



organized under the laws of the State of Texas with its principal place of business in College Station, Brazos County, Texas City has appeared and may be served through its counsel of record..

### **Jurisdiction & Venue**

5. Jurisdiction is proper in this Court because the amount in controversy in this case is within the Court's jurisdictional limits, and all parties are Texas citizens and/or residents.

6. Venue is proper in this Court pursuant to Texas Civil Practice and Remedies Code § 15.002 (a)(1) because all or a substantial part of the acts and omissions that occurred in this state occurred in Brazos County, Texas. In addition, venue is proper in this Court under § 15.035 because the claims in this lawsuit arise out of a written contract to be performed in part in Brazos County, Texas. In addition, venue is proper in this Court under § 15.011 because the real property subject to the claims is located in Brazos County, Texas. Because there are multiple defendants in this case, venue is appropriate in Brazos County, Texas, pursuant to Texas Civil Practice and Remedies Code §§ 15.005 & 15.011.

### **FACTS**

7. Café Eccell is a family owned and operated restaurant serving the residents of Brazos county and its many visitors for nearly 25 years. Located in the historic Old City Hall building, the renowned restaurant is a staple in the community and has received accolades both locally and throughout the Texas.

8. Café Eccell has been a tenant of the City for many years. Most recently, by exercise of its lease option, City and Café Eccell executed a ten (10) year Lease of Real Property-Renewal Term ("Lease")<sup>1</sup> for the lease of Lots 1-7 and 22 of Block 11 of the W. C. Boyett Estate Partition ("Premises"). The Lease term was to expire on November 30, 2013 but

---

<sup>1</sup> See Exhibit A - Lease of Real Property-Renewal Term dated December 10, 2003.

was extended through January 2014. The City owns all of Block 11 of the W. C. Boyett Estate Partition which is comprised of 22 lots. Block 11 is referred to herein as the "Property." The Premises accounts for roughly one-third the Property.

9. Earlier in 2013, the City, The Research Valley Partnership ("RVP") (a independent foundation through which the City conveys property for development) and Asset Plus entered into an Economic Development Agreement<sup>2</sup> wherein the City via RVP agreed to sell the Property (inclusive of the Premises) to Asset Plus. Upon information and belief, the purchase price is \$3,555,000 less an economic development grant of \$580,000 funded by the City and credited to the purchase price. In effect, Asset Plus is purchasing the Property for a discounted price of \$2,975,000. The Economic Development Agreement incorporates a Purchase and Sale Agreement which in turn is conditioned and "*subject to that certain Economic Development Agreement....*" Acknowledging the existing Lease and appreciating the economic value and community significance of Café Eccell, the City and RVP provided for the restaurant in its economic development plan to which Asset Plus agreed. Both the City and Asset Plus represented to Café Eccell that the agreements (Economic Development Agreement and Purchase Agreement) provided for the long term continuation of Café Eccell at the Premises. As a material provision to the Purchase Agreement and the Economic Development Agreement, Asset Plus represented and agreed to:

...provide for [Café Eccell]...to continue operations under a new lease agreement within the Project...provided that [Asset Plus] agrees to use good faith and commercially reasonable efforts to negotiate a new lease.<sup>3</sup>

10. Beginning in the Spring of 2013, Asset Plus representatives Barrett Kirk and Mark Lindley approached Café Eccell to discuss the project, the layout and the future of the

---

<sup>2</sup> See Exhibit B - The Agreement is titled "Economic Development Agreement Among The City of College Station, The Research Valley Partnership, Inc. and Asset Plus Realty Corporation"

<sup>3</sup> See Exhibit B - Economic Development Agreement

restaurant. Messrs. Kirk and Lindley represented that the project would include the existing building (Old City Hall) inclusive of dedicated parking. In the summer of 2013, Asset Plus changed its mind and said it would demolish the old restaurant because keeping it was not plausible and would not work with the construction plan. They told Costa Dallis, Café Eccell's President, and others that Asset Plus would build a new building more in line with the project. Although the Economic Development Agreement does not provide for Asset Plus to demolish the existing restaurant, Café Eccell was willing to accommodate Asset Plus so long as a suitable structure and parking were available for the restaurant. Over the next few months, several iterations of the new design were presented to Café Eccell all of which included dedicated parking for restaurant customers. Initially, Asset Plus' design provided for 42 restaurant parking spaces.<sup>4</sup> Asset Plus then represented that the new restaurant would include 30 dedicated spots and shared spots adjacent to the new restaurant and within the proposed parking garage. As the iterations changed up and through late August 2013, Asset Plus consistently represented that the project provided for sufficient dedicated parking.

11. Then, on November 4, 2013 and to the complete surprise of Café Eccell, Asset Plus dropped a bombshell. Mr. Kirk presented Café Eccell with a Letter of Intent to Lease<sup>5</sup> ("LOI") setting out the material terms of a proposed lease agreement to be finalized by January 14, 2014. Contrary to the requirements of the Economic Development Agreement and the many representations and promises made in the preceding several months, the LOI expressly states that no parking will be provided for Café Eccell.

PARKING: Landlord agrees to provide on street public parking in accordance with the Northgate plan per the City of College Station. *No dedicated restaurant spaces will be available.* (emphasis added)<sup>6</sup>

---

<sup>4</sup> See Exhibit C - April 18, 2013 email to Costa Dallis with attached site plan.

<sup>5</sup> See Exhibit D - Email and LOI dated November 4, 2013.

<sup>6</sup> See Exhibit D

Oddly, Asset Plus' LOI language implies that it would "provide" a handful of metered public parking spaces. Those very few spaces are just that-public parallel metered parking spaces. The following day, Mr. Dallis wrote to Asset Plus attempting to allow for dedicated parking. Mr. Kirk refused taking no responsibility for the abrupt change and instead blaming the City for refusing head in parking (as if head in parking was the sole parking solution). Instead of using reasonable commercial efforts to enter into a viable lease with Café Eccell or to find a resolution to the parking deficiency, on November 29, 2013 Asset Plus revoked its offer to lease to Café Eccell without explanation.<sup>7</sup>

12. All throughout 2013, the City represented and promised to Café Eccell that they were provided for in the Purchase Agreement and Economic Development Plan and that a new long term lease was required by Asset Plus. Asset Plus made the same representations and promises of a new lease. The City has recently taken the position that Asset Plus is not required to provide Café Eccell a new lease and that Café Eccell is not a beneficiary under the Purchase Agreement or Economic Development Plan. Café Eccell justifiably relied on the language in the documents and the continued promises by the City and Asset Plus to its substantial detriment.

13. Café Eccell is a 175 seat dine in restaurant that has provided parking for its patrons for the past 25 years. Without dedicated parking, its business will likely fail. The new lease, as proposed by Asset Plus, is neither commercially reasonable nor provided in good faith.

14. The current Café Eccell Lease provides Café Eccell the right to purchase the Premises should the City offer to sell it. The Lease provides in part:

On or after January 1, 2006, [Café Eccell] may submit in writing a request to the City's Representative to sell the premises. ... If the City decides to offer the property for sale, it shall do so in accordance with and subject to the requirements of Tex. Local Gov't. Code Chapter 272.

---

<sup>7</sup> See Exhibit E - November 29, 2013 email from Judy Krow, counsel for Asset Plus.

Relying on Asset Plus' representations and promises made in the Economic Development Agreement and thereafter to Café Eccell, Café Eccell continued to cooperate with Asset Plus and refrained from exercising its purchase rights under the Lease. But after learning of Asset Plus' unilateral decision not to use reasonable efforts to accommodate Café Eccell or provide dedicated restaurant parking, on November 13, 2013, Café Eccell exercised its right to purchase the Premises. Mr. Dassil notified the City of Café Eccell's desire not only to purchase the Premises but that it would purchase the entire Property for more than Asset Plus purchase price.<sup>8</sup> The City rejected Café Eccell's offer.

15. On December 13, 2013, Defendants made a settlement offer which was timely accepted by Café Eccell. The terms of Defendant's offer were: (a) all parties shall file a joint motion to dissolve the TRO; (b) all motions regarding the TRO are withdrawn and no other claims will be made regarding the issuance of the TRO; (c) all parties will agree to have Café Eccell's bond returned to Café Eccell; (d) Café Eccell's lease will expire 11:59 p.m. February 16, 2014, and Café Eccell will have until 11:59 p.m. February 18, 2014, to remove any and all equipment and fixtures, etc., from the premises; (e) Café Eccell will have no rent obligations through the remainder of its lease; (f) all parties retain all claims, causes of action and defenses except as it relates to issuance of the TRO; (g) Café Eccell will remove the lis pendens; and (h) any tax obligations not previously paid by Café Eccell will be waived.

16. Prior to its expiration, Café Eccell sent Defendant's signed written acceptance of the settlement offer.

17. After Café Eccell had already accepted Defendant's settlement offer, Defendants inexplicably informed Café Eccell that its offer further required Café Eccell to release any and

---

<sup>8</sup> See Exhibit F - November 13, 2013 letter from Mr. Dassil to the City.

all claims against Defendants as relates to this lawsuit.

### CAUSES OF ACTION

#### Breach of Contract – Asset Plus

18. Plaintiff realleges the factual statements in the preceding paragraphs and incorporates the same by reference. Café Eccell is a third party beneficiary to the Purchase Agreement and the Economic Development Agreement, both of which require for Asset Plus to (1) provide for Café Eccell to continue operations under a new lease agreement; and (2) use good faith and commercially reasonable efforts to negotiate a new lease. By failing to provide any adequate parking much less any parking at all, Asset Plus has breached both the Purchase Agreement and the Economic Development Agreement. Café Eccell has and will continue to suffer damages and likely irreparable harm as a result of Asset Plus' breach of contract. Café Eccell seeks specific performance of the Purchase Agreement and the Economic Development Agreement requiring Asset Plus to enter into a new lease with Café Eccell.

#### Breach of Lease – City

19. Plaintiff realleges the factual statements in the preceding paragraphs and incorporates the same by reference. Café Eccell and the City are parties to the Lease which affords Café Eccell the right to purchase the Premises if the City elects to sell the Premises. On November 13, 2013, after the City had already decided to place the Premises (and adjacent lands) for sale, Café Eccell exercised its contractual right to purchase the Premises. The City, without good cause, has not agreed to sell the Premises or the entire Property to Plaintiff. By its silence and indication that it was to sell and convey the Property (inclusive of the Premises) to Asset Plus on December 2, 2013 the City has breached the Lease or in the alternative anticipatorily breached the Lease. Café Eccell has and will continue to suffer damages and likely

irreparable harm as a result of the City's breach of contract.

Declaratory Judgment

20. Plaintiff realleges the factual statements in the preceding paragraphs and incorporates the same by reference. Defendants claim rights to conveyance of the Premises arising from the Economic Development Agreement and Purchase Agreement which they entered into. The Agreements and any assertion by Defendants of rights arising by virtue of the Agreements constitutes an interference with Café Eccell's contractual right to purchase the Premises, and imposes a cloud on Café Eccell's potential title to the Premises. Café Eccell seeks a declaration from the Court that Asset Plus' rights arising from the Agreements are subject to and subordinate to Café Eccell's right to purchase the Premises. Café Eccell seeks further declaration from the Court that any title to the Premises to be conveyed by the City to Café Eccell in accordance with the Lease will be free of all claims to the Premises arising by the Agreements between Defendants.

Negligent Misrepresentation – Asset Plus and City

21. Plaintiff realleges the factual statements in the preceding paragraphs and incorporates the same by reference. The misrepresentations made by the City and Asset Plus regarding Café Eccell's rights to a new lease and Asset Plus's willingness and ability to provide adequate parking for Café Eccell under a new lease were, at best, made negligently and without regard to the truth or falsity of said misrepresentations. Café Eccell was justified in relying on these negligent misrepresentations and did, in fact, rely on these representations to its detriment. Café Eccell has suffered actual damages as a result.

Common Law Fraud and Statutory Fraud (TBCC §27.01 et seq.) – Asset Plus and the City

22. Plaintiff realleges the factual statements in the preceding paragraphs and incorporates the same by reference.

23. Asset Plus made material false representations to Café Eccell with knowledge of their falsity or with reckless disregard to the truth of the representations. Asset Plus intended that such representations be acted upon by Café Eccell and Cafe Eccell did in fact, rely on these representations to its detriment. Further, Asset Plus concealed or failed to disclose material facts within the knowledge of Asset Plus. These facts include, but are not limited to, the fact that the City and Asset Plus had no intention of complying with the Economic Development Agreement. Defendants knew that Cafe Eccell did not have knowledge of the same and did not have equal opportunity to discover the truth, and Defendants intended to induce Cafe Eccell to refrain from exercising its right to purchase the Premises and alternatively to mitigate its damages in finding a suitable replacement location.

24. In violation of § 27.01 of the Texas Business and Commerce Code, Defendants made misrepresentations to Cafe Eccell and concealed or failed to disclose material facts to it, which Cafe Eccell reasonably relied upon in refraining from exercising its purchase rights to the Premises and locating suitable replacement property. Defendants made these misrepresentations either willfully or recklessly, with actual awareness of the falsity and the consequences of the falsity of the statements and without regard for their truth, and intended Cafe Eccell to rely on them. Café Eccell has suffered substantial injury and damages as a result of such wrongful conduct.

*Breach of Settlement Agreement – Asset Plus and City*

25. Plaintiff incorporates by reference the factual allegations in the preceding paragraphs.

26. Alternatively, Café Eccell pleads breach of Settlement Agreement. Defendants made a settlement offer which, by its terms, Café Eccell, through its counsel, accepted. Defendants then, after that offer had been accepted and the parties had a valid and binding agreement, tried to insert an additional term that benefited Defendants but was not part of its original offer. Café Eccell will be harmed by Defendants' failure to honor its original offer and the parties' settlement agreement.

Attorneys Fees

27. Plaintiff seeks and is entitled to recover attorneys' fees and expenses from Defendants pursuant to the purchase contract and under TEX. CIV. PRAC. & REM. CODE §§ 37.009 *et seq.*, 38.002, Tex. Bus. & Comm. Code § 27.01, *et seq.*

Conditions Precedent

28. All conditions precedent to Café Eccell's recovery, if any, have been performed or occurred, or are otherwise excused.

29. **Request for Injunctive Relief** an injunction pursuant to Texas Civil Practice and Remedies Code § 65.011(1), (3) and (5) enjoining the City or Asset Plus from evicting Café Eccell from the premises. It is uncertain at this time whether an adequate remedy at law exists which will protect Café Eccell from the immediate and potentially irreparable harm that will be caused if Café Eccell is evicted from the leased premises. The Premises is unique, making Café Eccell's losses at this juncture incalculable.

**PRAYER**

WHEREFORE, Café Eccell prays that the Court grant the relief requested herein including specific performance, award Café Eccell all damages entitled in law and in equity against Defendants, attorneys fees, punitive/exemplary damages, pre- and post judgment interest,

costs of court and that the Court issue an injunction enjoining and restraining Defendants from evicting Café Eccell from the Premises and all such other and further relief in law or in equity to which Plaintiff may be justly entitled.

Respectfully submitted,

BUCK KEENAN LLP

By: /s/ E. F. Mano DeAyala

E. F. MANO DEAYALA  
State Bar No. 00783946  
ANDREW C. WRIGHT  
State Bar No. 24063077  
700 Louisiana, Suite 5100  
Houston, Texas 77002  
(713) 225-4500  
(713) 225-3719 – Telecopier

THE LAW OFFICE OF CRAIG A.  
GREENING, P.C.

CRAIG A. GREENING  
State Bar No. 24025395  
P.O. Box 152  
Bryan, Texas 77806  
(979) 779-2000  
(979) 779-2033 – Telecopier

ATTORNEYS FOR PLAINTIFF  
CAFÉ ECCELL

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been forwarded to all known counsel of record, in compliance with the Texas Rules of Civil Procedure, on the 3rd day of January, 2014.

Ray T. Torgerson  
Stephanie L. Holcombe  
Porter Hedges LLP  
1000 Main Street, 36<sup>th</sup> Floor  
Houston, Texas 77002  
(713) 228-1331 - Fax  
*Attorneys for Defendant Asset Plus Realty Corporation*

John Hightower  
Olson & Olson LLP  
Wortham Tower, Suite 600  
2727 Allen Parkway  
Houston, Texas 77019  
(713) 533-3888 - Fax  
*Attorney for The City of College Station*

/s/ E. F. Mano DeAyala  
E. F. MANO DEAYALA

LEASE OF REAL PROPERTY  
RENEWAL TERM

THIS RENEWAL TERM LEASE is made on this the 10<sup>th</sup> day of December, 2003, by and between the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation (hereinafter referred to as LESSOR), and DELUXE BURGER BAR OF COLLEGE STATION, INC., a Texas corporation (hereinafter referred to as LESSEE).

The parties for and in consideration of the agreements herein set forth to be kept and performed by them respectively have agreed to and do hereby agree together as follows:

I. DEFINITIONS

LESSOR means the City of College Station, its officials, agents, or employees.

LESSEE means Deluxe Burger Bar of College Station, Inc., its agents, employees, invitees, licensees, or visitors.

Rent means base rent of \$10.00 per square foot plus any other sums of money due the LESSOR by the LESSEE.

Renewal Lease term means the renewal term of the lease entered into dated 1 December 1998, which consists of a ten- (10) year term starting on December 1, 2003, and ending on November 30, 2013.

City's Representative means the City Manager or his designee.

Property means Lots 1-7 and 22 of Block 11 of the W.C. Boyett Estate Partition described more fully in the metes and bounds description attached hereto as Exhibit A.

Premises means the property and all improvements thereon.

Improvements means any building or permanent structure, including but not limited to paved parking, sidewalks, irrigation lines or fence erected or placed on the property.

II. TERM

LESSEE has exercised its option to renew the lease entered into on 1 December 1998 ("the Primary Term lease") and LESSOR by these presents does re-lease unto LESSEE (the Renewal Term lease) those premises more commonly known as the "Old City Hall", legally described as Lots 1-7 and 22 of Block 11 of the W.C. Boyett Estate Partition described more fully in the metes and bounds description attached hereto as Exhibit A. The renewal lease term shall run ten (10) years from December 1, 2003, through November 30, 2013. At the expiration of this renewal term the lease shall terminate.



Any holdover by LESSEE after the expiration of the renewal lease term shall be deemed a month-to-month lease during which the terms of this Agreement shall apply.

III. CONSIDERATION

LESSEE agrees to pay the LESSOR as rent for the leased premises during the renewal term Ten and No/100 Dollars (\$10.00) per square foot for a monthly total rate in the amount of Four Thousand Two Hundred Eighteen and 33/100 Dollars (\$4,218.33). The rental rate has been established by an appraisal as provided in Section III of the Primary Term lease.

The first installment shall be due December 1, 2003, and a like installment shall be due on the same day of each month thereafter. Each payment shall represent rental payment in advance for the month in which the sum is due. LESSEE shall pay, in addition to the rental of said premises, all taxes or special assessments, if any, assessed against or levied upon said premises or upon LESSEE, and insurance as specified in Section VI hereinbelow. Rent shall be sent to the following address:

City of College Station, Accounting Department  
Attention: Accounting Customer Service Supervisor  
P.O. Box 9973  
College Station, TX 77842

LESSEE shall note on the check: "Rental payment - Café Eccell lease"

Upon failure of tenant to pay any monthly installment, the entire balance of the rental then due shall immediately be due and payable at the option of the LESSOR. Any installment of rent accruing under the provisions of this lease which shall not be paid when due, shall bear interest at the rate of five percent (5%) per year from the date when payable by terms of the lease, until same shall be paid by LESSEE.

IV. REQUEST TO OFFER PREMISES FOR SALE

On or after January 1, 2006, LESSEE may submit in writing a request to the City's Representative to sell the premises. Upon receipt of said request, City's representative shall submit same to the City of College Station City Council for consideration. The City Council may determine, in its sole discretion, whether to offer the property for sale or not. If the City decides to offer the property for sale, it shall do so in accordance with and subject to the requirements of TEX. LOCAL GOV'T. CODE, Chapter 272 or any other applicable laws in effect at the time the request is submitted. LESSEE agrees and understands that City may reject any and all bids received and may determine at the conclusion of the bid process not to sell the property. LESSEE understands and agrees that LESSOR's agreement to consider LESSEE's request does not constitute any representation, guaranty or warranty that it will either offer the property for sale or finally sell the property to LESSEE or any third party.

## V. ORDINANCES

LESSEE shall comply with all federal, state, county, and municipal laws, ordinances, rules, and regulations of any duly constituted authorities having jurisdiction over the matters that are the subject of this lease.

## VI. INSURANCE

LESSEE agrees to maintain insurance on said property and premises and the conduct of LESSEE's business, naming the LESSOR as an additional insured, in the amounts and in accordance with the specifications contained in Exhibit B attached hereto and incorporated herein by reference.

LESSEE shall deliver certificates of insurance to LESSOR before the commencement date of this lease and thereafter whenever requested by LESSOR.

## VII. IMPROVEMENTS

All additions, extensions, improvements, repairs and restoration to and of said premises, now or hereafter made by LESSEE, and the plans, construction, and workmanship therefor, shall be in accordance with all laws, ordinances, and building rules and regulations applicable thereto, as well as all requirements of any underwriters or board of insurance rating body necessary and proper to make the leased premises a first class risk of its kind.

It is further agreed that any additions, extensions, alterations, improvements, repairs and restoration to and of said premises may only be made by LESSEE after LESSEE has:

1. Submitted a full set of plans and specifications to LESSOR;
2. Obtained the prior written consent of LESSOR to make the specified changes or improvements; and
3. Received approval from the Design Review Board. In no event shall the Design Review Board have the authority to waive any standards contained in the City of College Station Unified Development Code or other codes and ordinances.

LESSOR's consent in these matters shall not be unreasonably withheld or delayed.

Prior to the performance of any such work, LESSEE shall submit to LESSOR such waivers of and such indemnity against any mechanics', materialmen's or other liens on account of said work as shall be satisfactory to LESSOR.

The material used in said work shall be of good quality, and the work shall be done in a good and workmanlike manner. LESSEE shall promptly pay all labor, material, architectural and engineering services, and superintendents employed in the performance of said work.

Any physical additions, alterations or improvements to the premises made by LESSEE will become the property of the LESSOR except, however, that any trade fixtures, shelving, counters, or other appliances placed in the building by LESSEE which do not actually become a part of the building, may be removed by LESSEE during the term hereby created. LESSOR may require that LESSEE, at the termination of this lease and at LESSEE's expense, remove any physical additions or improvements, repair any alterations and restore the premises to the condition existing at the commencement date, normal wear excepted.

#### VIII. AMERICANS WITH DISABILITIES ACT.

Notwithstanding anything else in this lease to the contrary, this Section shall apply to all issues related to compliance with both the Americans with Disabilities Act ("ADA") and the applicable state law. In the event of any conflict between the rest of the lease and this Section, this Section shall control.

1. Any remodeling, construction, reconstruction, installation of improvements or other work done to the common areas or other portions of the property of which the premises are a part shall be performed by LESSOR, at LESSOR's expense, in compliance with the requirements of the ADA and regulations promulgated pursuant to it.
2. In the event that a regulatory agency, private party, organization or any other person or entity makes a claim under the ADA against either (or both) parties, the party whose breach (or alleged breach) of responsibility under this lease gave rise to the claim shall promptly retain attorneys and other appropriate persons to advise the parties regarding the same, and shall in good faith and at that party's sole cost and expense take whatever actions are necessary to bring the premises or the property, as the case may be, into compliance with ADA requirements. That party shall defend, save and hold harmless the other party from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors, court costs, and costs incurred for bringing the property and/or the premises into compliance.
3. Notwithstanding the above, LESSEE shall be solely responsible for expenses necessary to comply with ADA requirements triggered solely by a disability of one or more of LESSEE's employees.
4. Non-compliance with the provisions of this Section, after written notice to the non-complying party and an opportunity to cure within a reasonable period, shall be an event of default under the lease. A reasonable period to cure shall mean cure or commencement of efforts to cure within ten (10) days, which efforts are diligently pursued to completion.

**LESSEE shall indemnify and save said premises harmless against any penalty, claim, loss, damage, cost, attorney's fees, expenses, and mechanics' or other liens arising out of the performance of the work or out of any accident or other occurrence connected therewith.**

LESSEE shall not, in connection with said work or for any other purpose whatsoever, create any lien upon the premises or upon any additions, extensions, alterations, or improvements thereto or thereon or in any way encumber the same or LESSOR's title thereto.

#### IX. CONDITION AND MAINTENANCE OF PREMISES

LESSEE has inspected the premises and accepts the premises in the condition that it is in as of the date of this lease. LESSEE shall maintain the premises in good condition and repair and shall make all repairs and replacements necessary to maintain the premises in good condition. LESSOR will, at no time during the term of this lease, incur any expense, or have any duty whatsoever, with regard to any existing structure or with regard to any maintenance or repairs of any portion of the premises, whether currently existing or not.

LESSEE shall use reasonable care to avoid any act which may disturb or create a nuisance in the course of the LESSEE's use, maintenance, repair and policing of said premises.

#### X. PURCHASE OF ELECTRICITY

LESSEE agrees to purchase electricity from the City of College Station, Texas, for the duration of this lease, and will be charged rates that are comparable to other similarly situated customers in the same rate classification.

#### XI. INDEMNIFICATION AND RELEASE

LESSEE agrees to and shall indemnify and hold harmless LESSOR, its officers, agents and employees, from and against any and all claims, costs, losses, penalties, damages, causes of action, suits, and liability of every kind, including all expenses of defense and/or litigation, court costs, and attorney's fees, for any claims, including personal injury to or death of any person or damage to any property, arising out of or in connection with LESSEE's occupation, maintenance, use, repair, or policing of the premises made the subject of this lease agreement.

