAM J		1617 WOOD CREEK LN	ALLEN	TX	7500
LINDER JE		422 SAINT ANDREWS DR	ALLEN	TX	7500
STRIETZEL		1619 WOOD CREEK LN	ALLEN	TX	7500
FISHER M		417 ST ANDREWS DR	ALLEN	TX	7500
BOWERS E		403 ST ANDREWS DR	ALLEN	TX	7500
BANERJEE		1611 WOOD CREEK LN	ALLEN	TX	7500
NGUYEN T		1514 BETHLEHEM RD	ALLEN	TX	7500
PATEL MA		1607 WOOD CREEK LN	ALLEN	TX	7500
SMITH CY		413 ST ANDREWS DR	ALLEN	TX	7500
BURTTSCH	BURTTSCHHELL JOHNNIE LYNN	1621 WOOD CREEK LN	ALLEN	TX	7500
WEAVER		428 SAINT ANDREWS DR	ALLEN	TX	7500
ELLERY CLI		409 ST ANDREWS DR	ALLEN	TX	7500
FINNEY RO		1524 BETHLEHEM RD	ALLEN	TX	7500
WHEELAN		1615 WOOD CREEK LN	ALLEN	TX	7500
BROWN S	BROWN JAMES W	406 DEER BROOKE DR	ALLEN	TX	7500
STARLING		403 SUNRISE DR	ALLEN	TX	7500
MEHTA NI		407 ST ANDREWS DR	ALLEN	TX	7500
VOOTKUR		1517 BETHLEHEM RD	ALLEN	TX	7500
STRAMEL		401 ST ANDREWS DR	ALLEN	TX	7500
WILLMAN		1527 BETHLEHEM RD	ALLEN	TX	7500
HARRISON		1635 WOOD CREEK LN	ALLEN	TX	7500
STONE ME	STONE KATHRYN M	1526 BETHLEHEM RD	ALLEN	TX	7500
WILLIAMS		1522 BETHLEHEM RD	ALLEN	TX	7500
TIKHAR	UMAR MAHNAZ	1424 SUMMER PLACE DR	ALLEN	TX	7500
CLARK HO		1629 WOOD CREEK LN	ALLEN	TX	7500

file_as_na	addr_line1	addr_line2	addr_city	addr_state	addr
PRUITT KE		1601 WOOD CREEK LN	ALLEN	TX	7500
GIBBS WE	GIBBS CHRYSTAL C	11005 S NATHAN ST	SAPULPA	OK	7406
TEARY CH		420 SAINT ANDREWS DR	ALLEN	TX	7500
TABONE J		404 SHADY VALLEY DR	ALLEN	TX	7500
DUERR GR		431 ST ANDREWS DR	ALLEN	TX	7500
FERTITTA		419 SAINT ANDREWS DR	ALLEN	TX	7500
STRATFOR		1503 BETHLEHEM RD	ALLEN	TX	7500
GREEN TR		408 ST ANDREWS DR	ALLEN	TX	7500
DAGENAIS		1516 BETHLEHEM RD	ALLEN	TX	7500
GARCIA AL	MONTOYA-GARCIA LOURDES	1511 BETHLEHEM RD	ALLEN	TX	7500
BOWMAN		7 EDGEFIELD LN	ALLEN	TX	7500
VILLALON	VILLALON SANDRA	1528 BETHLEHEM RD	ALLEN	TX	7500
SZATKOW		1533 BETHLEHEM RD	ALLEN	TX	7500
CASTLEBE		1534 BETHLEHEM RD	ALLEN	TX	7500
FREEBURG		1506 BETHLEHEM RD	ALLEN	TX	7500
PETERS RI		421 ST ANDREWS DR	ALLEN	TX	7500
HARTLEY R		1523 BETHLEHEM RD	ALLEN	TX	7500
AGAN RO		PO BOX 833113	RICHARDSON	TX	7508
TAVEIRA SI	RUA LAURINDO SBAMPATO	100 VILA GUILHERME	BRAZIL		
CLARK ERI		436 DANIEL DR	ALLEN	TX	7500
NETTLE PA		427 ST ANDREWS DR	ALLEN	TX	7500
WILSON A	TABOR JOSHUA	406 ST ANDREWS DR	ALLEN	TX	7500
VU TARA		1525 BETHLEHEM RD	ALLEN	TX	7500
SHIPPY CH		1508 BETHLEHEM RD	ALLEN	TX	7500
PETERS RI		421 ST ANDREWS DR	ALLEN	TX	7500
ROPER RIC		405 FOX TRL	ALLEN	TX	7500
TALIAFERR	TALIAFERRO AUDRA LYNN	409 LONG COVE CT	ALLEN	TX	7500
BARTON J	FUQUAY KIMBERLY ANN	1639 WOOD CREEK LN	ALLEN	TX	7500
DALLAS AR		PO BOX 660163	DALLAS	TX	7526
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
ANDREWS		2730 IRVING BLVD	DALLAS	TX	7520
ANDREWS		2730 IRVING BLVD	DALLAS	TX	7520
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501

file_as_na	addr_line1	addr_line2	addr_city	addr_state	addr
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501
DALLAS AR		PO BOX 660163	DALLAS	TX	7526
DALLAS AR		PO BOX 660163	DALLAS	TX	7526
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
TARGET C	ATTN PROPERTY ADMINISTRATIO	1000 NICOLLET MALL	MINNEAPOLIS	MN	5540
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
ANDREWS		2730 IRVING BLVD	DALLAS	TX	7520
ALLEN CIT		ONE ALLEN CIVIC PLAZA	ALLEN	TX	7501
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501
PIEDMON		3400 CARLISLE ST STE 445	DALLAS	TX	7520
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
VILLAGE A		5710 LBJ FWY STE 450	DALLAS	TX	7524
JQH - ALLE		300 S JOHN Q HAMMONS PKWY S	SPRINGFIELD	MO	6580
ANDREWS		2730 IRVING BLVD	DALLAS	TX	7520
ALLEN CIT		305 CENTURY PKWY	ALLEN	TX	7501



The Village at Allen
PD 73C
Property Ownership Notification

Map Legend	
	Property Boundary selection
	Railroad
	City Limit
	Property Boundary



Planning & Development - GIS
Revision Date: 03/2007



Revised: 11/14/06. Original: 03/2007. Planning & Development - GIS. Revision Date: 03/2007.