LESSOR and LESSEE release each other from any claim, by subrogation or otherwise, for any damage to the premises or personal property by reason of fire or the elements, regardless of cause, including negligence of LESSOR and LESSEE. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect insurance coverage.

#### XII. CASUALTY/TOTAL OR PARTIAL DESTRUCTION

If the premises are substantially damaged by fire or other casualty and cannot be restored to substantially the same condition as they existed before the casualty within ninety (90) days after the passage of the notice provided period provided below, LESSEE or LESSOR shall have the option to terminate said lease by providing written notice to the other within fifteen (15) days of the damage or destruction. If neither party terminates this lease, it shall continue and LESSOR shall restore the premises. To the extent the premises are untenable after the casualty, the rent will be adjusted as may be fair and reasonable.

If the premises is taken by condemnation or the right of eminent domain during the pendency of this Lease Agreement, either party, upon written notice to the other, shall be entitled to terminate as of the date of the taking by the Condemnor.

It is understood in the event of the termination of this Lease due to said condemnation, LESSEE shall have no claim against LESSOR for the value of any unexpired term of its Lease. LESSOR shall have no claim against LESSEE for any rental payments for the unexpired term of the Lease as provided above by LESSEE or LESSOR. Rental shall be adjusted to the date LESSEE is deprived of possession of the premises. Each party shall be entitled to receive and retain the amounts awarded for each party's interest in the premises.

### XIII. TERMINATION

If at any time during the term of this lease, LESSEE shall be in default of rental payment or in the performance of any of the covenants herein contained, and such default shall continue for a period of thirty (30) days after notice thereof in writing has been tendered by LESSOR to LESSEE, it shall be lawful for LESSOR at its election, at or after the expiration of said thirty (30) days, to declare said lease term ended and enter into said premises either with or without process of law. LESSEE hereby waives any demand for possession of said premises.

Notwithstanding the terms of the previous paragraph, this Lease shall be terminated automatically, and LESSEE shall immediately yield possession of said premises to LESSOR, including all additions and improvements thereto or thereon, upon the occurrence of any of the following events:

1. LESSEE files any debtor proceeding or is adjudicated as bankrupt under the provisions of any Bankruptcy Act;
2. LESSEE makes an assignment for the benefit of creditors;
3. LESSEE petitions for or enters into an arrangement of creditors; or
4. LESSEE abandons the premises or suffers this lease to be taken under any writ of execution.

Upon the termination of this lease for any reason, LESSEE shall surrender said premises peaceably to LESSOR. LESSEE shall surrender the premises in good order, condition, and state of repair less reasonable wear and tear, but damage or destruction by fire or other casualty is excepted. In any event, LESSEE shall leave the demised premises in a "broom clean" condition.

The parties further agree that, upon termination of this lease, LESSOR shall have the immediate right to re-enter the premises and may remove all persons and property from the premises. Said property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, LESSEE, all without resort to legal process and without LESSOR being deemed guilty of trespass or becoming liable for any unintentional loss or damages that may be occasioned thereby.

At the expiration of any term of the lease, LESSEE shall vacate the premises. Any holdover shall only be authorized upon the express written consent of LESSOR and shall only be on a month-to-month term; provided, however, that no holding over by LESSEE, with or without the consent of LESSOR, will extend the term.

#### XIV. LIMITATION OF WARRANTIES

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

#### XV. NOTICES

Notices to the parties herein shall be served by mailing a certified copy, return receipt requested, to the following addresses:

If to City:

City Manager  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

with a copy to:

City Attorney  
P.O. Box 9960  
College Station, TX 77842

If to Deluxe Burger Bar of College Station, Inc.:

Attn: Costandinos Dallis, President and Registered Agent  
Deluxe Burger Bar of College Station, Inc.  
104B Church Avenue  
College Station, Texas 77840

Either party may from time to time, upon written notice to the other party sent by certified mail, change the address to which notices by mail shall be sent.

#### XVI. ASSIGNMENT

LESSEE may not assign the interest in this lease or sublet the subject premises without LESSOR's express written consent. This lease is made to LESSEE because of LESSEE's qualifications and experience as a restaurateur. The premises shall be used only by LESSEE for a restaurant business, and the lease shall terminate upon cessation of the use of the demised premises by LESSEE or for that purpose; and the demised premises or any part thereof, or the lease itself, shall not be sold, encumbered, assigned, transferred, sublet, or seized or taken by operation of law or by virtue of any

process, attachment, execution or otherwise, or in any proceeding against LESSEE or another, or under or by virtue of insolvency or bankruptcy proceedings, without the express written consent of LESSOR. Additionally, a change in ownership of fifty plus one percent of the stock or financial interest of LESSEE shall be considered an assignment for purposes of this paragraph. An assignment as prohibited above shall cause this lease agreement to terminate immediately.

XVII. DEFAULT BY TENANT

Default by LESSOR Events. Default by LESSOR is: (a) failing to comply with any provision of this lease within thirty (30) days after written notice.

Default by LESSEE Events. Defaults by LESSEE are: (a) failing to pay timely rent within ten (10) days after written notice, (b) abandoning or vacating a substantial portion of the premises, or (c) failing to comply within thirty (30) days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

XVIII. REMEDIES

LESSEE's remedies for LESSOR's default. LESSEE's remedies for LESSOR's default are to (a) sue for damages or (b) terminate this lease.

LESSOR's remedies for LESSEE's default. LESSOR's remedies for LESSEE's default are to (a) enter and take possession of the premises, after which LESSOR may relet the premises on behalf of LESSEE and receive the rent directly by reason of the reletting, and LESSEE agrees to reimburse LESSOR for any expenditures made in order to relet; or (b) to terminate this lease by written notice and sue for damages. LESSOR may enter and take possession of the premises by self-help, by picking or changing locks if necessary, and may lock out LESSEE or any other person who may be occupying the premises, until the default is cured, without being liable for damages.

The various remedies available to LESSOR shall be cumulative, and no one of the remedies is exclusive of any other right or remedy allowed by law.

No waiver by either party hereto of any term or condition of this lease shall be deemed or construed to be a waiver of any other term or condition or to be a subsequent waiver of the same term or condition.

XIX. NO PARTNERSHIP

LESSOR shall not, in any way or for any purpose, be considered a partner of LESSEE in the conduct of its business or otherwise, or a joint venturer or a member of a joint enterprise with LESSEE.

XX. CAPTIONS

The captions, section numbers, and other such designations appearing in this lease are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of such sections of articles of this lease or in any way affect this lease.

XXI. PARTIAL INVALIDITY

If any term, covenant or condition of this lease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this lease, or the application of such term, covenant, or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

XXII. JURISDICTION

The parties agree that this contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

XXIII. COSTS OF COLLECTION

If either party at any time shall be compelled to pay or elects to pay any sum of money due, or perform any act which requires the payment of any sum of money by reason of the failure by the other party to comply with any provision of this lease, or if either party incurs any expenses, including reasonable attorney's fees, in prosecuting or defending any action or proceeding by reason of any default by the other party under this lease, the sum so paid by such party with legal interest, costs and damages, shall be due from and be paid by the other party to such party upon establishment of the party at default. All payments so payable shall, as the case may be, be either added to or deducted from the rentals payable under this lease.

XXIV. ENTIRE AGREEMENT

This lease sets forth all of the covenants, promises, conditions and understandings between the parties concerning the property, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than what are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon the parties unless reduced to writing, approved by the College Station City Council, and signed by both parties.

XXV. AMENDMENT OF LEASE

This lease may be amended only by an instrument in writing signed by the LESSOR and LESSEE.

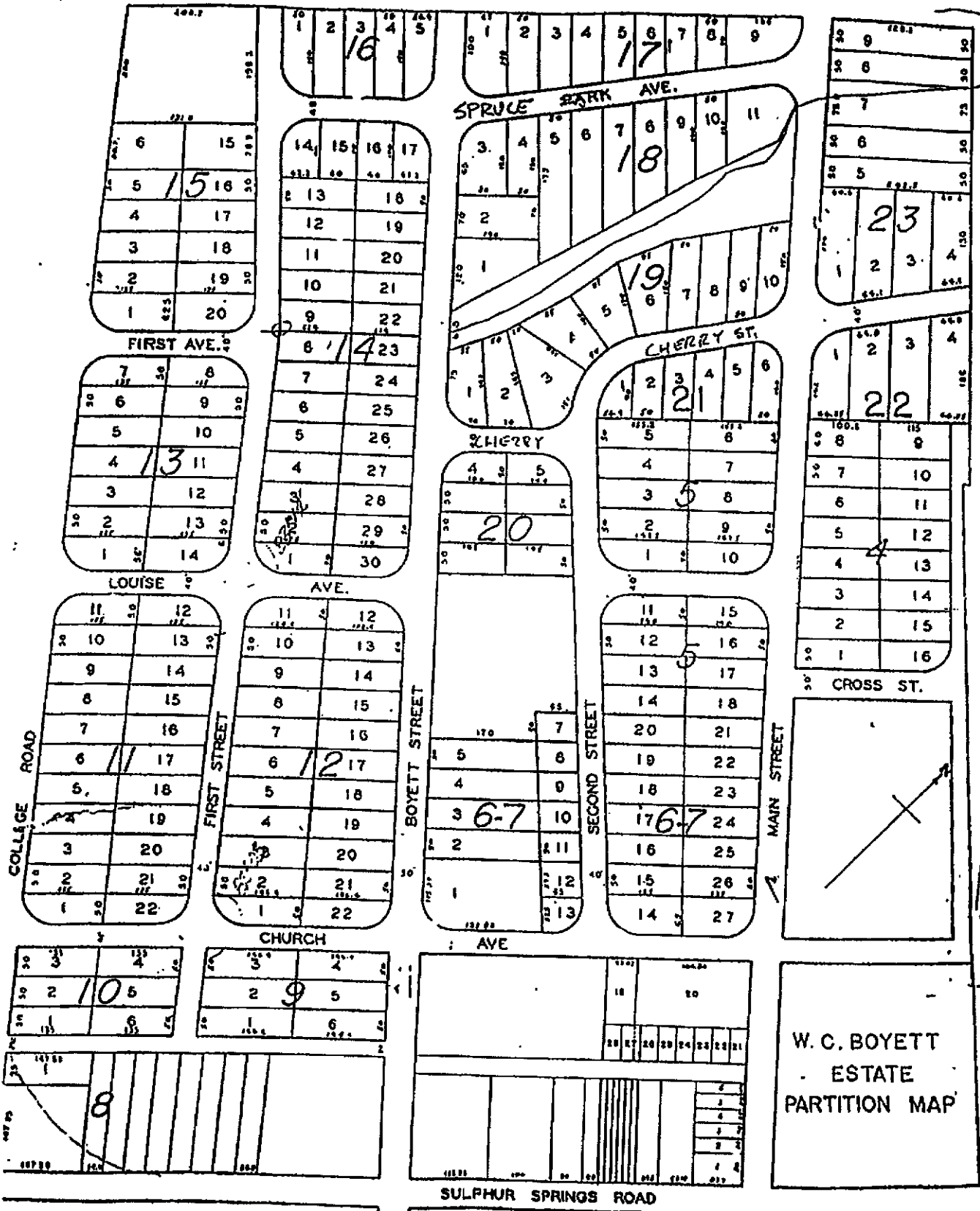


STATE OF TEXAS }  
COUNTY OF BRAZOS }

ACKNOWLEDGMENT

This instrument was acknowledged on the 31st day of December, 2003, by Ron Silvia, in his capacity as Mayor of the CITY OF COLLEGE STATION, a Texas home-rule municipality, on behalf of said municipality.

Connie Hooks  
Notary Public in and for  
The State of Texas



W. C. BOYETT  
ESTATE  
PARTITION MAP

SULPHUR SPRINGS ROAD

S.P. KAMM, SURVEYOR. 6-10-22

Partition Map

EXHIBIT A

Exhibit "B"

INSURANCE REQUIREMENTS

1. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers, shall be considered in excess of the Lessee's insurance and shall not contribute to it.
2. The following standard insurance policies shall be required:
  - (a) General Liability Policy
3. The following general requirements are applicable to *all* policies:
  - (a) All policies shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
  - (b) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
  - (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a "per occurrence" basis for property damage only.
  - (d) "Claims Made" Policies will not be accepted.
  - (e) The City of College Station, its officials, employees, and volunteers, are to be added as "Additional Insureds" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
  - (f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
  - (g) Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.
4. The following General Liability will be required:
  - (a) Minimum Combined Single Limit of \$500,000, per occurrence for Bodily Injury and Property Damage, and \$1,000,000 aggregate.
  - (b) Coverage shall be at least as broad as Insurance Service's Office form number CG 00 01.
  - (c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
  - (d) The coverage shall include but not be limited to the following: premises/operations; independent contracts; products/completed operations; and contracted liability (insuring the indemnity provided herein).

EXHIBIT B  
1 2

5. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and attached hereto and made a part hereof for all purposes. The certificate shall contain provisions warranting the following:

- (a) The company is licensed and admitted to do business in the State of Texas.
- (b) The insurances set forth by the insurance company are underwritten on forms which have been approved by the Texas State Board of Insurance or ISO.
- (c) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (d) Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
- (e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

Filed for Record in:  
BRAZOS COUNTY

On: May 13, 2005 at 01:47P

As a  
Recording

Document Number: 00090795

Amount 35.00

Receipt Number - 265606

By:  
Cynthia Rincon

STATE OF TEXAS COUNTY OF BRAZOS  
I hereby certify that this instrument was  
filed on the date and time stamped herein by me  
and was duly recorded in the volume and page  
of the named records of:  
BRAZOS COUNTY  
as stamped herein by me.

May 13, 2005

HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY

EXHIBIT B  
Pages 2 of 2 PAGES



**ECONOMIC DEVELOPMENT AGREEMENT AMONG  
THE CITY OF COLLEGE STATION, THE RESEARCH VALLEY PARTNERSHIP,  
INC. AND ASSET PLUS REALTY CORPORATION**

This Economic Development Agreement ("Agreement") is dated as of \_\_\_\_\_ and is entered into by and between the City of College Station, Texas, a home-rule municipal corporation organized under the laws of Texas (hereinafter referred to as the "City"), The Research Valley Partnership, Inc., a Texas nonprofit corporation (hereinafter referred to as "RVP"), and Asset Plus Realty Corporation, a Texas business corporation (hereinafter referred to as "Developer").

WHEREAS, the City is authorized and empowered under applicable Texas laws pertaining to economic development to aid in the development of commercial enterprises and redevelopment projects within the geographic boundaries of the City and its extraterritorial jurisdiction by offering economic and other incentives to prospective new, developing, and expanding businesses pursuant to Chapter 380, Texas Local Government Code; and

WHEREAS, the City actively seeks economic development prospects in College Station through participation in and establishment of an economic development program and including the disposition of property by and through an independent foundation; and

WHEREAS, the City desires to stimulate business and commercial activity in the NG-1 Core Northgate zone (hereinafter referred to as "Northgate") for redevelopment under its economic development program; and

WHEREAS, the City has determined that certain conditions including aging infrastructure, dilapidated structures, and the difficulty in assembling property due to fractured ownership of property exist in the Northgate area that increase development costs and create barriers to redevelopment; and

WHEREAS, the City owns Property it wishes to be redeveloped in Northgate pursuant to its economic development program; and

WHEREAS, RVP is an independent foundation through which the City can convey its property; and

WHEREAS, Developer has expressed its intent and desire to construct its Project in Northgate; and

WHEREAS, Section 272.001(4) Texas Local Government Code authorizes the conveyance, sale or exchange of land without public notice and bidding to an independent foundation for development by contract; and

WHEREAS, Developer is a qualified economic development prospect under the City's economic development policies that qualifies for a land incentive and will redevelop the Property and will meet the goals of the City's economic development program;



NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the City, RVP and Developer agree as follows:

**1. Definitions.**

For the purposes of this Agreement, when not inconsistent with the context, words used in the present tense include the future tense, words in the plural include the singular, and words in the singular include the plural, and the use of any gender shall be applicable to all genders whenever sense requires. The words "shall" and "will" are mandatory and the word "may" is permissive. Words not defined in this Agreement shall be given their common and ordinary meaning.

**1.1 Approved Plans** means the plans and specifications that meet the requirements of this Agreement, the City of College Station Codes and Ordinances and any other applicable laws and that have been submitted to, reviewed and approved by the City of College Station in accordance with such Codes and Ordinances and other applicable laws in effect as of the date of this Agreement.

**1.2 Certificate of Completion** means a certificate stating that work was done in compliance with approved construction documents/Approved Plans and in compliance with the City Code of Ordinances in effect as of the date of this Agreement.

**1.3 Certificate of Occupancy** means a certificate issued by the building department of the City of College Station pursuant to the City Code of Ordinances in effect as of the date of this Agreement.

**1.4 Effective Date** means the date on which this Agreement is executed by the second party to execute the same as set forth on the signature page hereto.

**1.5 Development Costs** means the hard and soft costs incurred by Developer in connection with the acquisition, development and construction of the Project, which hard and soft costs shall not be less than Thirty Million and no/100<sup>ths</sup> Dollars (\$30,000,000.00).

**1.6 Final Completion** means the date that a Certificate of Occupancy, whether temporary or permanent, has been issued for the Project.

**1.7 Project** means a four to eight story private mid-rise multi-family housing development with an associated parking structure plus commercial development with at least one entrance facing Church Street all located on the Property designed and provided in accordance with the City Unified Development Ordinance and as further described in this Agreement; and with a total Development Cost of not less than Thirty Million and no/100ths Dollars (\$30,000,000.00). A depiction of such proposed Project is attached hereto and made a part hereof marked as **Exhibit "A."**

1.8 **Property** means that one certain area located in the Northgate district owned by the City and as further described in **Exhibit "B"** attached hereto and made a part hereof and subject to an existing commercial lease between Deluxe Burger Bar of College Station, Inc. and the City dated December 10, 2003. A copy of the lease is attached hereto as **Exhibit "C"** and incorporated herein by reference.

## 2. **City Incentives.**

The City offers the following incentives for Developer to fulfill its obligations and representations as set forth in this Agreement relating to developing the Project on the Property:

### 2.1 **Sale of Property.**

(a) The City agrees to sell the Property to RVP as set forth herein. The Parties recognize that the Property is currently appraised for Three Million Five Hundred Fifty Five Thousand Dollars and No Cents (\$3,555,000.00) by the City. The City agrees to fund an economic development grant pursuant to TEXAS LOCAL GOVERNMENT CODE Chapter 380 to RVP in the total amount of Five Hundred Eighty Thousand and 00/100 Dollars (\$580,000.00). This grant shall be in the form of credit against the purchase price of the Property. Hence, the sale of the Property by the City to RVP shall be for Two Million Nine Hundred Seventy-Five Thousand and 00/100 Dollars (\$2,975,000.00) plus the Five Hundred Eighty Thousand and 00/100 Dollars (\$580,000.00) credit against the purchase price. RVP agrees that said credit shall be assigned, in turn, to Developer at the time of sale of the Property from RVP to Developer as set forth below. All parties agree that the sale of the Property shall be as set forth in this Agreement and for other good and valuable consideration set forth in a Purchase and Sale Agreement in substantially the form attached hereto as **Exhibit "D"** and made a part hereof. The City and RVP agree to enter into said Purchase and Sale Agreement within ten (10) days from the Effective Date.

Simultaneously with the purchase of the Property from the City, RVP agrees to sell the Property to Developer, and Developer agrees to purchase the Property from RVP for Three Million Five Hundred Fifty Five Thousand Dollars and No Cents (\$3,555,000.00). More specifically, the sale shall be for Two Million Nine Hundred Seventy-Five Thousand and 00/100 Dollars (\$2,975,000.00) plus the assignment of the Five Hundred Eighty Thousand and 00/100 Dollars (\$580,000.00) credit against the Purchase Price from the City by RVP to Developer and for other good and valuable consideration including the performance by Developer of all its obligations set forth in this Agreement and as set forth in a Purchase and Sale Agreement in substantially the form attached hereto as **Exhibit "E"** and made a part hereof. RVP and Developer agree to enter into said Purchase and Sale Agreement within 20 days from the Effective Date.

(b) The City hereby authorizes RVP to sell the Property to Developer for the Project pursuant to this Agreement and as set forth in the Purchase and Sale Agreement between RVP and Developer as substantially set forth in **Exhibit**

"E." The conveyance of the Property to RVP is only for the purposes set out herein. The Property shall not be used for any other purpose during the term of this Agreement. Developer shall electronically transfer the purchase price, as described in the purchase agreement between Developer and RVP to RVP, who shall electronically transfer the same to the City at closing. If Developer terminates the aforesaid Purchase and Sale Agreement, RVP shall convey the Property back to the City within ten (10) days after the effective date of the Notice of Termination from Developer.

(c) The City agrees to pay or cause RVP to pay the costs of an owner's policy of title insurance in favor of RVP or Developer in accordance with the Purchase and Sale Agreements in the forms substantially as set forth in Exhibits "D" and "E."

### 3. Developer's Obligations and Representations.

3.1 General. Developer shall timely comply in good faith with all of the terms and conditions of this Agreement.

3.2 Purchase of Property. Developer agrees to purchase the Property from RVP for the amount and in the manner described in Section 2 above pursuant to a Purchase and Sale Agreement in the form of Exhibit "E" and subject to the terms and conditions thereof. Development of the Property shall be in accordance with this Agreement and the Purchase and Sale Agreement which is an express part of the consideration for the sale of the Property to Developer. In the event of a conflict between this Agreement and the Purchase and Sale Agreement between Developer and RVP, the Purchase and Sale Agreement shall control. The conveyance of the Property is for the purposes set out herein and is sold to the Developer pursuant to the terms, conditions and restrictions contained in this Agreement and those contained in the aforesaid Purchase and Sale Agreement.

### 3.3 Restrictions on Property.

(a) Buy Back Option. In consideration of Ten Dollars and 00/100 Dollars (\$10.00) in hand paid by the City to Developer and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by Developer, Developer hereby grants to the City an option to repurchase the Property for a total purchase price of Two Million Nine Hundred Seventy-Five Thousand and 00/100 Dollars (\$2,975,000.00) as of the second (2<sup>nd</sup>) anniversary of the Effective Date, subject to the terms of the next succeeding paragraph. Said option may hereinafter be referred to as the "Buy Back Option."

The Buy Back Option may only be exercised (i) if Developer has failed to Commence Construction (defined below) of the Project by the second anniversary of the Effective Date; and (ii) if, not later than thirty (30) days after the second (2<sup>nd</sup>) anniversary of the Effective Date, the City gives Developer written notice (the "Buy Back Notice") that it intends to exercise the Buy Back Option. If the

conditions in (i) and (ii) above are satisfied, the City must repurchase the Property within ninety (90) days after the effective date of the Buy Back Notice or the City's right to do so shall be deemed waived and of no further force or effect. If the City fails to give the Buy Back Notice within the thirty (30) day period referenced in (ii) above, the City's right to issue the Buy Back Notice and repurchase the Property shall be deemed waived and of no further force or effect. Within thirty (30) days after the effective date of the Buy Back Notice, Developer shall provide all information reasonably requested by the City, including information regarding the status of any and all liens and encumbrances pertaining to the Property and any improvements thereon.

For purposes of this Agreement, "Commence Construction" means the date Developer is issued a City building permit for the Project.

At such time as Developer or a permitted assignee closes on the construction loan it intends to obtain for the construction of the Project, Developer will, or will cause its permitted assignee, to provide a copy of the completion guaranty required of the principals of Developer or such assignee by the construction lender.

(b) No tax exemptions. Developer may not sell, lease, assign or convey the Property to any individual or entity, other than the City or RVP, which would be exempt from the payment of ad valorem taxes on the Property.

(c) Prohibited uses. The following uses on the Property are prohibited: warehousing and storage, sexually oriented enterprises, and governmental or tax-exempt uses (other than as set forth above). Such restrictions will be incorporated in the deed, shall constitute covenants running with the land and shall survive termination of this Agreement.

(d) Reservation of easements and rights-of-way. The City may reserve from the conveyance of Property any easements or rights-of-way that it deems necessary, including, without limitation, blanket easements; provided however that, in such reservation, the City and/or RVP agrees that, upon approval of the Approved Plans it will, by recordable document, reduce and limit such easements to areas specified in the Approved Plans.

(e) Purchase and Sale Agreements. Any other restrictions, encumbrances, reservations contained in the Purchase and Sale Agreements as substantially set forth in Exhibits "D" and "E."

3.4 Develop the Project on the Property. Developer agrees to develop and construct the Project on the Property as set forth in this Agreement.

3.5 Description of the Project. In developing the Project on the Property, the Developer must comply with the following:

(a) Multi-family and parking. Developer will construct a four to eight story private mid-rise multi-family housing development with associated parking in a parking structure for tenants which may or may not be attached directly to the housing portion of the development.

(b) Building Orientation and Access. If required pursuant to the City's Unified Development Ordinance, the primary entrance shall face Church Avenue.

(c) Café Eccell. Developer agrees to provide for the current tenant, Deluxe Burger Bar of College Station, Inc. ("Tenant") which operates as Café Eccell on the Property pursuant to that certain lease agreement which is attached hereto as Exhibit "C", to continue operations under a new lease agreement within the Project; provided however that nothing herein shall constitute a warranty or guaranty that Developer and Deluxe Burger Bar of College Station, Inc. will be able to come to terms on a new lease; provided that Developer agrees to use good faith and commercially reasonable efforts to negotiate a new lease. Further, assuming that the parties enter into a new lease, nothing herein shall operate to act as a representation or warranty that Café Eccell will be able to operate continuously during construction; provided however that Developer agrees to use commercially reasonable efforts to allow Café Eccell to operate as much as possible during construction.

(d) Compliance with applicable law and rules. Developer agrees to comply with all applicable rules and regulations of the City and to applicable state and federal law, all in effect as of the date of this Agreement. Developer agrees to specifically comply with the City's Unified Development Ordinance, in effect on the date of this Agreement, including complying with the aesthetic and other requirements of the Northgate District in which the Property is located; provided, however, Developer understands and agrees that the Project will be vested only as provided under TEXAS LOCAL GOVERNMENT CODE Chapter 245 and the City's Unified Development Ordinance. Furthermore, Developer agrees to comply with all applicable law, rules and regulations pertaining to the timely and proper payment of ad valorem taxes.

3.6 Timing of completion of Project. Developer agrees to have Final Completion of the Project occur no later than January 1, 2016, subject to *force majeure*. For the purposes of this Agreement, *force majeure* shall mean delays in the performance of any obligation due to unforeseeable causes beyond the control of Developer or its permitted assignee, and without the fault of Developer or its permitted assignee, including, but not limited to, fire, flood, earthquake, storm or other natural disaster, war, invasion, terrorist act, act of foreign enemies, hostilities (whether war is declared or not), embargo, labor dispute, strike, lockout, unavailability of materials, the discovery of previously concealed site conditions or litigation commenced by third parties.

3.7 Incur Development Costs. Developer agrees that it shall develop the Project on the Property so that the Development Costs upon Final Completion shall be no less than Thirty Million Dollars and no/100ths Dollars (\$30,000,000.00).

3.8 Non-discrimination. Developer agrees that as to all its obligations arising from this Agreement, it shall comply fully with all Civil Rights Acts and specifically will not discriminate against any person on the basis of race, color, national origin, sex or by reason of being disabled.

3.9 Notification of financial condition. Developer must notify the City immediately at any time it reasonably anticipates or upon actual occurrence of one of the following events: a) upon appointment of a receiver of Developer or of all or any substantial part of its assets, the Property or the Project; or b) upon filing by Developer of a petition or an answer seeking bankruptcy, receivership, reorganization and the same is not dismissed within sixty (60) days after the filing thereof, or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding.

#### 4. Term.

4.1 Term. The term of this Agreement shall commence as of the Effective Date of this Agreement and shall end on the earlier of (a) the date of Final Completion; or (b) four (4) years following the date of Developer's purchase of the Property unless terminated earlier as set forth in this Agreement including this section and pursuant to the Default provisions. Upon written request by Developer or its permitted assignee, the City and RVP agree to execute and deliver to Developer a termination of this Agreement in recordable form within thirty (30) days after the last day of the Term.

4.2 Failure to Purchase. Notwithstanding any provision to the contrary in this Agreement, in the event Developer or the RVP does not purchase the Property pursuant to one of the Purchase and Sale Agreements as substantially set forth in Exhibits "D" and "E", this Agreement shall terminate immediately at such time and the parties shall have no further obligations hereunder.

5. **Developer Reporting Requirements.** The Developer shall be required to meet the following reporting requirements ("Reporting Requirements"):

5.1 Schedule of the Project. Developer shall submit to the City a final time schedule of the Project through Final Completion within fifteen (15) days after Developer receives the same from Developer's general contractor. Additionally, Developer shall promptly notify the City in writing if its Project schedule is delayed for more than thirty (30) days, subject to *force majeure* or if the Project schedule is revised in any substantial way.

#### 6. Default.

##### 6.1 General.

(a) Opportunity to cure. Should any party to this Agreement fail to timely, fully, completely and to continuously comply with any one or more of the requirements, obligations, duties, terms, conditions or warranties of this Agreement, such failure shall be an act of default by such party. Such party shall have thirty (30) days from the effective date of notice of such default to cure and

remove the default from the other party. The opportunity to cure shall not apply to the Buy Back Option or the City's requirement to provide the Buy Back Notice.

(b) Limitation of liability. The parties agree they shall be liable only for the actual amount of money or value to which the obligation, duty, term, condition or warranty relates but not for any other actual or consequential damages, direct or indirect, or interest for any act of default or breach by such defaulting party under the terms of this Agreement.

6.2 Developer Default. In addition to the above provision relating to default by one or more of the parties to this Agreement, Developer shall be subject to the following:

(a) Termination. In the event Developer does not fully, timely and completely cure and correct a default within thirty (30) days after written notice to do so or upon expiration of an extension of time, if any, granted Developer by the City, the City, as its sole remedy, may terminate this Agreement, after which the parties shall have no further obligations to one another, except for those provisions expressly surviving termination.

(b) The Project. Default of Developer consists of, but is not limited to, any of the following individual or cumulative events:

i. The failure to meet any one or more of Developer's obligations set forth in Section 3 above;

ii. The failure of Developer to materially comply with the Approved Plans; or

iii. The submittal of any information that, to Developer's then-current actual knowledge, is incorrect at the time of its submittal to the City, the failure of Developer to submit information when Developer knows or should reasonably know it has an obligation under this Agreement to do so, or any material misrepresentation of fact concerning the subject matter of this Agreement.

(c) Bankruptcy; receivership. Notwithstanding any other provision in this Agreement, Developer shall be considered in default and the City may, at its sole discretion, suspend its obligations or may determine this Agreement to have immediately terminated for all parties, with or without notice, upon the appointment of a receiver of Developer, or of all or any substantial part of the Property or the Project, and the failure of such receiver to be discharged within sixty (60) days thereafter.

(d) Refund. None of Developer, RVP or the City shall be required to refund to any other party any money or the value of any economic incentive

granted herein that has already been provided pursuant to this Agreement prior to termination.

(e) Extension. The City may grant Developer such extension of time as it chooses to grant upon notification by Developer to the City of the need for such extension and its reasonable ability to cure the default within said requested timeframe.

(f) Delay in notification. Any delay for any amount of time by either party in providing notice of default to the other party shall in no event be deemed or constitute a waiver of any other existing or future act of default by the defaulting party or of a subsequent act of default of the same act or event by the defaulting party.

(g) The City's obligations. In the event that this Agreement is terminated by the City in accordance with the terms of this Agreement, the City shall be relieved of any further obligations under this Agreement.

(h) Developer represents and agrees that any real estate broker or sales person of any kind engaged or involved in any manner in the sale of the Property shall be a private contractual matter between Developer and such broker or sales person. There will be no real estate sales commission due or to be claimed as a result of this sale pursuant to this Agreement.

6.3 The City's defaults. In the event the City is in default and fails to timely cure such default including failing to reasonably disburse the economic incentives provided for in this Agreement and Developer is not in default, Developer may terminate this Agreement at its option and may thereafter pursue its remedies available at law. In no event shall the City be liable to Developer for any consequential damages as a result of any breach or default under this Agreement. If Developer is in default or breach of this Agreement, Developer may only terminate this Agreement and shall not have the right to pursue its remedies available at law.

## **7. Representations and Warranties by the City.**

### **7.1 Representations and Warranties by the City.**

7.1.1 The City is a home rule municipal corporation under the laws of the State of Texas and has all necessary authority to execute, deliver and perform this Agreement and the transactions described herein and has had the opportunity to consult with counsel or others of its choice in connection with this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by the City and is a valid and binding obligation of the City enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed, delivered and performed by the City pursuant hereto have each been duly authorized by all necessary action on the part of the City and such execution, delivery and performance does and

will not conflict with or result in a violation of the City's governing documents or any judgment, order or decree of any court or arbiter to which the City is a party, or any agreement to which the City is bound or subject.

7.1.2 The City is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

7.1.3 To the best of the City's knowledge, without inquiry, there are no materials, substances or wastes located on the Property which are designated as hazardous or toxic or otherwise harmful to health or the environment, including without limitation, petroleum products, asbestos, radon, urea formaldehyde (collectively, "Hazardous Substances"), under any federal, state or local environmental laws and regulations ("Environmental Laws") or the actual discharge, disbursal, release, storage, treatment, generation, disposal or escape of any Hazardous Substances on the Property; and the City has not received any written notification from any governmental authority setting forth any violation of Environmental Laws.

7.1.4 To the best of the City's knowledge, there are no underground storage tanks on the Property.

7.1.5 The City has entered into no agreement with any third party for the conveyance of the Property or any part thereof to any third party.

## **8. Representations and Warranties by the RVP.**

### **8.1 Representations and Warranties by the RVP.**

8.1.1 RVP is a non-profit corporation under the laws of the State of Texas and has all necessary authority to execute, deliver and perform this Agreement and the transactions described herein and has had the opportunity to consult with counsel or others of its choice in connection with this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by the RVP and is a valid and binding obligation of the RVP enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed, delivered and performed by the RVP pursuant hereto have each been duly authorized by all necessary action on the part of the RVP and such execution, delivery and performance does and will not conflict with or result in a violation of the RVP's governing documents or any judgment, order or decree of any court or arbiter to which the RVP is a party, or any agreement to which the RVP is bound or subject.

8.1.2 The RVP is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

8.1.3 The RVP has entered into no agreement with any third party for the conveyance of the Property or any part thereof to any third party.

9. **Representations and Warranties by Developer.**

9.1 Representations and Warranties by Developer.

9.1.1 Developer is a Texas business corporation under the laws of the State of Texas and has all necessary authority to execute, deliver and perform this Agreement and the transactions described herein and has had the opportunity to consult with counsel or others of its choice in connection with this Agreement and the transactions contemplated hereby. This Agreement has been duly executed and delivered by Developer and is a valid and binding obligation of Developer enforceable in accordance with its terms. This Agreement and the documents and instruments required to be executed, delivered and performed by Developer pursuant hereto have each been duly authorized by all necessary action on the part of Developer and such execution, delivery and performance does and will not conflict with or result in a violation of Developer's governing documents or any judgment, order or decree of any court or arbiter to which Developer is a party, or any agreement to which Developer is bound or subject.

9.1.2 Developer is not a "foreign person", "foreign partnership", "foreign trust" or "foreign estate" as those terms are defined in Section 1445 of the Internal Revenue Code.

9.1.3 Developer is not subject to any legal or administrative proceeding, debt structure or other agreement that would prevent Developer's full and timely performance of its obligations hereunder.

10. **Indemnity.**

10.1 Indemnity by Developer. Developer agrees to and shall indemnify, hold harmless and defend the City and RVP, their respective officers, agents, and employees from and against any and all claims, demands, expenses, liability, losses, damages, causes of action, and suits of every kind, including all reasonable expenses of litigation, court costs, expert fees and reasonable attorney's fees, for injury to or death of any person, for damage to any property, or its failure to abide by all applicable environmental laws, rules and regulations arising out of or in connection with this Agreement and Developer's operation and construction of the Project contemplated by this Agreement on the Property; provided that the foregoing agreement to indemnify, hold harmless and defend shall not apply to the gross negligence or willful misconduct of the City or RVP or their respective officers, agents, employees or council members.

11. **Release.**

11.1 Developer's Release. Except with respect to the City's warranties and representations pursuant to Section 7.1, Developer releases, relinquishes and discharges the City and RVP, their respective officers, agents, and employees from all claims,

demands, expenses, liability, losses, damages, causes of action and suits of every kind, including the cost of defense thereof, for any injury to or death of, any person (whether they be any of the parties hereto, their employees or other third parties) and any loss of or damage to property (whether property of any of the parties hereto, their employees, or of third parties) or their respective failure to abide by all applicable environmental laws, rules and regulations that is caused by or alleged to be caused by, arising out of, or in connection with this Agreement and Developer's operation of or construction of the Project contemplated by this Agreement on the Property; provided that the foregoing agreement to release shall not apply to matters arising from or related to the gross negligence or willful misconduct of the City or RVP or their respective officers, agents, employees or council members..

11.2 No Waiver. By entering into this Agreement, the City does not consent to suit, waive its governmental immunity, waive any limitations as to damages contained in the Texas Tort Claims Act or waive any remedies it may have lawfully available to it pursuant to applicable law.

## 12. Assignment.

12.1 No Assignment. This Agreement may not be assigned by Developer without the express consent of the City Council of the City. Assignment for the purposes of this Agreement means any change in ownership in whole or in part. This Agreement shall be binding on Developer's heirs, assignees, and successors-in-interest, subject to Section 10.3 below.

12.2 Exception. The City agrees, however, that Developer shall have the right, upon written notice to, but without consent of the City, to assign all or part of its rights and obligations under this Agreement to any entity affiliated with the Developer in which Developer or any affiliate of Developer has an ownership interest, and Developer or assignee provides documentation reflecting such assignment to the City and RVP.

12.3 Assignee Obligations. Any assignee must unconditionally agree in writing to assume all rights and obligations of Developer under this Agreement, and at such time, Developer will be released. No consent given by the City to any transfer or assignment of Developer's rights or obligations hereunder shall be construed as consent to any other transfer or assignment.

## 13. Covenant Running with the Land.

13.1 Covenant Running with the Land. The terms of this Agreement shall constitute covenants running with the land for the term of this Agreement, as the term is described in Article 4 hereof, and, during the term, shall be binding on all future developers and owners of the Property. A memorandum of this Agreement, in the form attached hereto as Exhibit "F" shall be recorded in the County Clerk Official Records of Brazos County, Texas. Upon the termination of this Agreement or the expiration of the Term hereof, the City agrees that, within ten (10) days after Developer's written request therefor, the City will provide a termination of this Agreement in recordable form such

that any future title examiner will not note the Memorandum or this Agreement as an outstanding title matter.

14. Notice.

14.1 Notices. All notices, requests, demands, elections, offers, acceptances and other communications required or desired to be delivered hereunder shall be in writing and shall be deemed given, effective and received (whether refused or received) on the date (the "effective date of notice") which is (a) the date of personal delivery; (b) ten (10) days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested; (c) one (1) business day after deposit with a national overnight air courier, fees prepaid; or (d) the date of transmission via facsimile machine confirmed by the sender's machine facsimile transmission, or electronic mail sent to the intended addressee at the address set forth below, provided that a copy of the facsimile or electronic mail also is sent to the intended addressee by one of the means described in clauses (a) or (c) above; provided however, that if the notice is sent via electronic mail and the addressee responds via electronic mail, such response shall be deemed to constitute receipt by the addressee, in which case it shall not be necessary to send an original of the electronic mail communication as provided above. All of the communications describe in this Paragraph shall be addressed to the appropriate party at its address listed below:

To DEVELOPER:                   Asset Plus Realty Corporation  
675 Bering Drive, Suite 200  
Houston, TX 77057  
Attn: Barrett O. Kirk  
Facsimile: 713-268-5111  
Email: [bkirk@assetpluscorp.com](mailto:bkirk@assetpluscorp.com)

Copy to:                           Fabyanske, Westra, Hart & Thomson, P.A.  
800 LaSalle Avenue, Suite 1900  
Minneapolis, Minnesota 55402  
Attn: Judith E. Krow  
Facsimile: 612.359.7602  
Email: [jkrow@fwhtlaw.com](mailto:jkrow@fwhtlaw.com)

To the CITY:                   City of College Station  
P.O. Box 9960  
College Station, Texas 77842  
Attn: City Manager  
Facsimile: 979.764.6377  
Email: [cmo@cstx.gov](mailto:cmo@cstx.gov)

Copy to:                           City Attorney  
1101 Texas Avenue  
College Station, TX 77842  
Facsimile: 979.764.3481

Email: cmo@cstx.gov

To RVP:

The Research Valley Partnership, Inc.  
1500 Research Parkway, Suite 270  
College Station, TX 77845  
Attn: Todd McDaniel  
Email: tmcdaniel@researchvalley.org

14.2 Each party may change its address by written notice in accordance with this section.

**15. Miscellaneous.**

15.1 Entire Agreement. It is understood that this Agreement contains the entire agreement between the parties and supersedes any and all prior agreements, arrangements, or understandings, written or oral, between the parties relating to the subject matter. No oral understandings, statements, promises or inducements contrary to the terms of this Agreement exist. This Agreement cannot be changed or terminated orally. No verbal agreement or conversation with any officer, agent or employee of the City, either before or after the execution of this Agreement, shall affect or modify any of the terms or obligations hereunder.

15.2 Amendment. No amendment to this Agreement shall be effective and binding unless and until it is reduced to writing and signed by all the duly authorized representatives of the parties until the Property is conveyed to Developer. Upon such conveyance, no amendment to this Agreement shall be effective and binding unless and until it is reduced in writing and signed by duly authorized representatives of the City and Developer.

15.3 Texas Law. This Agreement shall be subject to and governed by the laws of the State of Texas, excluding any conflicts of law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Brazos County, Texas.

15.4 Place of Performance. Performance and all matters related thereto shall be in Brazos County, Texas, United States of America.

15.5 Authority to Contract. Each party represents that it has the full power and authority to enter into and perform this Agreement, and that the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

15.6 Waiver. Failure of any party, at any time, to enforce a provision of this Agreement, shall in no way constitute a waiver of that provision, nor in any way affect the validity of this Agreement, any part hereof, or the right of the party thereafter to enforce each and every provision hereof. No term of this Agreement shall be deemed

waived or breach excused unless the waiver shall be in writing and signed by the party claimed to have waived. Furthermore, any consent to or waiver of a breach will not constitute consent to or waiver of or excuse of any other different or subsequent breach.

15.7 Representation. Developer represents and warrants that no member of the College Station the City Council has an interest in the Project and that the Project is not owned or leased by any member of the College Station the City Council. Developer further represents and warrants that no member of the College Station the City Council is under contract either directly or indirectly with Developer or its agents, contractors or subcontractors. This representation and warranty shall be in effect for the full term of this Agreement.

15.8 Construction. The parties acknowledge that each party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

15.9 Time of Essence. Time is of the essence as to this Agreement and each and every provision hereof. All parties agree that time is of the essence regarding their respective performance and obligations.

15.10 Days; Business Days. Unless otherwise specified, all references to "days" shall mean and refer to calendar days. Business days shall exclude all Saturdays, Sundays and weekdays on which the City is not generally open for regular business. In the event the date for performance of any obligation hereunder shall fall on a Saturday, Sunday or such a weekday, then that obligation shall be performable on the next following regular business day.

15.11 Third party beneficiary. There are no third party beneficiaries to this Agreement.

15.12 Relationship of the Parties. This Agreement will not be construed as establishing a partnership or joint venture, joint enterprise, express or implied agency, or employer-employee relationship among the parties. No party nor their respective past, present or future officers, elected officials, employees or agents, assume any responsibility or liability to any third party in connection with the development of the Project on the Property or the design, construction or operation of any portion of the Project.

15.13 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, it is the intention of the parties that the remainder of this Agreement not be affected and it is also the intention of the parties 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 or enforceable and is as similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

15.14 Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which will be deemed an original, but all of which will constitute one and the same instrument.

15.15 Further Assurances. Each party hereby agrees that it will take all actions and properly execute all documents necessary to fully carry out the purposes and intent of this Agreement.

15.16 List of Exhibits.

- Exhibit "A" Proposed Project Plan
- Exhibit "B" Description of the Property
- Exhibit "C" Lease
- Exhibit "D" Form of Purchase and Sale Agreement between the City and RVP
- Exhibit "E" Form of Purchase and Sale Agreement between RVP and Developer
- Exhibit "F" Form of Memorandum of this Agreement

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK  
SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date set forth below each party's signature.

ASSET PLUS REALTY CORPORATION

CITY OF COLLEGE STATION, TX

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

By: \_\_\_\_\_  
Nancy Berry  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

THE RESEARCH VALLEY PARTNERSHIP,  
INC.

ATTEST:

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Chairman

\_\_\_\_\_  
City Secretary

Date: \_\_\_\_\_

APPROVED:

\_\_\_\_\_  
Frank Simpson  
Interim City Manager  
Date: \_\_\_\_\_

\_\_\_\_\_  
Jeff Kersten  
Executive Director Fiscal Services  
Date: \_\_\_\_\_

\_\_\_\_\_  
Carl A. Robinson  
City Attorney  
Date: \_\_\_\_\_

**EXHIBIT "A"**  
**Proposed Project Plan**



INVESTMENT • MANAGEMENT • DEVELOPMENT

December 5, 2011

Mr. Randall Heye, AICP  
Economic Development Analyst  
City Manager's Office  
P.O. Box 9960  
1101 Texas Avenue South  
College Station, Texas 77842

Re: Approximately 3.3 Acre "Full City Block" located at the NEC of Wellborn Road and Church Avenue, College Station, TX

Construction to begin Fall 2012 for delivery Fall 2014.

Conceptually, we'd like to build a class 'A' pedestrian-oriented four to eight story private mid-rise student housing development in Northgate. The 3+ acres at First Street is perfectly situated for a premier student living environment with five or six levels of structured parking that will provide tenants with secure and easy access to their apartments. Walking distance to A&M will keep auto traffic to a minimum.

This planned upscale, 400 – 600 bed student housing community will feature all of the amenities and components necessary to provide Texas A&M University students a quality living and learning environment. Many of the same components that have made The Lofts at Wolf Pen Creek a success would be incorporated again. Amenities would include but not limited to:

- Indoor restaurant space for Cafe' Excel to operate oriented towards Church Street.
- Private court yards integrated with beautiful landscaping and streetscapes, club house, game room, theatre room with stadium seating, Wi-Fi internet cafe, business centre, cardio room, state-of-the-art health and fitness room, and tanning rooms.
- Courtyard with resort-style pool, outdoor fireplace, kitchen and lounge areas.
- Fully furnished lounge, reception rooms and lobby.
- 24-hour maintenance and security.
- One-, two-, three- and four-bedroom units range from 550 to 1,500 square feet.
- Fully furnished with flat panel HD TVs in every apartment.

EXHIBIT "A"

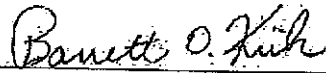
Corporate Headquarters  
675 Bering Dr. Suite 200  
Houston, TX 77057  
713.782.5800

Regional Office  
526 University Drive East, Bldg. B  
College Station, TX 77840  
979.693.1124

Please refer to the website ([www.assetpluscorp.com](http://www.assetpluscorp.com)) or Folder/Brochures for additional development experience or company information.

**PURCHASER:**

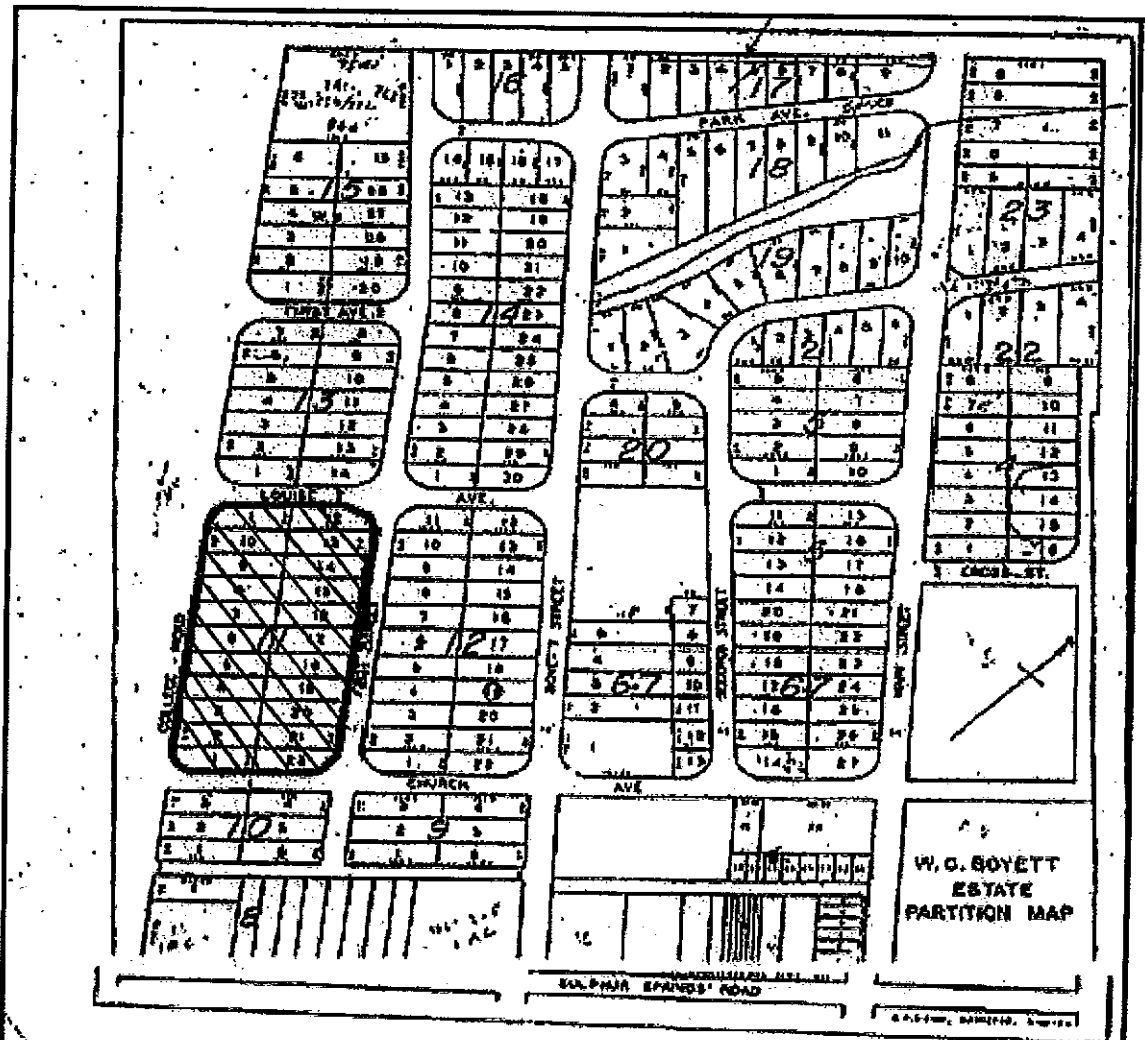
Asset Plus Realty Corporation

BY:   
Barrett O. Kirk  
Senior Vice President – Development

**EXHIBIT "B"**

**Description of Property**

EXHIBIT "B"



The foregoing is a true and correct copy of the original instrument which was filed for record on the 22nd day of June, A. D. 1939, at 5 o'clock p.m. and duly recorded on this the 19th day of July, A. D. 1939, at 11:55 o'clock a.m. to which I certify.

Frank Vorsham, C. C. B. C.  
*Miss [Signature]* Deputy  
 (5)



plat  
 Vol. 100 Pg. 440

SUBDIVISION PLAT

**EXHIBIT "C"**

**Lease**

## EXHIBIT "C"

### LEASE OF REAL PROPERTY RENEWAL TERM

THIS RENEWAL TERM LEASE is made on this the 10<sup>th</sup> day of December, 2003, by and between the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation (hereinafter referred to as LESSOR), and DELUXE BURGER BAR OF COLLEGE STATION, INC., a Texas corporation (hereinafter referred to as LESSEE).

The parties for and in consideration of the agreements herein set forth to be kept and performed by them respectively have agreed to and do hereby agree together as follows:

#### I. DEFINITIONS

LESSOR means the City of College Station, its officials, agents, or employees.

LESSEE means Deluxe Burger Bar of College Station, Inc., its agents, employees, invitees, licensees, or visitors.

Rent means base rent of \$10.00 per square foot plus any other sums of money due the LESSOR by the LESSEE.

Renewal Lease term means the renewal term of the lease entered into dated 1 December 1998, which consists of a ten- (10) year term starting on December 1, 2003, and ending on November 30, 2013.

City's Representative means the City Manager or his designee.

Property means Lots 1-7 and 22 of Block 11 of the W.C. Boyett Estate Partition described more fully in the metes and bounds description attached hereto as Exhibit A.

Premises means the property and all improvements thereon.

Improvements means any building or permanent structure, including but not limited to paved parking, sidewalks, irrigation lines or fence erected or placed on the property.

#### II. TERM

LESSEE has exercised its option to renew the lease entered into on 1 December 1998 ("the Primary Term lease") and LESSOR by these presents does re-lease unto LESSEE (the Renewal Term lease) those premises more commonly known as the "Old City Hall", legally described as Lots 1-7 and 22 of Block 11 of the W.C. Boyett Estate Partition described more fully in the metes and bounds description attached hereto as Exhibit A. The renewal lease term shall run ten (10) years from December 1, 2003, through November 30, 2013. At the expiration of this renewal term the lease shall terminate.

Any holdover by LESSEE after the expiration of the renewal lease term shall be deemed a month-to-month lease during which the terms of this Agreement shall apply.

### III. CONSIDERATION

LESSEE agrees to pay the LESSOR as rent for the leased premises during the renewal term Ten and No/100 Dollars (\$10.00) per square foot for a monthly total rate in the amount of Four Thousand Two Hundred Eighteen and 33/100 Dollars (\$4,218.33). The rental rate has been established by an appraisal as provided in Section III of the Primary Term lease.

The first installment shall be due December 1, 2003, and a like installment shall be due on the same day of each month thereafter. Each payment shall represent rental payment in advance for the month in which the sum is due. LESSEE shall pay, in addition to the rental of said premises, all taxes or special assessments, if any, assessed against or levied upon said premises or upon LESSEE, and insurance as specified in Section VI hereinbelow. Rent shall be sent to the following address:

City of College Station, Accounting Department  
Attention: Accounting Customer Service Supervisor  
P.O. Box 9973  
College Station, TX 77842

LESSEE shall note on the check: "Rental payment – Café Eccell lease"

Upon failure of tenant to pay any monthly installment, the entire balance of the rental then due shall immediately be due and payable at the option of the LESSOR. Any installment of rent accruing under the provisions of this lease which shall not be paid when due, shall bear interest at the rate of five percent (5%) per year from the date when payable by terms of the lease, until same shall be paid by LESSEE.

### IV. REQUEST TO OFFER PREMISES FOR SALE

On or after January 1, 2006, LESSEE may submit in writing a request to the City's Representative to sell the premises. Upon receipt of said request, City's representative shall submit same to the City of College Station City Council for consideration. The City Council may determine, in its sole discretion, whether to offer the property for sale or not. If the City decides to offer the property for sale, it shall do so in accordance with and subject to the requirements of TEX. LOCAL GOV'T. CODE, Chapter 272 or any other applicable laws in effect at the time the request is submitted. LESSEE agrees and understands that City may reject any and all bids received and may determine at the conclusion of the bid process not to sell the property. LESSEE understands and agrees that LESSOR's agreement to consider LESSEE's request does not constitute any representation, guaranty or warranty that it will either offer the property for sale or finally sell the property to LESSEE or any third party.

## V. ORDINANCES

LESSEE shall comply with all federal, state, county, and municipal laws, ordinances, rules, and regulations of any duly constituted authorities having jurisdiction over the matters that are the subject of this lease.

## VI. INSURANCE

LESSEE agrees to maintain insurance on said property and premises and the conduct of LESSEE's business, naming the LESSOR as an additional insured, in the amounts and in accordance with the specifications contained in Exhibit B attached hereto and incorporated herein by reference.

LESSEE shall deliver certificates of insurance to LESSOR before the commencement date of this lease and thereafter whenever requested by LESSOR.

## VII. IMPROVEMENTS

All additions, extensions, improvements, repairs and restoration to and of said premises, now or hereafter made by LESSEE, and the plans, construction, and workmanship therefor, shall be in accordance with all laws, ordinances, and building rules and regulations applicable thereto, as well as all requirements of any underwriters or board of insurance rating body necessary and proper to make the leased premises a first class risk of its kind.

It is further agreed that any additions, extensions, alterations, improvements, repairs and restoration to and of said premises may only be made by LESSEE after LESSEE has:

1. Submitted a full set of plans and specifications to LESSOR;
2. Obtained the prior written consent of LESSOR to make the specified changes or improvements; and
3. Received approval from the Design Review Board. In no event shall the Design Review Board have the authority to waive any standards contained in the City of College Station Unified Development Code or other codes and ordinances.

LESSOR's consent in these matters shall not be unreasonably withheld or delayed.

Prior to the performance of any such work, LESSEE shall submit to LESSOR such waivers of and such indemnity against any mechanics', materialmen's or other liens on account of said work as shall be satisfactory to LESSOR.

The material used in said work shall be of good quality, and the work shall be done in a good and workmanlike manner. LESSEE shall promptly pay all labor, material, architectural and engineering services, and superintendents employed in the performance of said work.

Any physical additions, alterations or improvements to the premises made by LESSEE will become the property of the LESSOR except, however, that any trade fixtures, shelving, counters, or other appliances placed in the building by LESSEE which do not actually become a part of the building, may be removed by LESSEE during the term hereby created. LESSOR may require that LESSEE, at the termination of this lease and at LESSEE's expense, remove any physical additions or improvements, repair any alterations and restore the premises to the condition existing at the commencement date, normal wear excepted.

#### VIII. AMERICANS WITH DISABILITIES ACT.

Notwithstanding anything else in this lease to the contrary, this Section shall apply to all issues related to compliance with both the Americans with Disabilities Act ("ADA") and the applicable state law. In the event of any conflict between the rest of the lease and this Section, this Section shall control.

1. Any remodeling, construction, reconstruction, installation of improvements or other work done to the common areas or other portions of the property of which the premises are a part shall be performed by LESSOR, at LESSOR's expense, in compliance with the requirements of the ADA and regulations promulgated pursuant to it.
2. In the event that a regulatory agency, private party, organization or any other person or entity makes a claim under the ADA against either (or both) parties, the party whose breach (or alleged breach) of responsibility under this lease gave rise to the claim shall promptly retain attorneys and other appropriate persons to advise the parties regarding the same, and shall in good faith and at that party's sole cost and expense take whatever actions are necessary to bring the premises or the property, as the case may be, into compliance with ADA requirements. That party shall defend, save and hold harmless the other party from any and all expenses incurred in responding to such a claim, including without limitation the fees of attorneys and other advisors, court costs, and costs incurred for bringing the property and/or the premises into compliance.
3. Notwithstanding the above, LESSEE shall be solely responsible for expenses necessary to comply with ADA requirements triggered solely by a disability of one or more of LESSEE's employees.
4. Non-compliance with the provisions of this Section, after written notice to the non-complying party and an opportunity to cure within a reasonable period, shall be an event of default under the lease. A reasonable period to cure shall mean cure or commencement of efforts to cure within ten (10) days, which efforts are diligently pursued to completion.

LESSEE shall indemnify and save said premises harmless against any penalty, claim, loss, damage, cost, attorney's fees, expenses, and mechanics' or other liens arising out of the performance of the work or out of any accident or other occurrence connected therewith.

LESSEE shall not, in connection with said work or for any other purpose whatsoever, create any lien upon the premises or upon any additions, extensions, alterations, or improvements thereto or thereon or in any way encumber the same or LESSOR's title thereto.

#### IX. CONDITION AND MAINTENANCE OF PREMISES

LESSEE has inspected the premises and accepts the premises in the condition that it is in as of the date of this lease. LESSEE shall maintain the premises in good condition and repair and shall make all repairs and replacements necessary to maintain the premises in good condition. LESSOR will, at no time during the term of this lease, incur any expense, or have any duty whatsoever, with regard to any existing structure or with regard to any maintenance or repairs of any portion of the premises, whether currently existing or not.

LESSEE shall use reasonable care to avoid any act which may disturb or create a nuisance in the course of the LESSEE's use, maintenance, repair and policing of said premises.

#### X. PURCHASE OF ELECTRICITY

LESSEE agrees to purchase electricity from the City of College Station, Texas, for the duration of this lease, and will be charged rates that are comparable to other similarly situated customers in the same rate classification.

#### XI. INDEMNIFICATION AND RELEASE

LESSEE agrees to and shall indemnify and hold harmless LESSOR, its officers, agents and employees, from and against any and all claims, costs, losses, penalties, damages, causes of action, suits, and liability of every kind, including all expenses of defense and/or litigation, court costs, and attorney's fees, for any claims, including personal injury to or death of any person or damage to any property, arising out of or in connection with LESSEE's occupation, maintenance, use, repair, or policing of the premises made the subject of this lease agreement.

LESSOR and LESSEE release each other from any claim, by subrogation or otherwise, for any damage to the premises or personal property by reason of fire or the elements, regardless of cause, including negligence of LESSOR and LESSEE. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect insurance coverage.

#### XII. CASUALTY/TOTAL OR PARTIAL DESTRUCTION

If the premises are substantially damaged by fire or other casualty and cannot be restored to substantially the same condition as they existed before the casualty within ninety (90) days after the passage of the notice provided period provided below, LESSEE or LESSOR shall have the option to terminate said lease by providing written notice to the other within fifteen (15) days of the damage or destruction. If neither party terminates this lease, it shall continue and LESSOR shall restore the premises. To the extent the premises are untenable after the casualty, the rent will be adjusted as may be fair and reasonable.

If the premises is taken by condemnation or the right of eminent domain during the pendency of this Lease Agreement, either party, upon written notice to the other, shall be entitled to terminate as of the date of the taking by the Condemnor.

It is understood in the event of the termination of this Lease due to said condemnation, LESSEE shall have no claim against LESSOR for the value of any unexpired term of its Lease. LESSOR shall have no claim against LESSEE for any rental payments for the unexpired term of the Lease as provided above by LESSEE or LESSOR. Rental shall be adjusted to the date LESSEE is deprived of possession of the premises. Each party shall be entitled to receive and retain the amounts awarded for each party's interest in the premises.

### XIII. TERMINATION

If at any time during the term of this lease, LESSEE shall be in default of rental payment or in the performance of any of the covenants herein contained, and such default shall continue for a period of thirty (30) days after notice thereof in writing has been tendered by LESSOR to LESSEE, it shall be lawful for LESSOR at its election, at or after the expiration of said thirty (30) days, to declare said lease term ended and enter into said premises either with or without process of law. LESSEE hereby waives any demand for possession of said premises.

Notwithstanding the terms of the previous paragraph, this Lease shall be terminated automatically, and LESSEE shall immediately yield possession of said premises to LESSOR, including all additions and improvements thereto or thereon, upon the occurrence of any of the following events:

1. LESSEE files any debtor proceeding or is adjudicated as bankrupt under the provisions of any Bankruptcy Act;
2. LESSEE makes an assignment for the benefit of creditors;
3. LESSEE petitions for or enters into an arrangement of creditors; or
4. LESSEE abandons the premises or suffers this lease to be taken under any writ of execution.

Upon the termination of this lease for any reason, LESSEE shall surrender said premises peaceably to LESSOR. LESSEE shall surrender the premises in good order, condition, and state of repair less reasonable wear and tear, but damage or destruction by fire or other casualty is excepted. In any event, LESSEE shall leave the demised premises in a "broom clean" condition.

The parties further agree that, upon termination of this lease, LESSOR shall have the immediate right to re-enter the premises and may remove all persons and property from the premises. Said property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, LESSEE, all without resort to legal process and without LESSOR being deemed guilty of trespass or becoming liable for any unintentional loss or damages that may be occasioned thereby.

At the expiration of any term of the lease, LESSEE shall vacate the premises. Any holdover shall only be authorized upon the express written consent of LESSOR and shall only be on a month-to-month term; provided, however, that no holding over by LESSEE, with or without the consent of LESSOR, will extend the term.

#### XIV. LIMITATION OF WARRANTIES

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

#### XV. NOTICES

Notices to the parties herein shall be served by mailing a certified copy, return receipt requested, to the following addresses:

If to City:

City Manager  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

with a copy to:

City Attorney  
P.O. Box 9960  
College Station, TX 77842

If to Deluxe Burger Bar of College Station, Inc.:

Attn: Costandinos Dallis, President and Registered Agent  
Deluxe Burger Bar of College Station, Inc.  
104B Church Avenue  
College Station, Texas 77840

Either party may from time to time, upon written notice to the other party sent by certified mail, change the address to which notices by mail shall be sent.

#### XVI. ASSIGNMENT

LESSEE may not assign the interest in this lease or sublet the subject premises without LESSOR's express written consent. This lease is made to LESSEE because of LESSEE's qualifications and experience as a restaurateur. The premises shall be used only by LESSEE for a restaurant business, and the lease shall terminate upon cessation of the use of the demised premises by LESSEE or for that purpose; and the demised premises or any part thereof, or the lease itself, shall not be sold, encumbered, assigned, transferred, sublet, or seized or taken by operation of law or by virtue of any

process, attachment, execution or otherwise, or in any proceeding against LESSEE or another, or under or by virtue of insolvency or bankruptcy proceedings, without the express written consent of LESSOR. Additionally, a change in ownership of fifty plus one percent of the stock or financial interest of LESSEE shall be considered an assignment for purposes of this paragraph. An assignment as prohibited above shall cause this lease agreement to terminate immediately.

#### XVII. DEFAULT BY TENANT

Default by LESSOR Events. Default by LESSOR is: (a) failing to comply with any provision of this lease within thirty (30) days after written notice.

Default by LESSEE Events. Defaults by LESSEE are: (a) failing to pay timely rent within ten (10) days after written notice, (b) abandoning or vacating a substantial portion of the premises, or (c) failing to comply within thirty (30) days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

#### XVIII. REMEDIES

LESSEE's remedies for LESSOR's default. LESSEE's remedies for LESSOR's default are to (a) sue for damages or (b) terminate this lease.

LESSOR's remedies for LESSEE's default. LESSOR's remedies for LESSEE's default are to (a) enter and take possession of the premises, after which LESSOR may relet the premises on behalf of LESSEE and receive the rent directly by reason of the reletting, and LESSEE agrees to reimburse LESSOR for any expenditures made in order to relet; or (b) to terminate this lease by written notice and sue for damages. LESSOR may enter and take possession of the premises by self-help, by picking or changing locks if necessary, and may lock out LESSEE or any other person who may be occupying the premises, until the default is cured, without being liable for damages.

The various remedies available to LESSOR shall be cumulative, and no one of the remedies is exclusive of any other right or remedy allowed by law.

No waiver by either party hereto of any term or condition of this lease shall be deemed or construed to be a waiver of any other term or condition or to be a subsequent waiver of the same term or condition.

#### XIX. NO PARTNERSHIP

LESSOR shall not, in any way or for any purpose, be considered a partner of LESSEE in the conduct of its business or otherwise, or a joint venturer or a member of a joint enterprise with LESSEE.

## XX. CAPTIONS

The captions, section numbers, and other such designations appearing in this lease are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of such sections of articles of this lease or in any way affect this lease.

## XXI. PARTIAL INVALIDITY

If any term, covenant or condition of this lease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this lease, or the application of such term, covenant, or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

## XXII. JURISDICTION

The parties agree that this contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

## XXIII. COSTS OF COLLECTION

If either party at any time shall be compelled to pay or elects to pay any sum of money due, or perform any act which requires the payment of any sum of money by reason of the failure by the other party to comply with any provision of this lease, or if either party incurs any expenses, including reasonable attorney's fees, in prosecuting or defending any action or proceeding by reason of any default by the other party under this lease, the sum so paid by such party with legal interest, costs and damages, shall be due from and be paid by the other party to such party upon establishment of the party at default. All payments so payable shall, as the case may be, be either added to or deducted from the rentals payable under this lease.

## XXIV. ENTIRE AGREEMENT

This lease sets forth all of the covenants, promises, conditions and understandings between the parties concerning the property, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than what are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon the parties unless reduced to writing, approved by the College Station City Council, and signed by both parties.

## XXV. AMENDMENT OF LEASE

This lease may be amended only by an instrument in writing signed by the LESSOR and LESSEE.

SIGNED this the 10<sup>th</sup> day of December, 2003.

LESSEE:  
DELUXE BURGER BAR  
OF COLLEGE STATION, INC.

LESSOR:  
CITY OF COLLEGE STATION

BY: [Signature]  
Constandinos Dallis, President

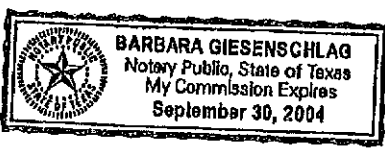
BY: [Signature]  
Ron Sílvia, Mayor

ATTEST:  
[Signature]  
Connie Hooks, City Secretary

APPROVED:  
[Signature]  
Thomas E. Brymer, City Manager  
[Signature]  
City Attorney  
[Signature]  
Charles Cryan, Director of Fiscal Services

STATE OF TEXAS  
COUNTY OF BRAZOS

This instrument was acknowledged before me on the 22nd day of December, 2003, by Constandinos Dallis, in his capacity as President of DELUXE BURGER BAR OF COLLEGE STATION, INC., a Texas Corporation, on behalf of said corporation.



[Signature]  
Notary Public, State of Texas

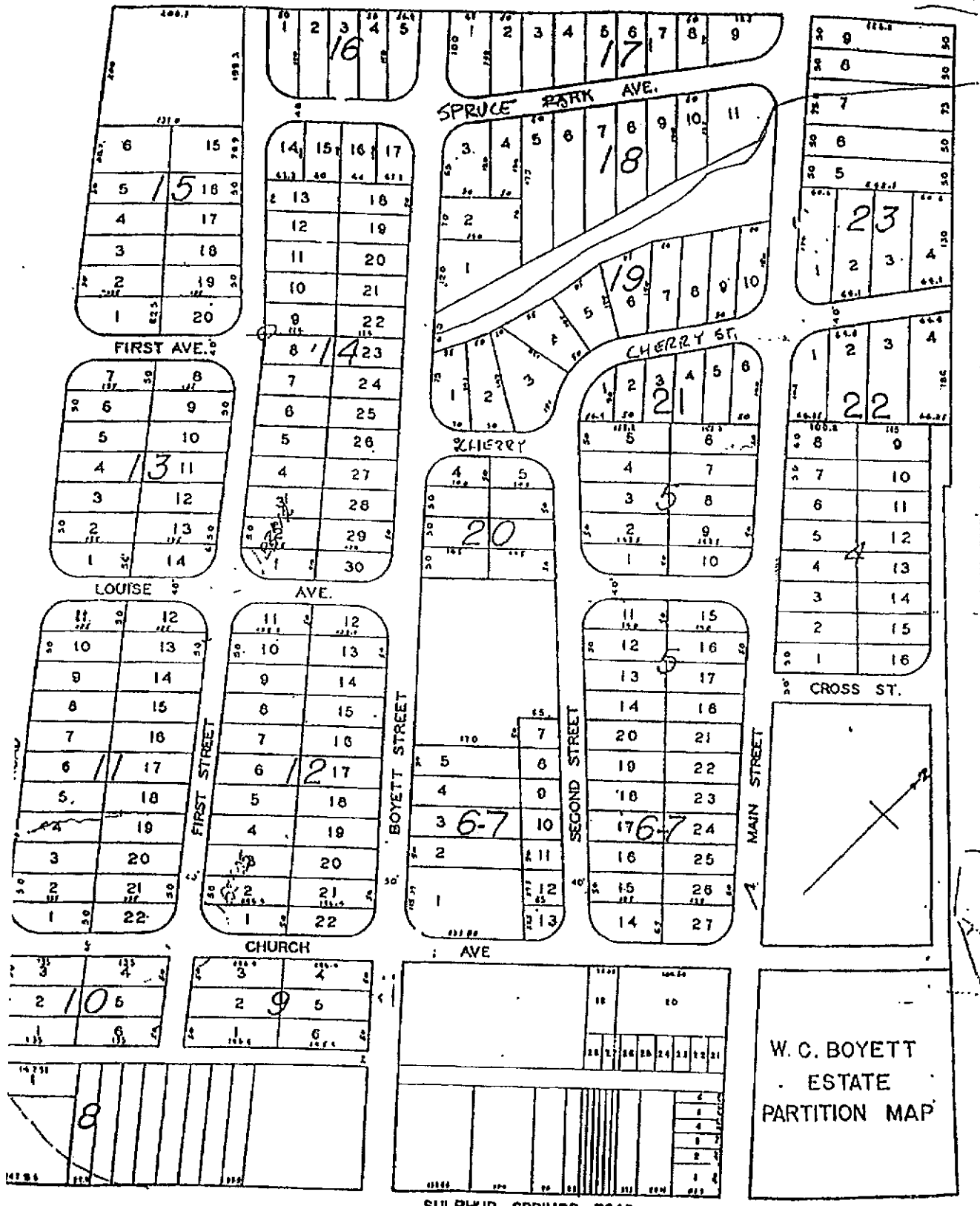
STATE OF TEXAS }  
COUNTY OF BRAZOS }

ACKNOWLEDGMENT

This instrument was acknowledged on the 31st day of December, 2003, by Ron Silvia, in his capacity as Mayor of the CITY OF COLLEGE STATION, a Texas home-rule municipality, on behalf of said municipality.



Connie Hodks  
Notary Public in and for  
The State of Texas



W. C. BOYETT  
 ESTATE  
 PARTITION MAP

G.P. EAKY, SURVEYOR. 6-10-28.

Deed to W.C. Boyett

**EXHIBIT A**

Exhibit "B"

INSURANCE REQUIREMENTS

1. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers, shall be considered in excess of the Lessee's insurance and shall not contribute to it.
2. The following standard insurance policies shall be required:
  - (a) General Liability Policy
3. The following general requirements are applicable to *all* policies:
  - (a) All policies shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
  - (b) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
  - (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a "per occurrence" basis for property damage only.
  - (d) "Claims Made" Policies will not be accepted.
  - (e) The City of College Station, its officials, employees, and volunteers, are to be added as "Additional Insureds" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
  - (f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
  - (g) Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.
4. The following General Liability will be required:
  - (a) Minimum Combined Single Limit of \$500,000, per occurrence for Bodily Injury and Property Damage, and \$1,000,000 aggregate.
  - (b) Coverage shall be at least as broad as Insurance Service's Office form number CG 00 01.
  - (c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
  - (d) The coverage shall include but not be limited to the following: premises/operations; independent contracts; products/completed operations; and contracted liability (insuring the indemnity provided herein).

SEARCHED  
SERIALIZED  
INDEXED  
FILED  
MAY 2 1966  
FBI - COLLEGE STATION  
B  
2

5. **Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and attached hereto and made a part hereof for all purposes. The certificate shall contain provisions warranting the following:**

- (a) The company is licensed and admitted to do business in the State of Texas.
- (b) The insurances set forth by the insurance company are underwritten on forms which have been approved by the Texas State Board of Insurance or ISO.
- (c) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (d) Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
- (e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

EXHIBIT B  
2 2

LEASE OF REAL PROPERTY

THIS LEASE is made on this the 1<sup>st</sup> day of December, 1998, by and between the CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation (hereinafter referred to as LESSOR), and DELUXE BURGER BAR OF COLLEGE STATION, INC., a Texas corporation (hereinafter referred to as LESSEE).

The parties for and in consideration of the agreements herein set forth to be kept and performed by them respectively have agreed to and do hereby agree together as follows:

I. DEFINITIONS

LESSOR means the City of College Station.

LESSEE means Deluxe Burger Bar of College Station, Inc., its agents, employees, invitees, licensees, or visitors.

Rent means base rent plus any other sums of money due the LESSOR by the LESSEE.

Primary Lease means the first term of this lease which shall consist of a five (5) year term.

Renewal term means the second term of this lease which may be exercised in writing by option of LESSEE which extends the primary lease for an additional ten (10) years from the date of expiration of the primary lease.

City's Representative means the City Manager or his designee.

Property means Lots 1-11 and 22 of Block 11 of the W.C. Boyett Estate Partition described more fully in the metes and bounds description attached hereto as Exhibit A.

Premises means the property and all improvements thereon.

Improvements means any building or permanent structure, including but not limited to paved parking, sidewalks, irrigation lines or fence erected or placed on the property.

II. TERM

LESSOR has leased and by these presents does lease unto LESSEE those premises more commonly known as the "Old City Hall", legally described as Lots 1-11 and 22 of Block 11 of the W.C. Boyett Estate Partition described more fully in the metes and bounds description attached hereto as Exhibit A. The primary lease term shall run five (5) years from the date of this lease. LESSEE shall have one option to renew for a ten (10) year term.

LESSEE shall exercise its option by notifying the City, at least one hundred twenty (120) days prior to the expiration of the primary term in writing. Any holdover by LESSEE after the expiration of

822668

either the primary or renewal term shall be deemed a month-to-month lease during which the terms of this Agreement shall apply.

III. CONSIDERATION

LESSEE agrees to pay the LESSOR as rent for the leased premises during the primary term a monthly rate as defined below:

<u>Year</u>	<u>Monthly Rate</u>
Year 1	\$2,406.92
Year 2	\$2,633.45
Year 3	\$2,888.30
Year 4	\$3,001.57
Year 5	\$3,114.83

The rental to be charged to LESSOR by City for said premises during the renewal term shall be conclusively based upon the City's independent appraisal at the time of the renewal. LESSEE may, at LESSEE's sole cost and expense, provide CITY with its appraisal for purposes or comparison and negotiation.

The first installment shall be due January 1, 1999, and a like installment shall be due on the same day of each month thereafter. Each payment shall represent rental payment in advance for the month in which the sum is due. LESSEE shall pay, in addition to the rental of said premises, all taxes or special assessments, if any, assessed against or levied upon said premises or upon LESSEE, and insurance as specified in Section VI hereinbelow.

Upon failure of tenant to pay any monthly installment, the entire balance of the rental then due shall immediately be due and payable at the option of the LESSOR. Any installment of rent accruing under the provisions of this lease which shall not be paid when due, shall bear interest at the rate of five percent (5%) per year from the date when payable by terms of the lease, until same shall be paid by LESSEE.

As part of the lease payment, LESSEE may to develop and construct permanent improvements on Lots 8-11 within thirty-six (36) months from first date of the commencement of the primary term of this lease at LESSEE's sole cost and expense, provided, however, that any development or improvements are approved in advance by CITY. Any improvements shall be constructed in accordance with City standards in existence at the time of construction. Any and all design and construction is subject to review and approval by the Northgate Revitalization Board Design Review Subcommittee; provided however, that in no event shall the NRB have the authority to waive any standards contained in the City of College Station Code of Ordinances. Any improvements shall become the sole property of LESSOR after the termination of this lease.

At the end of the third year of the primary term, the lease of Lots 8-11 shall terminate if LESSEE fails to construct permanent improvements. Additionally, at the end of the primary term, LESSEE may elect to terminate the lease of Lots 8-11, Block 11, W.C. Boyett Addition. If LESSEE elects to

terminate the lease on the aforesated lots, LESSEE shall do so by providing written notice to the City's representative 90 days before the end of the primary term. If LESSEE provides notice of termination for the aforesated lots as provided herein, then the revised monthly rental rate for Lots 1-7, and 22 shall be \$2,392.75 for Year 4 and \$2,506.00 for Year 5. Said revised rental payment shall be effective the first day of the month after notice of termination has been received by LESSOR.

IV. REQUEST TO OFFER PREMISES FOR SALE

On or after January 1, 2006, LESSEE may submit in writing a request to the City's Representative to sell the premises. Upon receipt of said request, City's representative shall submit same to the City of College Station City Council for consideration. The City Council may determine, in its sole discretion, whether to offer the property for sale or not. If the City decides to offer the property for sale, it shall do so in accordance with and subject to the requirements of TEX. LOCAL GOV'T. CODE, Chapter 272 or any other applicable laws in effect at the time the request is submitted. LESSEE agrees and understands that City may reject any and all bids received and may determine at the conclusion of the bid process not to sell the property. LESSEE understands and agrees that LESSOR's agreement to consider LESSEE's request does not constitute any representation, guaranty or warranty that it will either offer the property for sale or finally sell the property to LESSEE or any third party.

V. ORDINANCES

LESSEE shall comply with all federal, state, county, and municipal laws, ordinances, rules, and regulations of any duly constituted authorities having jurisdiction over the matters that are the subject of this lease.

VI. INSURANCE

LESSEE agrees to maintain insurance on said property and premises and the conduct of LESSEE's business, naming the LESSOR as an additional insured, in the amounts and in accordance with the specifications contained in Exhibit ~~X~~ attached hereto and incorporated herein by reference.

LESSEE shall deliver certificates of insurance to LESSOR before the commencement date of this lease and thereafter whenever requested by LESSOR.

VII. IMPROVEMENTS

All additions, extensions, improvements, repairs and restoration to and of said premises, now or hereafter made by LESSEE, and the plans, construction, and workmanship therefor, shall be in accordance with all laws, ordinances, and building rules and regulations applicable thereto, as well as all requirements of any underwriters or board of insurance rating body necessary and proper to make the leased premises a first class risk of its kind.

It is further agreed that any additions, extensions, alterations, improvements, repairs and restoration to and of said premises may only be made by LESSEE after LESSEE has:

1. submitted a full set of plans and specifications to LESSOR;
2. obtained the prior written consent of LESSOR to make the specified changes or improvements; and
3. received approval from the Northgate Revitalization Board Design Review Subcommittee.

LESSOR's consent in these matters shall not be unreasonably withheld or delayed.

Prior to the performance of any such work, LESSEE shall submit to LESSOR such waivers of and such indemnity against any mechanics', materialmen's or other liens on account of said work as shall be satisfactory to LESSOR.

The material used in said work shall be of good quality, and the work shall be done in a good and workmanlike manner. LESSEE shall promptly pay all labor, material, architectural and engineering services, and superintendents employed in the performance of said work.

Any physical additions, alterations or improvements to the premises made by LESSEE will become the property of the LESSOR except however that any trade fixtures, shelving, counters, or other appliances placed in the building by LESSEE which do not actually become a part of the building, may be removed by LESSEE during the term hereby created. LESSOR may require that LESSEE at termination of this lease and at LESSEE's expense, remove any physical additions or improvements, repair any alterations and restore the premises to the condition existing at the commencement date, normal wear excepted.

#### VIII. AMERICANS WITH DISABILITIES ACT.

Notwithstanding anything else in this lease to the contrary, this Section shall apply to all issues related to compliance with both the Americans with Disabilities Act ("ADA") and the applicable state law. In the event of any conflict between the rest of the lease and this Section, this Section shall control.

1. Any remodeling, construction, reconstruction, installation of improvements or other work done to the common areas or other portions of the property of which the premises are a part shall be performed by LESSOR, at LESSOR's expense, in compliance with the requirements of the ADA and regulations promulgated pursuant to it.
2. In the event that a regulatory agency, private party, organization or any other person or entity makes a claim under the ADA against either (or both) parties, the party whose breach (or alleged breach) of responsibility under this lease gave rise to the claim shall promptly retain attorneys and other appropriate persons to advise the parties regarding the same, and shall in good faith and at that party's sole cost and expense take whatever actions are necessary to bring the premises or the property, as the case may be, into compliance with ADA requirements. That party shall defend, save and hold harmless the other party from any and all expenses incurred in responding

to such a claim, including without limitation the fees of attorneys and other advisors, court costs, and costs incurred for bringing the property and/or the premises into compliance.

3. Notwithstanding the above, LESSEE shall be solely responsible for expenses necessary to comply with ADA requirements triggered solely by a disability of one or more of LESSEE's employees.
4. Non-compliance with the provisions of this Section, after written notice to the non-complying party and an opportunity to cure within a reasonable period, shall be an event of default under the lease. A reasonable period to cure shall mean cure or commencement of efforts to cure within ten (10) days, which efforts are diligently pursued to completion.

LESSEE shall indemnify and save said premises harmless against any penalty, claim, loss, damage, cost, attorney's fees, expenses, and mechanics' or other liens arising out of the performance of the work or out of any accident or other occurrence connected therewith.

LESSEE shall not, in connection with said work or for any other purpose whatsoever, create any lien upon the premises or upon any additions, extensions, alterations, or improvements thereto or thereon or in any way encumber the same or LESSOR's title thereto.

#### IX. CONDITION AND MAINTENANCE OF PREMISES

LESSEE has inspected the premises and accepts the premises in the condition that it is in as of the date of this lease. LESSEE shall maintain the premises in good condition and repair and shall make all repairs and replacements necessary to maintain the premises in good condition. LESSOR will, at no time during the term of this lease, incur any expense, or have any duty whatsoever, with regard to any existing structure or with regard to any maintenance or repairs of any portion of the premises, whether currently existing or not.

LESSEE shall use reasonable care to avoid any act which may disturb or create a nuisance in the course of the LESSEE's use, maintenance, repair and policing of said premises.

#### X. PURCHASE OF ELECTRICITY

LESSEE agrees to purchase electricity from the City of College Station, Texas, for the duration of this lease, and will be charged rates that are comparable to other similarly situated customers in the same rate classification.

#### XI. INDEMNIFICATION AND RELEASE

LESSEE agrees to and shall indemnify and hold harmless LESSOR, its officers, agents and employees, from and against any and all claims, costs, losses, penalties, damages, causes of action, suits, and liability of every kind, including all expenses of defense and/or litigation, court costs, attorney's fees, for any claims, including personal injury to or death of any person or damage to any property, arising out of or in connection with LESSEE's occupa-

tion, maintenance, use, repair, or policing of the premises made the subject of this lease agreement.

LESSOR and LESSEE release each other from any claim, by subrogation or otherwise, for any damage to the premises or personal property by reason of fire or the elements, regardless of cause, including negligence of LESSOR and LESSEE. This release applies only to the extent that it is permitted by law, the damage is covered by insurance proceeds, and the release does not adversely affect insurance coverage.

XII. CASUALTY/TOTAL OR PARTIAL DESTRUCTION

If the premises are substantially damaged by fire or other casualty and cannot be restored to substantially the same condition as they existed before the casualty within ninety (90) days after the passage of the notice provided period provided below. LESSEE or LESSOR shall have the option to terminate said lease by providing written notice to the other within fifteen (15) days of the damage or destruction. If neither party terminates this lease, it shall continue and LESSOR shall restore the premises. To the extent the premises are untenable after the casualty, the rent will be adjusted as may be fair and reasonable.

If the premises is taken by condemnation or the right of eminent domain during the pendency of this Lease Agreement, either party, upon written notice to the other, shall be entitled to terminate as of the date of the taking by the Condemnor.

It is understood in the event of the termination of this Lease due to said condemnation, LESSEE shall have no claim against LESSOR for the value of any unexpired term of its Lease. LESSOR shall have no claim against LESSEE for any rental payments for the unexpired term of the Lease as provided above by LESSEE or LESSOR. Rental shall be adjusted to the date LESSEE is deprived of possession of the premises. Each party shall be entitled to receive and retain the amounts awarded for parties interest in the premises.

XIII. TERMINATION

If at any time during the term of this lease, LESSEE shall be in default of rental payment or in the performance of any of the covenants herein contained, and such default shall continue for a period of thirty (30) days after notice thereof in writing has been tendered by LESSOR to LESSEE, it shall be lawful for LESSOR at its election, at or after the expiration of said thirty (30) days, to declare said lease term ended and enter into said premises either with or without process of law; LESSEE hereby waives any demand for possession of said premises.

Notwithstanding the terms of the previous paragraph, this Lease shall be terminated automatically, and LESSEE shall immediately yield possession of said premises to LESSOR, including all additions and improvements thereto or thereon, upon the occurrence of any of the following events:

1. LESSEE files any debtor proceeding or is adjudicated as bankrupt under the provisions of any Bankruptcy Act;

- 2. LESSEE makes an assignment for the benefit of creditors;
- 3. LESSEE petitions for or enters into an arrangement of creditors;
- 4. LESSEE abandons the premises or suffers this lease to be taken under any writ of execution; or

Upon the termination of this lease for any reason, LESSEE shall surrender said premises peaceably to LESSOR. LESSEE shall surrender the premises in good order, condition, and state of repair less reasonable wear and tear, but damage or destruction by fire or other casualty is excepted. In any event, LESSEE shall leave the demised premises in a "broom clean" condition.

The parties further agree that, upon termination of this lease, LESSOR shall have the immediate right to re-enter the premises and may remove all persons and property from the premises. Said property may be removed and stored in a public warehouse or elsewhere at the cost of, and for the account of, LESSEE, all without resort to legal process and without LESSOR being deemed guilty of trespass or becoming liable for any unintentional loss or damages that may be occasioned thereby.

At the expiration of any term of the lease in which no option to renew the lease is exercised, LESSEE shall vacate the premises. Any holdover shall only be authorized upon the express written consent of LESSOR and shall only be on a month-to-month term; provided however that no holding over by LESSEE with or without the consent of LESSOR will extend the term.

**XIV. LIMITATION OF WARRANTIES**

There are no implied warranties of merchantability, of fitness for a particular purpose, or of any other kind arising out of this lease, and there are no warranties that extend beyond those expressly stated in this lease.

**XV. NOTICES**

Notices to the parties herein shall be served by mailing a certified copy, return receipt requested, to the following addresses:

If to City:

City Manager  
 City of College Station  
 P.O. Box 9960  
 College Station, Texas 77842

If to Deluxe Burger Bar of College Station, Inc.:

Attn: Donald E. and Cheryl P. Anz  
 Deluxe Burger Bar of College Station, Inc.  
 104B Church Avenue  
 College Station, Texas 77840

Either party may from time to time, upon written notice to the other party sent by certified mail, change the address to which notices by mail shall be sent.

XVI. ASSIGNMENT

LESSEE may not assign the interest in this lease or sublet the subject premises without LESSOR's express written consent. This lease is made to LESSEE because of LESSEE's qualifications and experience as a restaurateur. The premises shall be used only by LESSEE for a restaurant business, and the lease shall terminate upon cessation of the use of the demised premises by LESSEE or for that purpose; and the demised premises or any part thereof, or the lease itself, shall not be sold, encumbered, assigned, transferred, sublet, or seized or taken by operation of law or by virtue of any process, attachment, execution or otherwise, or in any proceeding against LESSEE or another, or under or by virtue of insolvency or bankruptcy proceedings, without the express written consent of LESSOR. Additionally, a change in ownership of fifty plus one percent of the stock or financial interest of LESSEE shall be considered an assignment for purposes of this paragraph. An assignment as prohibited above shall cause this lease agreement to terminate immediately.

XVII. DEFAULT BY TENANT

Default by LESSOR Events. Defaults by LESSOR are (a) failing to comply with any provision of this lease within thirty (30) days after written notice.

Default by LESSEE Events. Defaults by LESSEE are: (a) failing to pay timely rent within ten (10) days after written notice, (b) abandoning or vacating a substantial portion of the premises, or (c) failing to comply within thirty (30) days after written notice with any provision of this lease other than the defaults set forth in (a) and (b) above.

XVIII. REMEDIES

LESSEE's remedies for LESSOR's default. LESSEE's remedies for LESSOR's default are to (a) sue for damages or (b) terminate this lease.

LESSOR's remedies for LESSEE's default. LESSOR's remedies for LESSEE's default are to (a) enter and take possession of the premises, after which LESSOR may relet the premises on behalf of LESSEE and receive the rent directly by reason of the reletting, and LESSEE agrees to reimburse LESSOR for any expenditures made in order to relet; (b) to terminate this lease by written notice and sue for damages. LESSOR may enter and take possession of the premises by self-help, by picking or changing locks if necessary, and may lock out LESSEE or any other person who may be occupying the premises, until the default is cured, without being liable for damages.

The various remedies available to LESSOR shall be cumulative, and no one of the remedies is exclusive of any other right or remedy allowed by law.

No waiver by either party hereto of any term or condition of this lease shall be deemed or construed to be a waiver of any other term or condition or to be a subsequent waiver of the same term or condition.

XIX. NO PARTNERSHIP

LESSOR shall not, in any way or for any purpose, be considered a partner of LESSEE in the conduct of its business or otherwise, or a joint venturer or a member of a joint enterprise with LESSEE.

XX. CAPTIONS

The captions, section number, and other such designations appearing in this lease are inserted only as a matter of convenience and in no way define, limit, or describe the scope or intent of such sections of articles of this lease or in any way affect this lease.

XXI. PARTIAL INVALIDITY

If any term, covenant or condition of this lease or the application thereof to any person or circumstance shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this lease, or the application of such term, covenant, or condition to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant or condition of this lease shall be valid and be enforced to the fullest extent permitted by law.

XXII. JURISDICTION

The parties agree that this contract has been made under and shall be governed by the laws of the State of Texas. The parties agree that performance and all matters related thereto shall be in Brazos County, Texas.

XXIII. COSTS OF COLLECTION

If either party at any time shall be compelled to pay or elects to pay any sum of money due, or perform any act which requires the payment of any sum of money by reason of the failure by the other party to comply with any provision of this lease, or if either party incurs any expenses, including reasonable attorney's fees, in prosecuting or defending any action or proceeding by reason of any default by the other party under this lease, the sum so paid by such party with legal interest, costs and damages, shall be due from and be paid by the other party to such party upon establishment of the party at default. All payments so payable shall, as the case may be, be either added to or deducted from the rentals payable under this lease.

XXIV. ENTIRE AGREEMENT

This lease sets forth all of the covenants, promises, conditions and understandings between the parties concerning the property, and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than what are herein set forth. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this lease shall be binding upon the parties unless reduced to writing, approved by the College Station City Council, and signed by both parties.

XXV. AMENDMENT OF LEASE

This lease may be amended only by an instrument in writing signed by the LESSOR and LESSEE.

SIGNED this the 6th day of November, 1998.

LESSEE:  
DELUXE BURGER BAR  
OF COLLEGE STATION, INC.

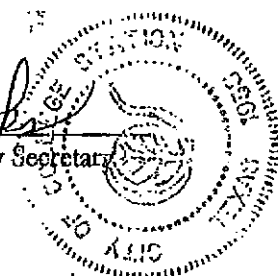
LESSOR:  
CITY OF COLLEGE STATION

BY: Donald E. Anz  
DONALD E. ANZ

BY: Lynn McIlhane  
LYNN McILHANEY, Mayor

BY: Cheryl P. Anz  
CHERYL P. ANZ

ATTEST:  
Connie Hooks  
CONNIE HOOKS, City Secretary



APPROVED:  
George K. Noe  
George K. Noe, City Manager

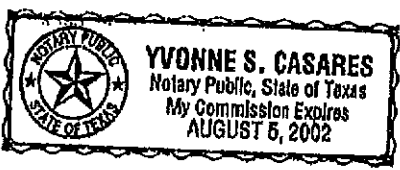
Harvey Cargill, Jr.  
Harvey Cargill, Jr., City Attorney

Charles Cryan  
Charles Cryan, Director of Fiscal Services

STATE OF TEXAS  
COUNTY OF BRAZOS }

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 6<sup>th</sup> day of November, 1998, by DONALD E. ANZ and CHERYL P. ANZ, in their capacities as Pres. & Vice Pres. of DELUXE BURGER BAR OF COLLEGE STATION, INC., a Texas Corporation, on behalf of said corporation.

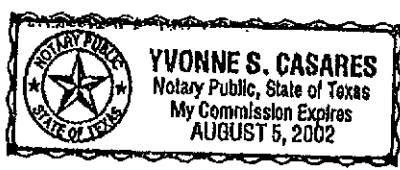


Yvonne S. Casares  
Notary Public in and for  
the State of Texas

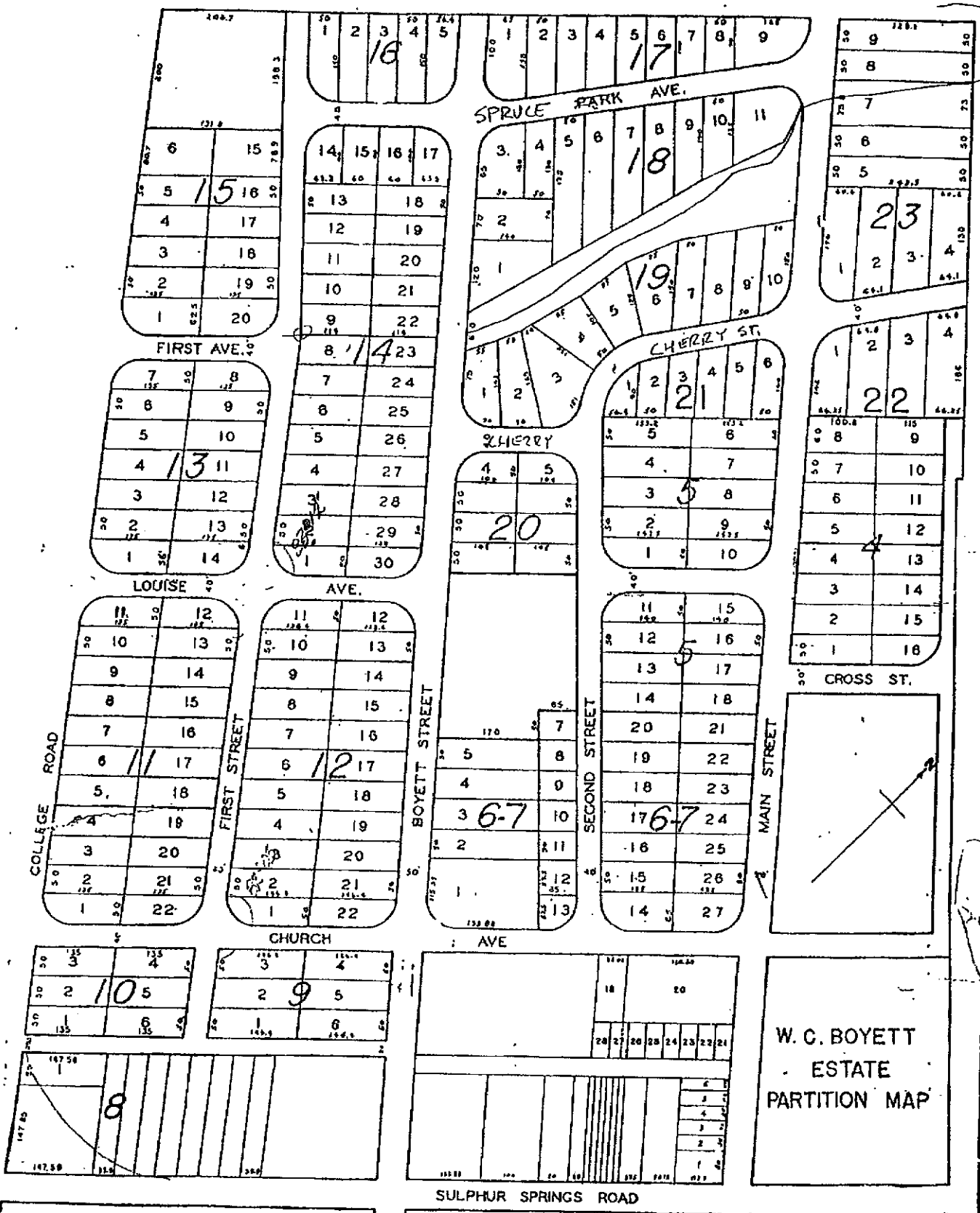
STATE OF TEXAS  
COUNTY OF BRAZOS }

ACKNOWLEDGMENT

This instrument was acknowledged on the 20<sup>th</sup> day of November, 1998, by Lynn McIlhane, in her capacity as Mayor of the City of College Station, a Texas home-rule municipality, on behalf of said municipality.



Yvonne S. Casares  
Notary Public in and for  
The State of Texas



W. C. BOYETT  
ESTATE  
PARTITION MAP

Exhibit "B"

INSURANCE REQUIREMENTS

1. The Lessee's insurance coverage shall be primary insurance with respect to the City, its officials, employees and volunteers. Any insurance or self-insurance maintained by City, its officials, employees, or volunteers, shall be considered in excess of the Lessee's insurance and shall not contribute to it.
2. The following standard insurance policies shall be required:
  - (a) General Liability Policy
3. The following general requirements are applicable to *all* policies:
  - (a) All policies shall be written by a carrier with an A:VIII or better rating in accordance with the current Best Key Rating Guide.
  - (b) Only insurance carriers licensed and admitted to do business in the State of Texas will be accepted.
  - (c) Deductibles shall be listed on the Certificate of Insurance and are acceptable only on a "per occurrence" basis for property damage only.
  - (d) "Claims Made" Policies will not be accepted.
  - (e) The City of College Station, its officials, employees, and volunteers, are to be added as "Additional Insureds" to the General Liability policy. The coverage shall contain no special limitations on the scope of protection afforded to the City, its officials, employees, or volunteers.
  - (f) Each insurance policy shall be endorsed to state that coverage shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days' prior written notice by certified mail, return receipt requested, has been given to the City of College Station.
  - (g) Upon request, certified copies of all insurance policies shall be furnished to the City of College Station.
4. The following **General Liability** will be required:
  - (a) Minimum Combined Single Limit of \$500,000, per occurrence for Bodily Injury and Property Damage, and \$1,000,000 aggregate.
  - (b) Coverage shall be at least as broad as Insurance Service's Office form number CG 00 01.
  - (c) No coverage shall be deleted from the standard policy without notification of individual exclusions being attached for review and acceptance.
  - (d) The coverage shall include but not be limited to the following: premises/operations; independent contracts; products/completed operations; and contracted liability (insuring the indemnity provided herein).

5. **Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and attached hereto and made a part hereof for all purposes. The certificate shall contain provisions warranting the following:**

- (a) The company is licensed and admitted to do business in the State of Texas.
- (b) The insurances set forth by the insurance company are underwritten on forms which have been approved by the Texas State Board of Insurance or ISO.
- (c) Sets forth all endorsements and insurance coverages according to requirements and instructions contained herein.
- (d) Shall specifically set forth the notice of cancellation, termination, or change in coverage provisions to the City of College Station.
- (e) Original endorsements affecting coverage required by this section shall be furnished with the certificates of insurance.

Filed for Record in:  
BRAZOS COUNTY

On: Jul 22, 2003 at 04:56P

As a  
Recordings

Document Number: 00022668

Amount 32.00

Receipt Number - 222606

By:  
Pan Pivonka

STATE OF TEXAS COUNTY OF  
I hereby certify that this instrument was  
filed on the date and time stamped hereon by me  
and was duly recorded in the volume and page  
of the said records of:  
BRAZOS COUNTY  
as stamped hereon by me.

Jul 22, 2003

HONORABLE KAREN MCQUEEN, COUNTY CLERK  
BRAZOS COUNTY

AMENDMENT NO. 1 to LEASE DATED 1 DECEMBER 1998  
BETWEEN THE CITY OF COLLEGE STATION AND DELUXE  
BURGER BAR OF COLLEGE STATION, INC.

WHEREAS, the City of College Station as Lessor and Deluxe Burger Bar of College Station, Inc., as Lessee entered into a lease agreement on December 1, 1998, for the lease of Lots 1 - 11 and 22, Block 11 of the W.C. Boyett Estate Partition more commonly known as the "old city hall"; and

WHEREAS, the Lessee has requested that the City consider amending Section III of the lease agreement; and

WHEREAS Lessor and Lessee hereby agree to amend Section III of the lease as follows:

**Section III Consideration**

Section III, page 2 of 11, paragraph 2, shall be deleted in its entirety and substituted with the following:

"The rental to be charged to LESSOR by City for said premises during the renewal term shall be conclusively based upon the City's independent appraisal at the time of the renewal; provided however, that if Lessor has constructed parking in accordance with Section III and LESSOR has not been in default of any term or condition of the original lease or this amendment, the appraisal for Lots 8-11 shall separately value the improvements made by the Lessee for parking purposes and exclude the value of the improvements constructed by Lessee in the calculation of the rental renewal charge."

All other terms and conditions of the lease remain unchanged.

AGREED:

DELUXE BURGER BAR OF  
COLLEGE STATION, INC.

BY: [Signature]  
PRESIDENT

CITY OF COLLEGE STATION

BY: [Signature] for Tom Brymer  
Thomas E. Brymer, City Manager

APPROVED:

[Signature]  
City Attorney

[Signature]  
Charles Cryan, Director of Fiscal Services

## AMENDMENT NO. 1 TO LEASE OF REAL PROPERTY – RENEWAL TERM

THIS AMENDMENT NO.1 TO LEASE OF REAL PROPERTY – RENEWAL TERM (“Amendment”) made as of \_\_\_\_\_, 2013, by and between CITY OF COLLEGE STATION, a Texas Home Rule Municipal Corporation (“Lessor”) and DELUXE BURGER BAR OF COLLEGE STATION, INC., a Texas corporation (“Lessee”).

### RECITALS:

A. Lessor and Lessee entered into that certain Lease of Real Property dated December 1, 1998, which was amended by that certain undated Amendment No. 1 to Lease dated December 1, 1998, between The City of College Station and Deluxe Burger Bar of College Station, Inc. (collectively, the “Original Lease”); and

B. Upon the expiration of the term of the Original Lease, Lessor and Lessee entered into that certain Lease of Real Property – Renewal Term dated December 10, 2003 (the “Lease”).

C. The term of the Lease expires on November 30, 2013, and Lessee has requested that the term be extended for an additional forty five (45) days to allow Lessee to obtain the benefit of holiday bookings during the 2013 holiday season, and Lessor has agreed to such extension.

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

### AGREEMENT

1. Defined Terms. Unless otherwise indicated, any capitalized term used in this Amendment and not defined herein shall have the meaning ascribed to it in the Lease.

2. Extension of Term. The term of the Lease is hereby extended for a period of forty five (45) days commencing December 1, 2013 (the “Extension Commencement Date”), through and including January 14, 2014.

3. Additional Agreements.

(a) Lessor and Lessee agree that on the Extension Commencement Date, Lessee shall accept the Premises in their then AS-IS, WITH ALL FAULTS CONDITION. Lessee acknowledges that neither Lessor nor any agent or employee of Lessor has made any representation or warranty with respect to the Premises, including, without limitation, any representation or warranty with respect to the suitability or fitness of the Premises for the conduct of Lessee’s business in the Premises.

(b) Each of the parties agrees that it has had no dealings with any broker, and each party hereby agrees to defend, indemnify and hold the other harmless from and against all costs, expenses, attorneys’ fees or other liability for commissions or other compensation or charges claimed by any broker or agent other than the brokers listed above claiming by or through Lessor or Lessee, respectively, with respect to this Amendment.

4. Reference to and Effect on the Lease.

(a) Upon the effectiveness of this Amendment, each reference in the Lease to "this Lease", "hereunder", "hereof", "herein" or words of like import referring to the Lease shall mean and be a reference to the Lease as amended hereby.

(b) Except as specifically set forth above, the Lease remains in full force and effect and is hereby ratified and confirmed; provided, however, that the parties agree that the rights and obligations of each of them occurring prior to the Extension Commencement Date shall survive the execution and delivery of this Amendment.

(c) Wherever there exists a conflict between this Amendment and the Lease, the provisions of this Amendment shall control.

(d) This Amendment, together with the Lease, constitute the complete agreement of Landlord and Tenant as to the matters set forth herein and may not be waived, modified or changed, except by writing signed by both Landlord and Tenant.

(e) To the extent the Original Lease remains in effect, in the event of a conflict between the Original Lease and the Lease, as amended by this Amendment, the Lease, as amended by this Amendment, shall control.

5. Governing Law. This Amendment shall be governed by and construed in accordance with the laws of the State of Texas.

6. Counterparts: Signatures. This Amendment may be executed in counterparts, all of which, when taken together, shall constitute one and the same original. Signatures transmitted by facsimile or electronically shall constitute original signatures for the purposes of this Amendment.

7. Headings. Section headings in this Amendment are included herein for convenience of reference only and shall not constitute a part of this Amendment for any other purpose.

8. Time of Essence. Time shall be of the essence as to each and every provision of this Amendment.

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, this Amendment has been executed as of the date first written above.

LESSOR:

CITY OF COLLEGE STATION, TEXAS

By:

Name: \_\_\_\_\_  
Its Mayor

Attest:

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

Approved:

Name: \_\_\_\_\_  
Its City Manager

\_\_\_\_\_  
Carla Robinson  
Its City Attorney

Name: \_\_\_\_\_  
Its Director of Fiscal Services

LESSEE:

DELUXE BURGER BAR OF COLLEGE  
STATION, INC.

By:

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

STATE OF TEXAS            )  
                                  ) ss.  
COUNTY OF BRAZOS        )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, the Mayor of the City of College Station, a Texas Home Rule Municipal Corporation, on behalf of the municipal corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF TEXAS            )  
                                  ) ss.  
COUNTY OF BRAZOS        )

This instrument was acknowledged before me on the \_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, the \_\_\_\_\_ of Deluxe Burger Bar of College Station, Inc., a Texas corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

EXHIBIT "D"

Form of Purchase and Sale Agreement between the City and RVP

EXHIBIT "D"

**PURCHASE AND SALE AGREEMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF BRAZOS       §

THIS AGREEMENT OF SALE is made by and between the CITY OF COLLEGE STATION, TEXAS, a Home-Rule Municipal Corporation ("Seller") and THE RESEARCH VALLEY PARTNERSHIP, INC., a Texas non-profit corporation (hereinafter referred to as ("Buyer")), upon the terms and conditions set forth herein.

**ARTICLE I  
PURCHASE AND SALE**

1.1 Seller agrees to convey in fee simple but subject to reserving all oil, gas, other minerals, an approximately 3.36 acre tract of land known as the First Street Property (hereinafter referred to as the "Property") attached hereto as Exhibit "A", together with all and singular the rights and appurtenances pertaining to the Property, including all right, title and interest of Seller in and to adjacent roads, streets, alleys or rights-of-way; subject to an existing commercial lease between Seller and Deluxe Burger Bar of College Station, Inc., dated December 10<sup>th</sup>, 2003, which Seller will assign to Buyer as part of this sale for the consideration and subject to the terms, provisions, and conditions set forth herein.

The mineral estate of the Property shall not be conveyed by Seller.

1.2 This Agreement by Buyer to purchase the Property is subject to approval by the City Council of the City of College Station, Texas of that one certain Economic Development Agreement as substantially set forth in Exhibit "B" attached hereto ("EDA"); such approval indicated by signature of Seller's representatives to this Agreement of Sale.

1.3 Seller represents that it is a tax-exempt entity and as such is not subject to rollback or other taxes.

1.4 The conveyance of the Property shall be made by Special Warranty Deed from Seller to Buyer in a form as substantially set forth in Exhibit "C" attached hereto.

1.5 Seller shall select a title company of its choosing. Buyer will order a survey of the Property by a registered professional land surveyor acceptable to the title company which shows, without limitation, all adjacent property lines, record ownership of adjoining properties, encroachments, easements, rights-of-way and other encumbrances of record. The survey will reflect any encroachments onto or by the

Property onto adjoining properties. The field notes description, as prepared by the surveyor shall be used in the Special Warranty Deed.

1.6 Because this Agreement arises pursuant to the EDA described above, Seller will not insure title to Buyer. However, Seller agrees that it will provide and pay to insure title to Asset Plus Realty Corporation upon Buyer's conveyance and closing of the Property to such corporation, as provided for in the EDA. To this end, Seller shall request the title company to furnish said commitment for title insurance to Buyer within fifteen (15) business days of the date Buyer obtains a binding Sale and Purchase Agreement for the Property with Asset Plus Realty Corporation ("Asset Plus").

Buyer shall have a period of thirty (30) business days following the receipt of the commitment to insure title, to make exceptions by notifying Seller of Buyer's objection to any item shown on or referenced by those documents ("Title Reviewable Matters"). Any Title Reviewable Matter to which Buyer does not object within the time period set forth above shall be deemed to be accepted by Buyer (herein the "Permitted Exceptions"). If Buyer objects to any Title Reviewable Matter and gives notice to Seller as provided herein, Seller may at Seller's election, on or before closing, attempt to cure same. If Seller fails to cure same by the closing date, or is unwilling to cure same, Buyer may either:

- (a) waive such objections (which will cause such waived objectionable Title Reviewable Matters to be included within the definition of Permitted Exceptions) and accept such title as Seller is able to convey; or
- (b) terminate this Agreement by written notice to the title company and to Seller, and neither Seller nor Buyer shall have any further rights or obligations under this Agreement.

1.7 Rents. The parties agree that rent for a portion of the Property pursuant to the lease described above shall be prorated for the month on which the day of closing occurs.

## ARTICLE II PURCHASE PRICE AND EARNEST MONEY

2.1 The sales price of the Property is Three Million Five Hundred Fifty Five Dollars and No cents (\$3,555,000.00) unless an appraisal is performed establishing a lesser appraised value, in which case the sales price shall be for said lower amount as determined by such subsequent appraisal but in no event less than Two Million Nine Hundred Thousand Dollars and No Cents (\$2,900,000.00) and other good and valuable consideration as described in the Economic Development Agreement set forth in Exhibit "B" herein. Two Million Nine Hundred Seventy Five Thousand and No/100 Dollars (\$2,975,000.00) of the Sales Price will be paid in cash and Five Hundred Eighty Thousand and No/100 Dollars (\$580,000.00) of which will be satisfied by an economic development grant by the Seller to the Buyer.

2.2 There is no earnest money required pursuant to the terms of this Agreement.

### **ARTICLE III WARRANTIES AND REPRESENTATIONS OF BUYER**

3.1 Buyer represents and warrants to Seller that the following statements are true. In the event that any of the following representations and warranties is not true on the date of closing, Seller, at Seller's option, shall have the right to terminate this Agreement. In the event of such termination, neither party will have any further obligations or liabilities under this Agreement. Buyer and Seller shall certify to the other at closing either (i) that all of such respective representations and warranties contained herein are true, or (ii) indicate which are not true as of the closing date.

(a) Buyer has the full right, power, and authority to enter into and perform its obligations under this Agreement and the EDA referenced herein.

(b) As of the effective date, Buyer has been advised in writing that Buyer should have an abstract covering the Property examined by an attorney of Buyer's own selection or that Buyer should be furnished with or obtain a policy of title insurance.

(c) Buyer is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., Buyer is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in such Code and the regulations promulgated thereunder).

(d) Buyer agrees to fulfill the terms and conditions of the EDA. The EDA is incorporated herein by reference as if set out in full herein.

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

4.1 Seller represents and warrants to Buyer as of the effective date and as of the closing date that:

(a) Seller has the full right, power, and authority to convey the Property to Seller as provided in this Agreement and to carry out Seller's obligations under this Agreement, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations hereunder has been or on or before closing will have been taken.

#### **(b) DISCLAIMER OF WARRANTIES**

**BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL**

CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). SELLER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED "AS IS" AND "WITH ALL FAULTS", AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY. BUYER REPRESENTS THAT BUYER HAS MADE OR WILL MAKE PRIOR TO CLOSING (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY BUYER, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS AND (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY. THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM SELLER TO BUYER OF THE SPECIAL WARRANTY DEED.

#### ARTICLE V DISCLOSURES

5.1 Asbestos Disclosure Notice – See Exhibit "D" attached hereto and incorporated herein.

#### ARTICLE VI CLOSING

6.1 The closing for the sale of the Property shall be held at the title company selected by Seller within forty-five (45) calendar days from the date of this Agreement (the "Effective Date"), or at such time and date as Seller and Buyer may agree upon so as to facilitate the sale of the Property to Asset Plus.

6.2 At the closing, Seller shall:

- (a) Deliver to Buyer the duly executed and acknowledged Special Warranty Deed prepared by Seller, at Seller's sole cost and expense, conveying good and indefeasible title to the Property subject to any reservations, restrictions, limitations or reversions

specified herein or in the EDA, the Permitted Exceptions, and free and clear of any and all liens, encumbrances.

- (b) Deliver possession of the Property to Buyer.
  - (c) Pay the Seller's expenses and attorney fees.
  - (d) Pay all closing costs including but not limited to the survey costs, utility charges incurred pursuant to the Deluxe Burger Bar lease, and prorated taxes, if any, and escrow fees.
- 6.3 Upon such performance by Seller at closing, Buyer shall:
- (a) Pay the Buyer's expenses or attorney fees.

#### **ARTICLE VII SPECIAL CONDITIONS**

7.1 The Property is subject to a Buy-Back Option which is contained in the EDA. This First Buy-Back Option shall be included in the Special Warranty Deed.

7.2 The Property shall be conveyed subject to deed restrictions that prohibit warehousing and storage, sexually oriented enterprises, and governmental or tax-exempt uses. These restrictions shall be included in the Special Warranty Deed.

7.3 Seller may reserve any easements or rights-of-way from the conveyance in accordance with the terms of the EDA.

7.4 The parties herein agree that part of the consideration for this Agreement is the RVP's performance of its duties as an economic development corporation on behalf of the City of College Station and the City of College Station's economic development program as implemented through the RVP.

7.5 The Buyer agrees to hold this Property as a corporate asset and use it only for qualified economic development prospects as an incentive to locate new businesses to the City of College Station. Prior to any sale or conveyance of the Property, the RVP must receive written authorization from the City of College Station City Manager.

7.6 Seller agrees to pay for a title policy at the time Buyer conveys said Property to a qualified economic development prospect in accordance with the EDA.

7.7 Seller will assign its lease to Buyer by the Assignment attached hereto as Exhibit "E."

7.8 Seller shall provide access to the Property to the Buyer and/or Asset Plus to conduct tests, inspections, reviews, assessments, engineering, hydrology, topographic, soil, and wetlands inspections, and Phase I and II environmental site assessments.

7.9 Seller shall provide to Buyer all title, survey, engineering and environmental information about the Property in its possession.

## ARTICLE VIII MISCELLANEOUS

8.1 **Survival of Covenants:** Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the closing date, shall survive the closing and shall not be merged by deed or otherwise be extinguished.

8.2 **Notice:** Any notice required or permitted to be delivered by this Agreement shall be deemed received when sent by United States mail, postage prepaid, certified mail, return receipt requested, addressed to Seller or Buyer, as the case may be, at the addresses set forth below:

BUYER:       The Research Valley Partnership, Inc.  
                  1500 Research Parkway, Suite 270  
                  College Station, Texas 77845  
                  Attn: Todd McDaniel

SELLER:       City of College Station  
                  1101 Texas Avenue  
                  College Station, TX 77842  
                  Attn: City Manager  
                  Attn: City Attorney

8.3 **Texas Law to Apply:** This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created by this Agreement are to be performed in Brazos County, Texas.

8.4 **Parties Bound:** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns. The persons executing this Agreement are duly authorized by their respective entity to do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Agreement in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

8.5 **Invalidity:** In case any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this

Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained in the Agreement.

8.6 Construction. The parties acknowledge that each party and their respective counsel have reviewed and revised this Agreement as needed, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

8.7 Prior Agreements Superseded: This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter within.

8.8 Time of Essence: Time is of the essence to this Agreement.

8.9 Gender: Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

8.10 Memorandum of Agreement: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

EXECUTED on this the \_\_\_\_\_ day of \_\_\_\_\_, 2013.

List of Exhibits:

- Exhibit "A" Depiction of the Property
- Exhibit "B" Economic Development Agreement Among the City of College Station, Research Valley Partnership and Asset Plus Realty Corporation
- Exhibit "C" Special Warranty Deed
- Exhibit "D" Asbestos Disclosure Notice
- Exhibit "E" Assignment of Lease

SELLER:

BUYER:

CITY OF COLLEGE STATION

THE RESEARCH VALLEY  
PARTNERSHIP, INC.

BY: \_\_\_\_\_  
Mayor

BY: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
City Secretary

THE STATE OF TEXAS   §  
                                  §     ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by Nancy Berry, Mayor of the City of College Station, a Texas Home Rule municipal corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for  
the STATE OF TEXAS

THE STATE OF TEXAS   §  
                                  §     ACKNOWLEDGMENT  
COUNTY OF BRAZOS   §

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ Chairman of the Board of Directors, of The Research Valley Partnership, Inc., a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for  
the STATE OF TEXAS

EXHIBIT "A"  
PROPERTY DESCRIPTION

EXHIBIT "B"  
EDA AGREEMENT

EXHIBIT "C"  
FORM OF SPECIAL WARRANTY DEED

EXHIBIT "D"  
ASBESTOS DISCLOSURE NOTICE

EXHIBIT "E"

FORM OF ASSIGNMENT AND ASSUMPTION OF LEASE

**EXHIBIT "E"**

**Form of Purchase and Sale Agreement Between RVP and Developer**

## EXHIBIT "E"

### PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") is made this \_\_\_ day of \_\_\_\_\_, 201\_\_\_, by and between THE RESEARCH VALLEY PARTNERSHIP, INC., a Texas non-profit corporation ("Seller"), and ASSET PLUS REALTY CORPORATION, a Texas business corporation authorized to do business in Texas ("Buyer"), upon the terms and conditions set forth herein.

#### ARTICLE 1 PURCHASE AND SALE

1.1 Sale and Purchase. Seller agrees to convey in fee simple but subject to reserving all oil, gas and other minerals, an approximately 3.36 acre tract of land known as the First Street Property (hereinafter referred to as the "Property") legally described on Exhibit "A" attached hereto, together with all and singular the rights and appurtenances pertaining to the Property, including all right, title and interest of Seller in and to adjacent roads, streets, alleys or rights-of-way; subject to an existing commercial lease between Seller and Deluxe Burger Bar of College Station, Inc., dated December 10<sup>th</sup>, 2003 (as amended, the "Lease"), which Seller will assign to Buyer as part of this sale for the consideration and subject to the terms, provisions, and conditions set forth herein.

1.2 Approval. This Agreement between Seller and Buyer is subject to approval of the Board of Directors of the Research Valley Partnership, such approval indicated by signature of Seller's representatives to this Agreement. This Agreement to purchase the Property is also subject to that certain Economic Development Agreement as substantially set forth in Exhibit "B" attached hereto ("EDA") to which Buyer, Seller and the City of College Station, Texas, are parties.

#### ARTICLE 2 PURCHASE PRICE

2.1 Purchase Price. The sales price of the Property is Three Million Five Hundred Fifty Five Thousand Dollars and No cents (\$3,555,000.00) and other good and valuable consideration as described in the EDA. The Three Million Five Hundred Fifty Five Thousand Dollars and No cents (\$3,555,000.00) shall be payable at closing as follows:

- (a) Two Million Eight Hundred Seventy Five Thousand Dollars and No Cents (\$2,875,000.00), or, if the Earnest Money (as defined in Section 2.2 below) has been increased as set forth in Section 2.3 below, Two Million Eight Hundred Sixty Five Thousand Dollars and No Cents (\$2,865,000.00) in cash by wire transfer of immediately available funds; plus
- (b) the Earnest Money (as defined in Section 2.2 below); and less
- (c) a credit from Seller in the amount of Five Hundred Eighty Thousand and no/100ths Dollars (\$580,000.00).

2.2 Earnest Money. Buyer shall deposit the sum of One Hundred Thousand Dollars and No Cents (\$100,000.00) in escrow as earnest money with the Title Company (as defined in Section 3.1 below) as escrow agent, within three (3) business days after delivery of this Agreement executed by Seller to the Title Company. The escrow deposit is refundable up to and including the last day of the Inspection Period (as defined in Section 4.1 below) and otherwise as provided in this Agreement. The balance of the purchase price for the Property shall be payable at closing by certified funds or wire transfer.

2.3 Additional Earnest Money. Buyer shall have the right to extend the Inspection Period for an additional thirty (30) days as set forth in Article 4.1 below. Should Buyer exercise such right, within three (3) days after such exercise, Buyer shall deposit an additional Ten Thousand Dollars and No Cents (\$10,000.00) in escrow as additional earnest money with the Title Company, as escrow agent, such that, after such deposit, the Earnest Money shall consist of One Hundred Ten Thousand Dollars and No Cents (\$110,000.00). The escrow deposit is refundable during the extended Inspection Period and otherwise as provided in this Agreement. The balance of the purchase price for the Property shall be payable at closing by certified funds or wire transfer.

2.4 Application of Earnest Money. The Earnest Money shall be applied against the Purchase Price at Closing.

2.5 Interest Bearing Account. The Earnest Money shall be placed in an interest bearing account by Title Company, with all interest to be for the benefit of Buyer whether Buyer or Seller is entitled to the Earnest Money less the Contract Consideration pursuant to the terms and conditions of this Agreement.

2.6 Contract Consideration. Simultaneously with its deposit of the Earnest Money, Buyer shall deposit with Title Company cash in the amount of One Hundred Dollars (\$100.00) as independent consideration for this Agreement ("Contract Consideration"), which Contract Consideration shall be non-refundable.]

### ARTICLE 3 TITLE AND SURVEY

3.1 Title Evidence. Within fifteen (15) days after the date of this Agreement, Seller shall provide to Buyer a commitment to insure title to the Property (the "Commitment") issued by Brazos County Abstract Company (the "Title Company"). The Commitment shall (a) be in an amount equal to the Purchase Price, and (b) include legible copies of all documents, instruments and matters shown as exceptions or referenced therein.

3.2 Survey. Within thirty (30) days after the date of this Agreement, Seller shall, at its expense, provide a current land title survey of the Property prepared and certified by a registered land surveyor licensed in the State of Texas and satisfactory to Buyer and Title Company (the "Survey"). The Survey shall be prepared in accordance with the "Minimum Standard Detail Requirements" for ALTA/ASCM Land Title Surveys, jointly established by ALTA and ASCM in 2011, and shall include Items 1, 2, 3, 4, 6, 11(b), 13, 14, 16, 17 and 19 of Table A thereof.

3.3 Buyer's Objections and Requirements. The date the Commitment, the underlying documents, as described in Section 5.1.1 above and the Survey (collectively, the "Title Evidence") have all been delivered to Buyer is the "Title Matters Delivery Date." Buyer shall have until and through thirty (30) days following the Title Matters Delivery Date to notify Seller of specific objections that Buyer has to the Title Evidence (the "Title Review Period"). Upon expiration of said Title Review Period, if Buyer has not notified Seller of any unacceptable items in Title Evidence, Buyer shall be deemed to have accepted all exceptions to title referenced in the Commitment and all matters shown on the Survey, and such accepted exceptions shall be included in the term "Permitted Exceptions" as used herein. In the event Buyer does object to any matters shown in the Commitment (including any exception documents) or the Survey within the Title Review Period, Seller shall have a period of fifteen (15) days, commencing on the day after the Effective Date of Notice (as defined in Section 13.2 below) of Buyer's objections and ending at 5:00 p.m. Local Time (standard or daylight savings time in effect on the date in question in the time zone in which the Property is located) on the fifteenth (15<sup>th</sup>) day thereafter (the "Election Period"), to notify Buyer of Seller's election to cure or not cure any one or more of such objections, it being understood and agreed that Seller has no duty or obligation to cure or attempt to cure such objections; provided however, that the parties understand and agree that, without any objection thereto being made by Buyer, Seller shall have the obligation to remove or cause to be removed, at Closing, all liens affecting the Property. In the event that Seller is unable or unwilling to cure Buyer's objections prior to the expiration of the Election Period, Seller shall notify Buyer in writing of such fact prior to the expiration of the Election Period, it being understood and agreed that if Seller fails to provide such notice, Seller shall be deemed to have elected not to cure any such objections. In such event, or if Seller shall fail to provide any such notice to Buyer, Buyer shall have until the Closing Date within which to either waive Buyer's objections in writing and accept title to the Property subject to the matters which Seller has been unable or unwilling to cure, or terminate this Agreement in writing, in which case the Earnest Money (less the Contract Consideration) shall be returned to Buyer and neither Seller nor Buyer shall have any further obligation hereunder, except as to those obligations provided for herein which are stated to survive termination of this Agreement. If Buyer does not so waive such objections in writing or so terminate this Agreement in writing Buyer shall be deemed to have waived Buyer's objections and accepted the Property subject to the matters which Seller has been unable or unwilling to eliminate and such accepted exceptions shall be included in the term "Permitted Exceptions". Notwithstanding the foregoing, nothing herein shall prohibit Buyer from objecting to new title matters or new survey matters first appearing on title or the Survey after the issuance of each of the same. In such case, the parties shall proceed as though the date of any revised Commitment showing a new title matter or the Survey showing a new survey matter is the Title Matters Delivery Date as to such matter, and the parties will proceed in accordance with this Section 3.3 with respect thereto; provided however that the Title Review Period shall be five (5) days and the Election Cure Period shall be three (3) days, and, after the expiration of the Election Cure Period, Buyer shall have until the Closing Date to either (a) terminate this Agreement and receive a refund of the Earnest Money (less the Contract Consideration); or (b) proceed to Closing without diminution of the Purchase Price.

#### ARTICLE 4 INSPECTION PERIOD

4.1 Inspection Period. Buyer shall have the right, at its sole cost and expense and within a period of one hundred twenty (120) days (the "Inspection Period") following the effective date of this Agreement to inspect the Property as set forth herein. Furthermore, Buyer shall have the right, at its sole cost and expense, to extend the Inspection Period for an additional thirty (30) days upon depositing additional money in the escrow as set forth in Section 2.3 above. The Inspection Period may be used by Buyer to conduct or cause to be conducted any and all tests, inspections, reviews, assessments or evaluations of the Property, including without limitation engineering, hydrology, topographic, soils, zoning, wetlands and environmental inspections (including Phase I and/or Phase II environmental site assessments to be performed by an environmental consultant selected by Buyer), and economic feasibility and financial availability analyses (collectively, the "Inspections") as Buyer deems necessary, desirable or appropriate in order to determine whether the Property is suitable for purchase by Buyer. As used herein, the term "Phase I and/or Phase II environmental site assessments" includes Buyer's right to perform intrusive soil sampling/investigation to the land and improvements constituting the Property. Simultaneously with the execution of this Agreement, Seller shall provide to Buyer all title, survey, engineering and environmental information and other such information about the Property which Seller may have in its possession (the "Documents to be Delivered").

Seller shall allow Buyer, and its authorized agents, representatives, consultant and engineers, reasonable access to the Property and to other information pertaining thereto in the possession of or within the control of Seller for the purpose of the Inspections. Seller shall reasonably cooperate with Buyer in facilitating the Inspections and shall use reasonable efforts to obtain any consents that may be necessary in order for Buyer to perform the Investigations and shall use its reasonable efforts to secure such cooperation from existing tenants of the Property.

In the event such Inspections reveal any condition(s) which renders the Property unsuitable for purchase by Buyer, Buyer may, in its sole and absolute discretion, terminate this Agreement upon written notice to Seller, delivered within five (5) days after the expiration of the Inspection Period. In the event Buyer terminates this Agreement pursuant to this Section, Buyer shall promptly restore the Property to as close to its previous condition as possible immediately prior to the Inspections (which obligation shall survive the termination of this Agreement) and upon such restoration of the Property, neither party shall have any further rights nor obligations hereunder except as otherwise expressly provided herein. In the event this Agreement is terminated, Buyer will return to Seller any and all documents and analysis obtained during the Inspection Period and Buyer agrees that it will not utilize the results of such inspection period for any other purpose.

## ARTICLE 5

### ALLOCATION OF COSTS; PRORATIONS; CLOSING ADJUSTMENTS

5.1 Allocation of Costs; Closing Adjustments. The following adjustments shall be made at Closing:

(a) Each party shall pay its share of the closing costs which are customarily paid by a Seller or Buyer in a transaction of this character in the county where the Property is located, except as follows or as otherwise agreed, in writing:

(i) Seller shall pay the following Closing costs: (i) Seller's attorneys' fees and costs; (ii) the cost of any tax certificates and the premium for the Owner's Policy (other than for modification of the survey exception and any endorsements to the Owner's Policy); (iii) the costs of obtaining the release of the Property from any existing mortgages and other liens and charges encumbering the Property and the cost of recordation of such documents; (iv) one-half (1/2) of Title Company's escrow charges; (v) the cost of the Survey (excluding any changes or modifications thereto requested by Buyer); and (vi) other Closing costs not expressly identified in this Section 5.1(a)(i) and normally paid by sellers of comparable properties.

(ii) Buyer shall pay the following Closing costs: (i) Buyer's attorneys' fees and costs; (ii) the costs and expenses of Buyer's audits and inspections of the Property and matters pertaining thereto; (iii) the additional premiums for obtaining endorsements to the Owner's Policy or modifying the survey exception in the Owner's Policy, if such modification or endorsements are desired by Buyer; (iv) one-half (1/2) of the Title Company's escrow charges; (v) the costs of any revisions to the Survey requested by Buyer; (vi) the cost of recordation of the Special Warranty Deed; and (vii) other Closing costs not expressly identified in this Paragraph 5.1(a)(ii) and normally paid by buyers of comparable properties.

5.2 Taxes. The parties agree that general real estate taxes on the Property for the then current year shall be prorated through the day prior to the Closing Date. If the closing occurs before the tax rate is fixed for the current year, the apportionment of taxes shall be upon the basis of the tax rate for the preceding year applied to the latest assessed valuation, but subject to Section 5.6 below.

5.3 Rents. The parties agree that rent and other amounts due under the Lease shall be prorated on a daily basis for the month on which the day of closing occurs.

5.4 Utilities. Utility charges, if any, accrued prior to the day before the Closing Date shall be paid by Seller, and utility charges attributable to and accruing on the Closing Date and thereafter shall be paid by Buyer. To the extent any such expenses and charges are not determinable as of the Closing Date, such expenses and charges shall be paid promptly upon receipt of an invoice therefor by the party obligated for payment thereof.

5.5 Post-Closing Adjustments. If Closing prorations made pursuant to the provisions of this Agreement result in an amount due to Buyer, then such amount shall be applied as a credit to Buyer at Closing. If such prorations result in a payment due Seller, then the same shall be paid to Seller in addition to the portion of the Purchase Price payable at Closing.

5.6 Final Adjustment. If the final cost or amount of any item which is to be adjusted under Sections 5.2 and 5.3 above has not been determined at Closing (the "Post Closing Adjustments"), then an initial adjustment for such items shall be made at Closing, such amount to be estimated by Seller and Buyer, acting reasonably, as at the date immediately preceding the Closing Date. In each case when a Post Closing Adjustment is determined, Seller and Buyer, as the case may be, shall within thirty (30) days of determination, provide a complete statement

thereof to the other and within thirty (30) days thereafter, if the party receiving such statement does not (acting reasonably) dispute the determination, the parties shall make a final adjustment as of the Closing Date for the Post Closing Adjustment in question, provided that such final adjustment and all payments therewith, shall be made between the parties no later than twelve (12) months from the Closing Date (the "Final Adjustment Date") and no claim for any readjustment may be made by either party thereafter.

## ARTICLE 6 WARRANTIES AND REPRESENTATIONS OF BUYER

6.1 Buyer represents and warrants to Seller that the following statements are true. In the event that any of the following representations and warranties are not true on the date of Closing, Seller, at Seller's option, shall have the right to terminate this Agreement. In the event of such termination, all Earnest Money (less the Contract Consideration) shall be paid over to Seller and thereafter no one will have any further obligations or liabilities under this Agreement. Buyer shall certify to Seller at closing either (i) that all of such representations and warranties are true, or (ii) indicate which are not true as of the closing date.

(a) Buyer has the full right, power, and authority to enter into and perform its obligations under this Agreement.

(b) Buyer has been advised in writing that Buyer should have an abstract covering the Property examined by an attorney of Buyer's own selection or that Buyer should be furnished with or obtain a policy of title insurance.

(c) Buyer is not subject to any legal or administrative proceeding, debt structure or other agreement which would prevent Buyer's full and timely performance of its obligations hereunder.

(d) Buyer is not a "foreign person" within the meaning of the Internal Revenue Code of 1986, as amended, Sections 1445 and 7701 (i.e., Buyer is not a non-resident alien, foreign corporation, foreign partnership, foreign trust or foreign estate as those terms are defined in the Code and regulations promulgated thereunder).

(e) In the event the transaction contemplated by this Agreement is not consummated for any reason, Buyer shall promptly deliver to Seller all reports and studies relating to the Property in the possession of its agents, consultants or employees, including, without limitation, any and all environmental reports, market studies, site plans, plats and related engineering, prospect lists, soil reports, architectural renderings, drawings and/or elevations, and third party documents, including any copies thereof made by Buyer or at Buyer's direction.

## ARTICLE 7 REPRESENTATIONS AND WARRANTIES OF SELLER

7.1 Seller represents and warrants to Buyer as of the effective date and as of the closing date that Seller has the full right, power, and authority to convey the Property to Buyer as

provided in this Agreement and to carry out Seller's obligations under this Agreement, and all requisite action necessary to authorize Seller to enter into this Agreement and to carry out Seller's obligations hereunder will have been obtained on or before closing.

## ARTICLE 8 DISCLOSURES

8.1 Asbestos Disclosure Notice – See Exhibit “D” attached hereto and incorporated herein.

## ARTICLE 9 DISCLAIMER OF WARRANTIES

**BUYER ACKNOWLEDGES THAT SELLER HAS NOT MADE AND DOES NOT MAKE ANY REPRESENTATIONS AS TO THE PHYSICAL CONDITION OF THE PROPERTY, OR ANY OTHER MATTER AFFECTING OR RELATED TO THE PROPERTY (OTHER THAN WARRANTIES OF TITLE AS PROVIDED AND LIMITED HEREIN). BUYER EXPRESSLY AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROPERTY IS CONVEYED “AS IS” AND “WITH ALL FAULTS”, AND SELLER EXPRESSLY DISCLAIMS, AND BUYER ACKNOWLEDGES AND ACCEPTS THAT SELLER HAS DISCLAIMED, ANY AND ALL REPRESENTATIONS, WARRANTIES OR GUARANTIES OF ANY KIND, ORAL OR WRITTEN, EXPRESS OR IMPLIED (EXCEPT AS TO TITLE AS HEREIN PROVIDED AND LIMITED) CONCERNING THE PROPERTY, INCLUDING WITHOUT LIMITATION (i) THE VALUE, CONDITION, MERCHANTABILITY, HABITABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR USE OR PURPOSE, OF THE PROPERTY; (ii) THE MANNER OR QUALITY OF THE CONSTRUCTION, OR THE MATERIALS, IF ANY, INCORPORATED INTO THE CONSTRUCTION OF ANY IMPROVEMENTS TO THE PROPERTY; AND (iii) THE MANNER OF REPAIR, QUALITY OF REPAIR, STATE OF REPAIR OR LACK OF REPAIR OF ANY SUCH IMPROVEMENTS. BUYER REPRESENTS THAT IT IS NOT RELYING ON ANY INFORMATION SELLER HAS PROVIDED REGARDING THE PROPERTY AND IMPROVEMENTS THEREON AND HAS MADE OR WILL MAKE (i) ALL INSPECTIONS OF THE PROPERTY TO DETERMINE ITS VALUE AND CONDITION DEEMED NECESSARY OR APPROPRIATE BY BUYER, INCLUDING, WITHOUT LIMITATION, INSPECTIONS FOR THE PRESENCE OF ASBESTOS, PESTICIDE RESIDUES, HAZARDOUS WASTE AND OTHER HAZARDOUS MATERIALS; AND (ii) INVESTIGATIONS TO DETERMINE WHETHER ANY PORTION OF THE PROPERTY LIES WITHIN ANY FLOOD HAZARD AREA AS DETERMINED BY THE U.S. ARMY CORPS OF ENGINEERS OR OTHER APPLICABLE AUTHORITY. THE PROVISIONS CONTAINED IN THIS PARAGRAPH SHALL SURVIVE THE CLOSING HEREUNDER AND THE DELIVERY FROM SELLER TO BUYER OF THE SPECIAL WARRANTY DEED.**

## ARTICLE 10 CLOSING

10.1 Location; Date. The closing shall be held at the Title Company or at such other location as to which Seller and Buyer may agree in writing within twenty-five (25) calendar days after the last day of the Inspection Period. The parties acknowledge and agree that Closing may occur by delivery in escrow of the items set forth in Sections 10.2 and 10.3 below, with appropriate instructions for recording and disbursement consistent with this Agreement and that neither party need be physically present at Closing.

10.2 Seller's Deliveries. At the Closing, Seller shall deliver to Buyer:

(a) the duly executed and acknowledged Special Warranty Deed in the form as substantially set forth in Exhibit "C" attached hereto, conveying good and indefeasible title in the Property, free and clear of any and all liens, and encumbrances, except for the Permitted Exceptions;

(b) an Assignment and Assumption of Lease in the form of Exhibit "E" (the "Assignment");

(c) exclusive possession of the Property, subject only to the Lease and the Permitted Exceptions.

(d) a Title Policy insuring indefeasible title issued by the title company selected as set forth above, in Buyer's favor in the full amount of the purchase price, insuring Buyer's fee simple interest in the Property subject only to the Permitted Exceptions;

(e) a Certification Regarding Non-Foreign Status ("Non-Foreign Affidavit"), executed and sworn to under oath on behalf of Seller, in satisfaction of Section 1445(b)(4) of the Internal Revenue Code of 1986, as amended;

(e) evidence acceptable to the Title Company as to the authority and capacity of the person or persons acting for Seller to the transactions contemplated by this Agreement, the execution and delivery of closing documents to be delivered by Seller at Closing;

(f) a settlement statement consistent with this Agreement (the "Closing Statement"); and

(g) such certificates and other documentation as Title Company may reasonably request from Seller in order to issue the Owner's Policy to Buyer.

At Closing, Seller shall also pay Seller's expenses and attorneys' fees.

10.3 Buyer's Deliveries. At Closing, Buyer shall deliver to Seller;

(a) the balance of the Purchase Price;

(b) an executed counterpart of the Assignment;

(c) an executed counterpart of the Closing Statement; and

(d) such certificates and other documentation as Title Company may reasonably request from Seller in order to issue the Owner's Policy to Buyer.

10.4 Payment of Other Costs. All other costs payable at the Closing shall be paid as set forth in Article 5 hereof.

## ARTICLE 11 SPECIAL CONDITIONS

11.1 Mineral Rights. Seller shall not convey any and oil, gas or other mineral rights to the Property, provided that there shall never in any event be any ingress or egress on or across the surface of the Property for the purposes of exploration, development, production or transportation of such oil, gas or other minerals, it being expressly contemplated by the parties to this instrument that there shall be no development of any minerals that would require oil and gas drilling, mining, shaft mining, pit mining or any other kind of mining that would require utilization of the surface for the development with adjacent parcels.

11.2 Deed Restrictions. The Property shall be conveyed subject to deed restrictions that prohibit warehousing and storage, sexually oriented enterprises or businesses and governmental or tax-exempt uses on the Property.

11.3 Tax Exempt Entity Sale. The Property may not be resold or leased to a tax-exempt entity except as provided in the EDA.

11.4 Buy-Back Option. The Property is subject to the Buy Back Option contained in the EDA. This Buy Back Option shall be included in the Special Warranty Deed.

11.5 Easements. It is understood and agreed that the City may reserve from the conveyance of the Property to Seller, any easements or rights-of-way that it deems necessary, including, without limitation, blanket easements; provided however that, and Buyer agrees that it will take the Property subject to such easements or rights-of-way, but subject to the conditions set forth in Section 3.2(d) of the EDA.

## ARTICLE 12 DEFAULT AND REMEDIES.

12.1 Buyer Default. If Buyer fails to consummate this Agreement for any reason whatsoever other than Seller's default, Seller may, as Seller's sole remedy, by written notice to Buyer, terminate this Agreement and retain the Earnest Money (less the Contract Consideration) as liquidated damages. Upon the termination of this Agreement, neither Buyer nor Seller shall have any further obligations under this Agreement, except as to those obligations provided for herein which are expressly stated to survive termination of this Agreement. Seller and Buyer acknowledge the difficulty and inconvenience of ascertaining Seller's actual damages in the event of Buyer's default and agree that the Earnest Money is a fair and reasonable estimate of such damages.

12.2 Seller's Default. Except as limited in (iii)(B) below, if Seller fails to consummate this Agreement for any reason whatsoever, other than Buyer's default, Buyer shall, as Buyer's sole remedy, select any one, but not more than one, of the following: (i) terminate this Agreement by written notice to Seller, in which event Buyer shall be entitled to return of the Earnest Money less the Contract Consideration, neither Seller nor Buyer shall have any further obligations under this Agreement, except those matters expressly stated to survive termination of this Agreement; or (ii) purchase the Property notwithstanding such default, pursuant to the remaining terms of this Agreement thereby waiving any claim for default or any claim for reimbursement to Buyer; or (iii) enforce specific performance of Seller's obligations under this Agreement; provided however, that (A) any action for specific performance shall be commenced within two (2) years after Seller's failure to perform or such action shall be barred; and (B) Buyer may commence an action for specific performance only if Seller's Default consists of Seller's failure to convey the Property to Buyer at the Closing pursuant to the terms of this Agreement, it being understood and agreed that Buyer's remedies for any other breach or default by Seller shall be limited to subsections (i) or (ii) above.

12.3 No Damages. Except for suit brought for damages pursuant to the documents delivered at Closing, each party waives its rights to seek damages of any kind or nature, including, without limitation, consequential, indirect or special damages, in the event of the other's default hereunder.

### ARTICLE 13 MISCELLANEOUS

13.1 Survival of Covenants: Any of the representations, warranties, covenants, and agreements of the parties, as well as any rights and benefits of the parties, pertaining to the period of time following the Closing Date, shall survive the Closing for a period of one year and shall not be merged by deed or otherwise be extinguished until the expiration of said one year period.

13.2 Notice: All notices, requests, demands, elections, offers, acceptances and other communications required or desired to be delivered hereunder shall be in writing and shall be deemed given, effective and received (whether refused or received) on the date (the "effective date of notice") which is (a) the date of personal delivery; (b) ten (10) days after deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested; (c) one (1) business day after deposit with a national overnight air courier, fees prepaid; or (d) the date of transmission via facsimile machine confirmed by the sender's machine facsimile transmission, or electronic mail sent to the intended addressee at the address set forth below, provided that a copy of the facsimile or electronic mail also is sent to the intended addressee by one of the means described in clauses (a) or (c) above; provided however, that if the notice is sent via electronic mail and the addressee responds via electronic mail, such response shall be deemed to constitute receipt by the addressee, in which case it shall not be necessary to send an original of the electronic mail communication as provided above. All of the communications describe in this Paragraph shall be addressed to the appropriate party at its address listed below:

To Buyer

Asset Plus Realty Corporation  
675 Bering Drive, Suite 200

Houston, TX 77057  
Attn: Barrett O. Kirk  
Facsimile: 713-268-5111  
Email: bkirk@assetpluscorp.com

Copy to:

Fabyanske, Westra, Hart & Thomson, P.A.  
800 LaSalle Avenue, Suite 1900  
Minneapolis, Minnesota 55402  
Attn: Judith E. Krow  
Facsimile: 612.359.7602  
Email: jkrow@fwhtlaw.com

To SELLER:

Research Valley Partnership  
1500 Research Parkway, Suite 270  
College Station, Texas 77845  
Attn: Todd McDaniel  
Email: tmcDaniel@researchvalley.org

13.3 Texas Law to Apply: This Agreement shall be subject to and governed by the laws of the State of Texas, excluding any conflicts of law rule or principle that might refer the construction or interpretation of this Agreement to the laws of another state. Each party hereby submits to the jurisdiction of the state and federal courts in the State of Texas and to venue in Brazos County, Texas.

13.4 Parties Bound: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors, and assigns. The persons executing this Agreement do so in their capacities as set forth below and in no other capacity whatsoever, and such persons shall have no personal liability for executing this Agreement in a representative capacity. All such liability is limited to the principal for which they execute this document as a representative.

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

13.6 Construction. The parties acknowledge that each party and their respective counsel have reviewed and revised this Agreement as needed, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

13.7 Prior Agreements Superseded: This Agreement constitutes the sole and only agreement of the parties and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter within.

13.8 Time of Essence: Time is of the essence as to this Agreement and each and every provision hereof.

13.9 Gender: Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular number shall be held to include the plural, and vice versa, unless the context requires otherwise.

13.10 Memorandum of Agreement: Upon request of either party, both parties shall promptly execute a memorandum of this agreement suitable for filing of record.

13.11 List of Exhibits

- Exhibit "A" Depiction of the Property
- Exhibit "B" Economic Development Agreement Among the City of College Station, Research Valley Partnership and Asset Plus Realty Corporation
- Exhibit "C" Special Warranty Deed
- Exhibit "D" Asbestos Disclosure Notice
- Exhibit "E" Assignment of Lease

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

BUYER:

SELLER:

ASSET PLUS REALTY CORPORATION  
PARTNERSHIP,  
profit corporation

THE RESEARCH VALLEY  
INC., a Texas non-  
profit corporation

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

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its Chairman

STATE OF TEXAS            )  
  ) SS.       ACKNOWLEDGMENT  
COUNTY OF BRAZOS        )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ as chairman of the board of THE RESEARCH VALLEY PARTNERSHIP, INC., a Texas non-profit corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
STATE OF TEXAS

STATE OF TEXAS            )  
                                  ) SS.        ACKNOWLEDGMENT  
COUNTY OF HARRIS        )

This instrument was acknowledged before me on the \_\_\_\_\_ day of \_\_\_\_\_, 2013,  
by \_\_\_\_\_, the \_\_\_\_\_ of ASSET PLUS REALTY  
CORPORATION, a Texas business corporation, on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC in and for the  
STATE OF TEXAS

EXHIBIT "A"  
PROPERTY DESCRIPTION

EXHIBIT "B"  
EDA AGREEMENT

EXHIBIT "C"

FORM OF SPECIAL WARRANTY DEED

EXHIBIT "D"  
ASBESTOS DISCLOSURE

EXHIBIT "E"

FORM OF ASSIGNMENT AND ASSUMPTION OF LEASE

EXHIBIT "F"

MEMORANDUM OF  
ECONOMIC DEVELOPMENT AGREEMENT AMONG THE  
CITY OF COLLEGE STATION, THE RESEARCH VALLEY PARTNERSHIP, INC.  
AND ASSET PLUS REALTY CORPORATION

THE STATE OF TEXAS     §  
                                   §     KNOW ALL MEN BY THESE PRESENTS:  
COUNTY OF BRAZOS     §

The Economic Development Agreement (the "Agreement") was made and into as of  
\_\_\_\_\_ (date) \_\_\_\_\_ by and among the City of College Station, Texas (the "City"), a municipal  
corporation in Brazos County, Texas, acting by and through its governing body, the City Council  
of College Station, Texas, and ASSET PLUS REALTY CORPORATION, a Texas Corporation  
(the "Developer") and The Research Valley Partnership, Inc., a Texas nonprofit corporation.

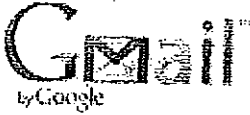
Developer purchased the following property pursuant to the Agreement to wit:  
\_\_\_\_\_ (description of property) \_\_\_\_\_ the legal description which is attached hereto and  
made a part hereof.

The purpose of this Agreement is to set forth the terms and conditions under which  
Developer purchases and develops the property, and to define the City's regulatory authority to  
establish certain economic incentives, restrictions and commitments imposed and made in  
connection with the development of the Property for a period of years.

A copy of the Agreement, all exhibits, and supplements or amendments thereto is on file  
in the deed records of Brazos County, Texas at 300 E. 26<sup>th</sup> Street, Bryan, Texas.

**EXHIBIT "F"**

**Form of Memorandum of this Agreement**



Jeff Vartan <jvartan55@gmail.com>

---

**Fwd: Prelim Site Plan 4-15-2013.pdf**

1 message

---

From: **Wayne Cotter** <wayne@landmarkadvisorsinc.com>  
Date: Thu, Apr 18, 2013 at 8:37 AM  
Subject: Prelim Site Plan 4-15-2013.pdf  
To: Costa Dallis <c.dallis@cafeeccell.com>

Costa,

See you guys at Asset Corp offices 11AM Monday...

675 Bering | Suite 200 | Houston, TX 77057

Also see latest preliminary site plan attached... Thx.

Wayne Cotter, CCIM  
Landmark Advisors, Inc.

Sent from my iPhone

—  
Costa Dallis  
CEO-EccellGroup  
104 B Church Ave.  
College Station, TX 77840  
p. 979 846 8559 f. 979 268 4748  
www.eccellgroup.com

---

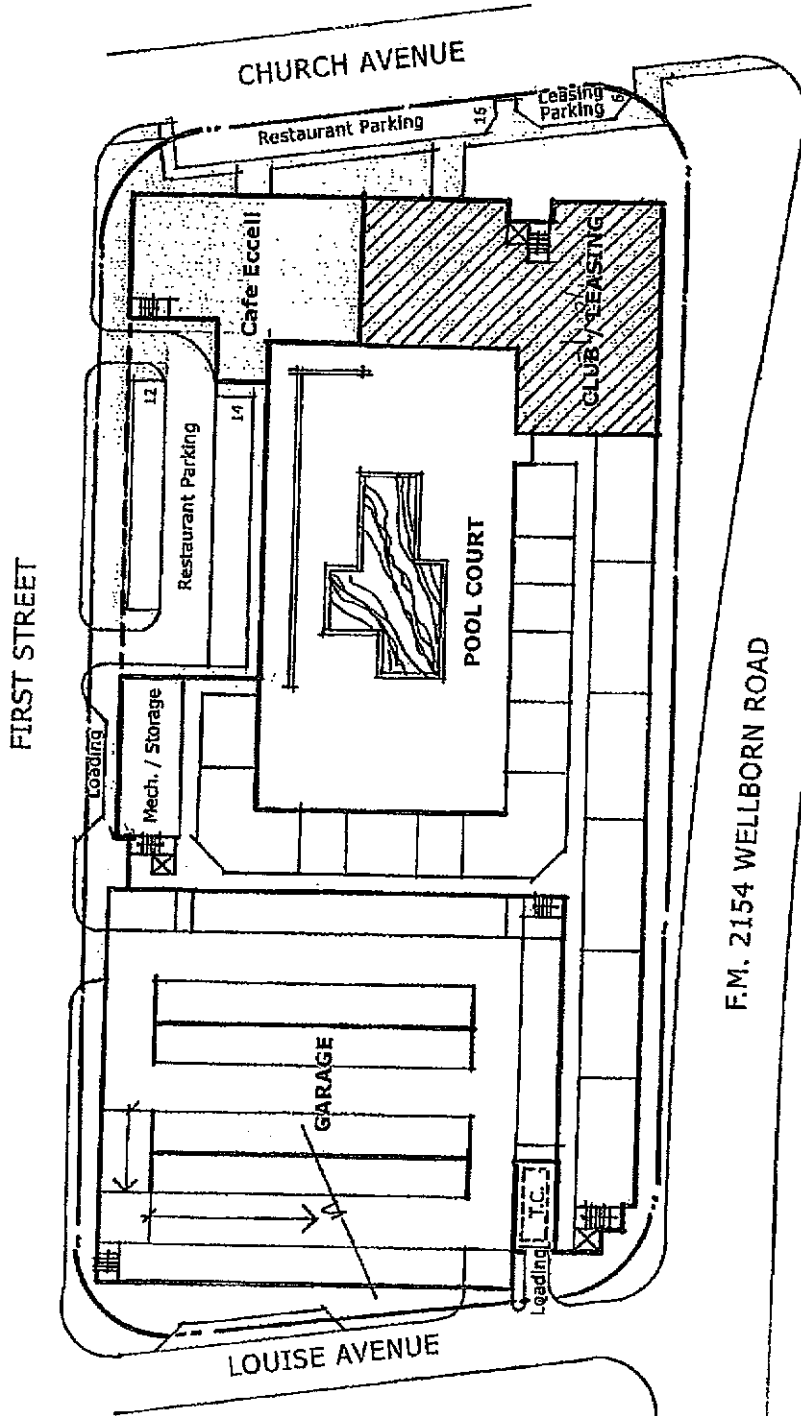
 **Prelim Site Plan 4-15-2013.pdf**  
655K



**DATA**

50 1 BEDROOM  
 98 2 BEDROOM  
 124 4 BEDROOM  
 280 TOTAL UNITS  
 190 TOTAL BEDS

118 PARKING / LEVEL  
 6.5 LEVELS  
 761 TOTAL PARKING



LEVEL 1 PLAN  
 1"=50'-0"



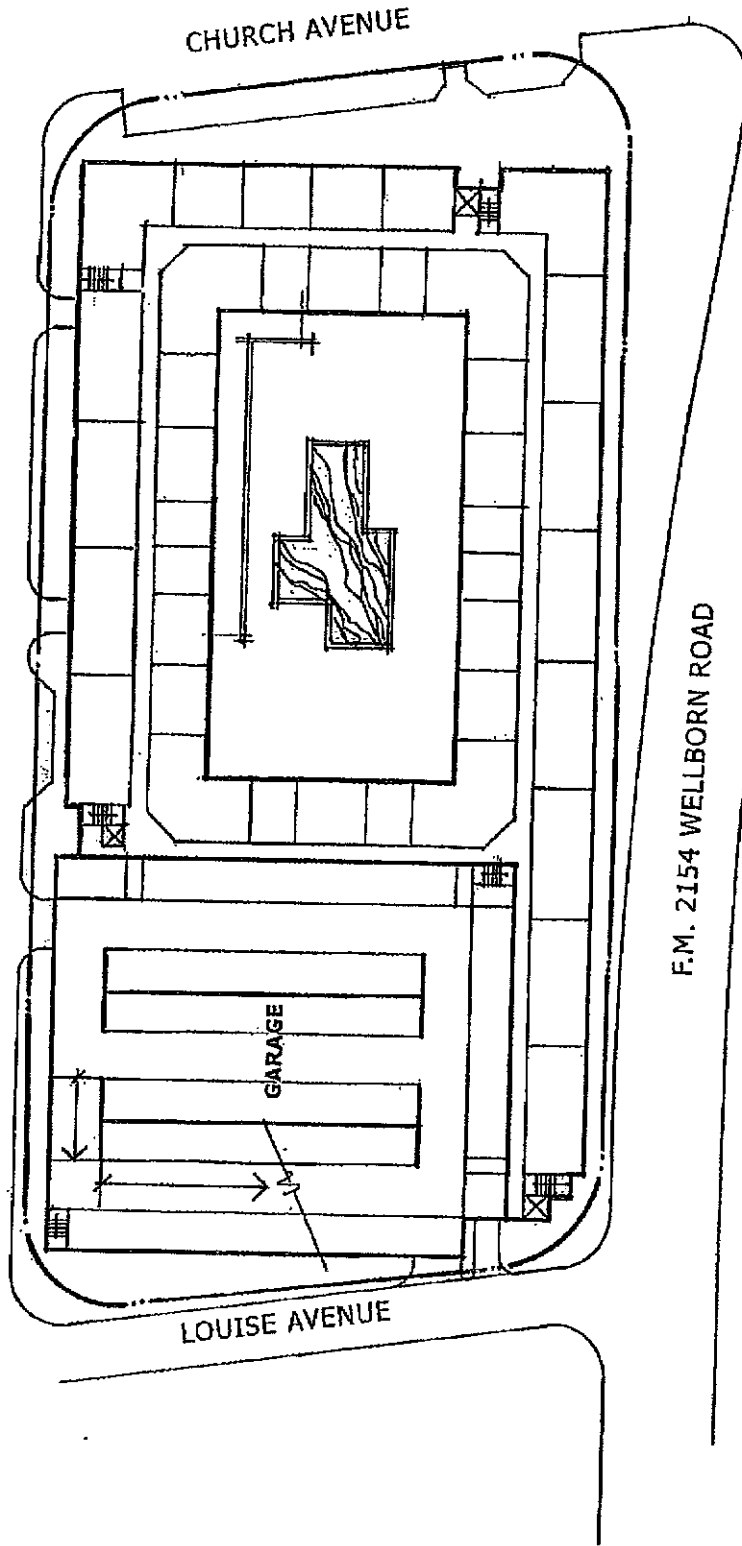
**COLLEGE STATION STUDENT APARTMENTS**

College Station, Texas

Meeks + Partners  
 ARCHITECTS



FIRST STREET



CHURCH AVENUE

F.M. 2154 WELLBORN ROAD

LOUISE AVENUE

LEVEL 2-B PLAN  
1"=30'-0"

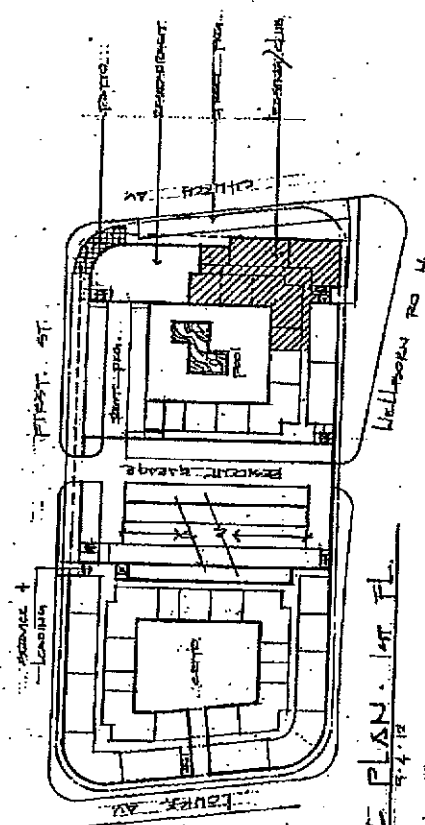
ASSET PLUS  
COMPANIES

COLLEGE STATION STUDENT APARTMENTS

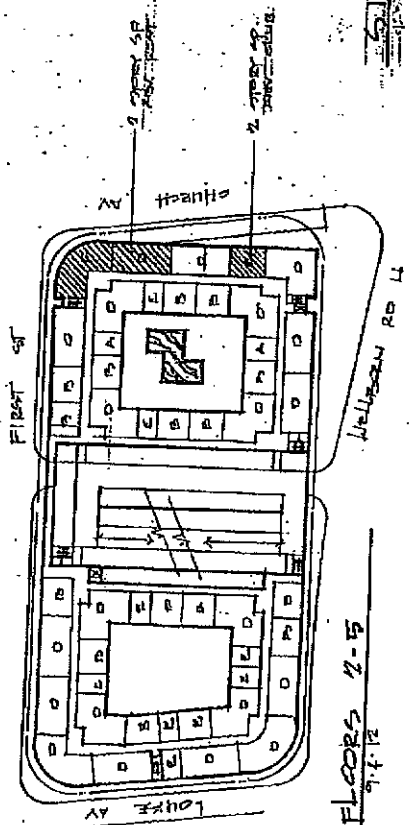
College Station, Texas

Meeks + Partners





1ST FLOOR  
1-50  
9-1-12



2ND FLOOR  
1-50  
9-1-12

1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150

1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150

1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150

1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150

1122  
1123  
1124  
1125  
1126  
1127  
1128  
1129  
1130  
1131  
1132  
1133  
1134  
1135  
1136  
1137  
1138  
1139  
1140  
1141  
1142  
1143  
1144  
1145  
1146  
1147  
1148  
1149  
1150

**From:** Barrett Kirk <[bkirk@assetpluscorp.com](mailto:bkirk@assetpluscorp.com)>  
**Date:** November 4, 2013 at 4:16:07 PM CST  
**To:** "Costa Dallis ([dallisc@gmail.com](mailto:dallisc@gmail.com))" <[dallisc@gmail.com](mailto:dallisc@gmail.com)>  
**Cc:** Jeff Knowles <[jknowles@assetpluscorp.com](mailto:jknowles@assetpluscorp.com)>  
**Subject:** Mixed-Use Student Housing Development

Mr. Dallis,

Thank you for taking time to meet with us over the past twelve months to explore design options to integrate Café Eccell in our newest project in College Station. I want to let you know that we have finally completed due diligence and we will close the pending acquisition on December 2<sup>nd</sup>. We are excited to move forward, and we hope you will choose to keep Café Eccell in this location with a new long-term lease.

We are working diligently to finalize the project design and we want to accommodate your ideas for the new restaurant layout as previously discussed in our last meeting. Please reply at your earliest opportunity with any additional comments to the plans we submitted to your architect in August.

Before we finalize the design and other project elements, we want to confirm your commitment to occupy the new retail space. I have attached another copy of the Letter of Intent for the proposed restaurant lease. Please return an executed copy of the Letter of Intent by November 15<sup>th</sup> so we may continue to reserve the restaurant space for Café Eccell until a formal lease agreement is drafted for both parties to sign.

Please do not hesitate to contact me with any questions.

Sincerely,

**Barrett O. Kirk**

Senior Vice President - Development

675 Bering | Suite 200 | Houston, TX 77057

P 713 782 5800 | F 713 268 5111 | C 713 385 2242

E [bkirk@assetpluscorp.com](mailto:bkirk@assetpluscorp.com)

W [www.assetpluscorp.com](http://www.assetpluscorp.com) | [www.assetcampus.com](http://www.assetcampus.com)





INVESTMENT • MANAGEMENT • DEVELOPMENT

November 4, 2013

Mr. Costa Dallis - President  
Deluxe Burger Bar of College Station, Inc.  
College Station, TX 77840

**LETTER OF INTENT TO LEASE**

Re: New Mixed-Use Student Housing Development  
3.3 Acres – Church Street – Northgate District  
College Station, Texas 77840

Mr. Dallis:

This Letter of Intent is for your consideration and is intended to outline the general terms of a Lease Agreement for Restaurant Lease Space at the above referenced location.

It is specifically agreed and understood that no party hereto shall have any obligations hereunder until a Lease Agreement is fully executed by all parties.

TENANT:	Deluxe Burger Bar of College Station, Inc.
LANDLORD:	DRI/APRC Northgate, LLC
LOCATION:	3.3 Acres – Church Street, Northgate, College Station
PREMISES:	Approximately 6,100SF to be part of new student living development.
TRADE NAME:	Café Eccell
USE OF PREMISES:	The Premises shall be used by Tenant for the purpose of operating therein a restaurant.
LEASE TERM:	Ten (10) Years <b>REDACTED</b>
BASE LEASE RATE:	Years 1 – 5 Years 6 – 10
OPTIONS:	Four (4) – Five (5) Year Option Terms with a 10% increase each Option Term.

**REDACTED**

**REDACTED**

**LEASE AGREEMENT  
DEADLINE:**

January 14<sup>th</sup>, 2014

**LEASE TERM  
COMMENCEMENT:**

The lease term and rent commences the earlier of: (i) Tenant's opening for business; or (ii) One Twenty (120) days following the date Landlord delivers the Premises to Tenant.

**COMMON AREA  
MAINTENANCE:**

Pro rata share of the proposed development (estimated at

**TAXES & INSURANCE:**

Pro rata share of the proposed development (estimated at

**UTILITIES:**

Landlord shall provide adequate and separately metered utility services to the Premises, and Tenant shall pay for its own utility services.

**TENANT IMPROVEMENT  
ALLOWANCE:**

Landlord shall pay and deliver to Tenant a construction allowance in an aggregate amount equal to \_\_\_\_\_ per square foot, of which shall be due and payable to Tenant by Landlord upon completion of Tenant's work and upon Tenant's and Landlord's receipt City's Certificate of Occupancy.

**DELIVERY OF  
PREMISES:**

2015 (estimate). Landlord will use its best efforts to construct the Premises while new restaurant space is open for business.

**LANDLORD'S  
IMPROVEMENTS:**

Landlord shall deliver a demised lease space and deliver all utilities to the Premises (including a gas line) in sizes adequate for Tenant's use to include electric, gas, water and sewer. Landlord will also provide a water line and riser adequate in size to support a sprinkler system in the Premises. Landlord will be responsible for bringing the sprinkler system water line into the demised space and Tenant will be responsible for installing the sprinkler system in the Premises.

**TENANT'S  
IMPROVEMENTS:**

Tenant shall be responsible for any improvements made to the Premises, which are subject to plans submitted to Landlord for prior review and approval.

**SIGNAGE:**

Tenant shall be allowed building signage allowed by the City of College Station Sign Ordinance. The cost of building signage shall be at Tenant's cost and subject to review and approval by Landlord.

**TENANT'S OBLIGATIONS:**

Tenant will keep the Premises in good, clean and habitable condition including plate glass, windows, doors, door closure devices and other exterior openings, window and door frames, moldings, locks and hardware, interior painting and will make all repairs and replacements not specifically required to be made by Landlord in the Lease.

**PARKING:**

Landlord agrees to provide on street public parking in accordance with the Northgate plan per the City of College Station. No dedicated restaurant spaces will be provided.

**PRELIMINARY  
SITE PLAN:**

See attached.

MUNICIPAL  
PERMITS:

The Lease will be subject to Tenant obtaining all necessary building and operating permits from the City of College Station as well as a liquor license from the Texas Alcoholic Beverage Commission.

DOCUMENTATION:

Landlord will prepare the Lease, the terms and conditions of which will be substantially as set forth in the form of lease established by Landlord for the Premises within the proposed development with such modifications as are mutually acceptable and to reflect the terms set forth in this letter.

The content of this letter of intent is confidential in nature and shall not be disclosed or released to any person or party other than representatives, agents and attorneys of Landlord, Landlord's lender, and Tenant, respectively, to the extent necessary to evaluate and consummate the transaction contemplated by this letter. This letter describing lease terms for consideration is not an offer, reservation, or option, but is rather for discussion purposes only. The parties shall not be bound by these terms or any subsequent discussions or negotiations until a full and final lease is signed by both owner of the property and the Tenant listed above. **If the above sets forth our agreement, please sign the attached copy of this letter and return it to my attention by November 15<sup>th</sup>, 2013.**

Sincerely,



Barrett O. Kirk  
Senior Vice President – Development

AGREED AND ACCEPTED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

LANDLORD:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

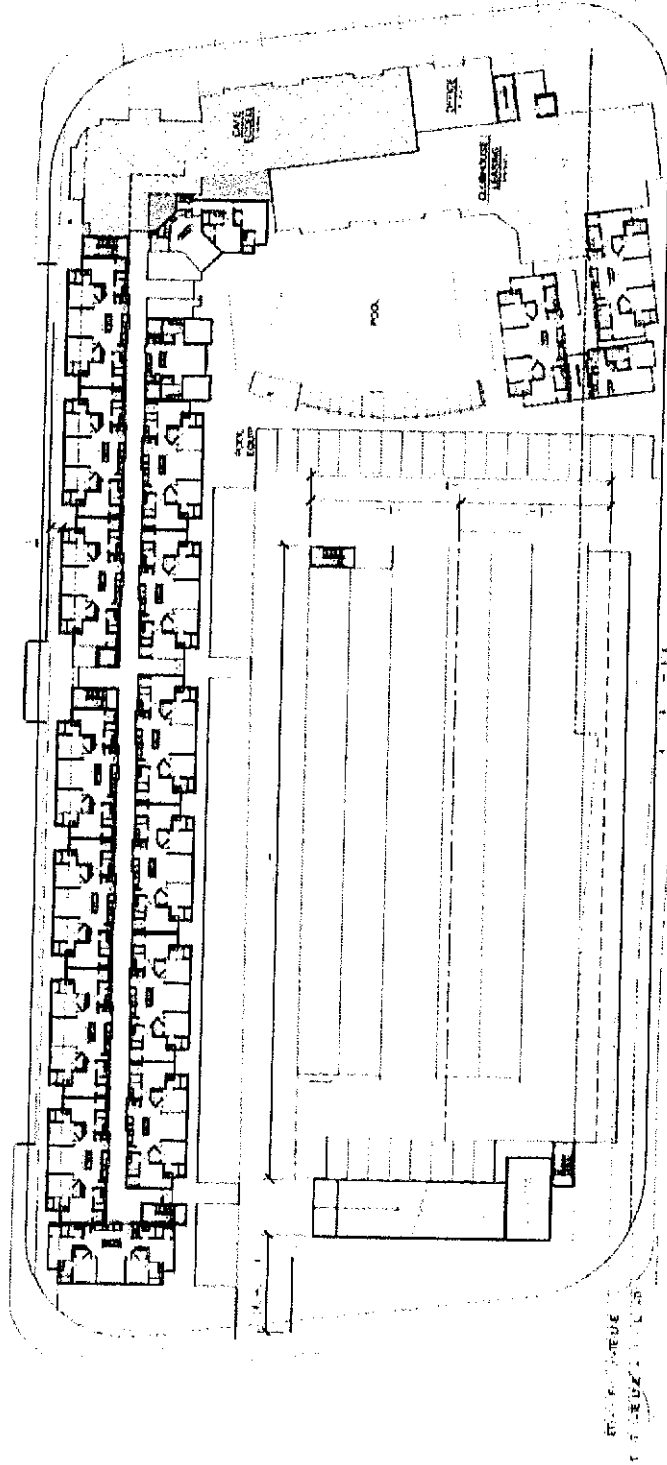
TENANT:

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

# Preliminary Site Plan



**Mano DeAyala**

---

**From:** Judith E. Krow [JKrow@fwhtlaw.com]  
**Sent:** Friday, November 29, 2013 10:57 AM  
**To:** Mano DeAyala  
**Cc:** bwhalen@porterhedges.com  
**Subject:** Cafe Eccell

Mr. Deayala: My client does not believe a face to face meeting concerning parking would be productive and has engaged Brad Whalen of Porter Hedges in this matter. Please communicate directly with him. His email is above and his cell phone number is 713 299 9723. He will be available all day tomorrow and Sunday morning. Additionally, any offer to lease my client might previously have made or may be deemed to have made is hereby revoked.

Judy Krow

Sent from my iPad



# CAFÉ ECCELL

104 D Church Ave  
College Station, TX 77840  
Ph: 979.846.8559 Fax: 979.268.4748

November 13, 2013

Mr. Kelly Templin, City Manager  
City of College Station  
P.O. Box 9960  
College Station, Texas 77842

Via: Certified Mail No. 70100780000131433802, return receipt requested

Re: Lease of Real Property (the "Lease") made the 10<sup>th</sup> day of December, 2003, by and between the City of College Station ("Lessor") and Deluxe Burger Bar of College Station, Inc., sometimes doing business as Café Eccell ("Lessee"), providing for the lease of premises (the "Premises") commonly known as the "Old City Hall" in the W.C. Boyett Estate Partition in College Station, Brazos County, Texas.

Dear Kelly:

Thank you for taking the time to meet with my family and me on Monday, and listening to our concerns. Pursuant to the provisions of Section IV of the Lease, Lessee hereby requests that Lessor sell the Premises in accordance with the bidding provisions of Section 272.001 of the Texas Local Government Code, Lessee and its affiliated investors desiring the opportunity to purchase the Premises and, at the election of Lessor, the surrounding property, for fair market value.

Lessee's representatives have been advised that the agreement among The Research Valley Partnership, Inc., Asset Plus Realty Corporation ("Developer"), and Lessor provides for Lessee's continuing operations on the Premises under a new lease agreement, Developer being obligated to use good faith and commercially reasonable efforts to negotiate such new lease. Developer's current and very ambiguous offer to Lessee is not commercially reasonable in that it seeks to replace the existing Premises having the exclusive use of approximately sixty-five (65) on-site parking spaces, and currently being improved to conduct a restaurant business, with premises not having access to any on-site parking and not in any way improved for the operation of a restaurant business. Lessee questions Developer's good faith as relates to the negotiations of a continuing lease, because Developer's representatives have previously represented to Lessee that Lessee's continuing occupation of the Premises would include exclusive on-site parking for a 6,000 square foot restaurant facility, interim parking during construction of the new restaurant premises, restaurant-appropriate improvements within the new premises, and a short transition period between the closing of the existing restaurant and the completion of the new premises improvements, such inclusions absent from Developer's current proposal.



November 13, 2013  
Mr. Kelly Templin, City Manager  
Page 2

Lessee is not seeking to obtain a fee or leasehold interest in exchange for anything other than fair market value. But Lessee is expecting a premises that has functional utility comparable to the existing Premises, such expectation not being unreasonable considering Lessee's 24-year operation of a quality and unique restaurant business within the historic Premises.

Lessee stands ready to negotiate for a leasehold within the Premises and/or surrounding property, provided such leasehold provides for amenities similar to those presently benefitting the Premises, in exchange for Lessee's payment of a fair market rental. Further and alternatively, Lessee's affiliated investors stand ready to negotiate a purchase of the Premises, including the adjacent property being proffered by the City, for fair market value, without requiring any economic development grant or tax abatement. Lessee anxiously awaits your response.

Very truly yours,

DELUXE BURGER BAR OF COLLEGE  
STATION, INC.  
sometimes doing business as Café Eccell

By:

  
Costandinos Dallis, President

cc: City Attorney  
P.O. Box 9960  
College Station, Texas 77842  
via: Certified Mail No. 70100780000131433796, return receipt requested

The Honorable Nancy Berry, Mayor  
via: e-mail to [nberry@cstx.gov](mailto:nberry@cstx.gov)

The Honorable Blanche Brick  
via: e-mail to [bbrick@cstx.gov](mailto:bbrick@cstx.gov)

The Honorable Jess Fields  
via: e-mail to [jfields@cstx.gov](mailto:jfields@cstx.gov)

The Honorable Karl Mooney, Mayor Pro Tem  
via: e-mail to [kmooney@cstx.gov](mailto:kmooney@cstx.gov)

The Honorable John Nichols  
via: e-mail to [jnichols@cstx.gov](mailto:jnichols@cstx.gov)

The Honorable Julie Schultz  
via: e-mail to [jschultz@cstx.gov](mailto:jschultz@cstx.gov)

The Honorable James Benham  
via: e-mail to [jbenham@cstx.gov](mailto:jbenham@cstx.gov)