

ORDINANCE NO. 2013-009

AN ORDINANCE OF THE CITY OF DENTON, TEXAS APPROVING A LEASE AGREEMENT BETWEEN THE CITY OF DENTON, TEXAS, AS LESSOR, AND VOW 210 HICKORY PARTNERS LLC, AS LESSEE, LEASING AN APPROXIMATELY 1089 SQUARE FEET TRACT OF LAND, LOCATED AT THE SOUTHWEST CORNER OF EAST HICKORY AND INDUSTRIAL STREETS, BEING SITUATED WITHIN THE H. SISCO SURVEY, ABSTRACT NUMBER 1184, CITY OF DENTON, DENTON COUNTY, TEXAS (THE "SUBJECT LAND"), FOR THE CONSTRUCTION, OCCUPANCY AND MAINTENANCE OF AN OUTDOOR PATIO; TERMINATING AND REVOKING ORDINANCE NO. 2009-129, DATED JUNE 2, 2009, AUTHORIZING A LEASE OF THE SUBJECT LAND; AND PROVIDING AN EFFECTIVE DATE

WHEREAS, VOW 210 Hickory Partners, LLC (the "Owner") is the owner of a tract of land located at the southwest corner of East Hickory and Industrial Streets, being situated within the H. Sisco Survey, Abstract Number 1184 and being described as a part of Lot 3, Block 20 of the Original Town of Denton (the "Owner's Property"); and

WHEREAS, the Owner has requested the lease of certain City owned real property, approximately 1,089 square feet in size, located adjacent to the Owner's Property, as described in Attachment "C" of the Lease Agreement, as defined below, for the purpose of constructing, occupying and maintaining a outdoor patio area in conjunction with a business on the Owner's Property; and

WHEREAS, the City of Denton approved a Lease Agreement (the "Prior Lease"), by and between the City of Denton and ARG East Hickory Partners, LLC, pursuant to Ordinance No. 2009-129, dated on or about June 2, 2009 (the "Prior Ordinance");

WHEREAS, ARG has never accepted the offer of the Prior Ordinance or executed the Prior Lease;

WHEREAS, the City Council finds that is in the best interest of the citizens of the City to (i) enter into the Lease Agreement (herein so called) in the form attached hereto and made a part hereof as Exhibit "A"; and (ii) revoke and terminate the Prior Ordinance; NOW, THEREFORE,

THE COUNCIL OF THE CITY OF DENTON, TEXAS HEREBY ORDAINS:

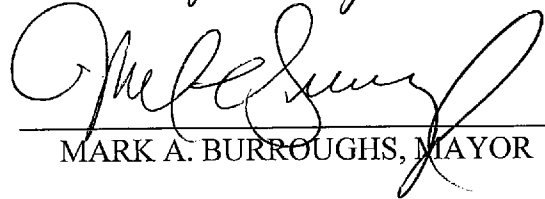
SECTION 1. The findings and recitations contained in the preamble of this ordinance are incorporated herein by reference.

SECTION 2. The City Manager, or his designee, is hereby authorized to execute the Lease Agreement by and between the City of Denton, Texas, as Lessor and VOW 210 Hickory Partners, LLC, as Lessee, and any other documents necessary for the lease of an approximate 1,089 square foot tract of land, as described above, substantially in the form attached hereto and made a part hereof as Exhibit "A".

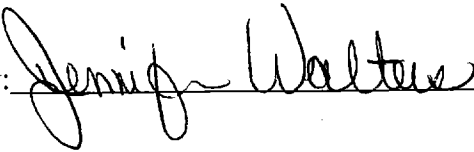
SECTION 3. Ordinance No. 2009-129, including the offer made therein, is hereby revoked and terminated.

SECTION 4. This Ordinance shall become effective immediately upon its passage and approval.

PASSED AND APPROVED this 15th day of January, 2013.


MARK A. BURROUGHS, MAYOR

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

By: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

By: 

LEASE OF CITY PROPERTY

This Lease Agreement is made and executed to be effective this 15th day of January, 2013 (the "Effective Date") at Denton, Texas, by and between the City of Denton, Texas, a Texas home rule municipal corporation, hereinafter referred to as "Lessor" or "City", and VOW 210 Hickory Partners LLC, a Texas limited liability company, hereinafter referred to as "Lessee".

WITNESSETH:

WHEREAS, Lessee is the owner of certain real property located at the southwest corner of Industrial and East Hickory streets in the City of Denton, Denton County, Texas, commonly known as 210 E. Hickory Street, being part of Lot 3, Block 20 of the Original Town of Denton and being more particularly described in Attachment "A", attached hereto and made a part hereof for all purposes ("Lessee's Property"); and

WHEREAS, Lessee has requested that it be allowed to lease a portion of the land owned by Lessor adjacent to Lessee's Property in order to construct, occupy and maintain a patio area in conjunction with the operation of a restaurant on Lessee's Property; and

NOW, THEREFORE, for and in consideration of the promises and the mutual covenants contained in this Agreement, the parties agree as follows:

I. LEASED PREMISES

Lessor, for and in consideration of the covenants and agreements herein contained to be kept by Lessee, does hereby demise and lease, without warranty of title, unto Lessee, and Lessee does hereby lease from Lessor, for the lease term described in Article II, the following described land situated in Denton County, Texas:

A. LAND. A tract of land, being approximately 1,089 square feet, drawn and outlined on the site plan (the "Site Plan") described on Attachment "B" attached hereto and made a part hereof for all purposes and being more particularly described by the survey and metes and bounds description on Attachment "C", attached hereto and made a part hereof for all purposes (the "Leased Premises").

B. IMPROVEMENTS PROVIDED BY LESSOR. NONE: There will be no improvements provided by Lessor.

C. IMPROVEMENTS PROVIDED BY LESSEE. On the Leased Premises, Lessee shall construct a patio, and other improvements ("Improvements"). The Improvements are illustrated on Attachment "D" attached hereto and made a part hereof for all purposes. The construction of the Improvements shall be commenced no later than 180 calendar days after the Effective Date, as evidenced by the issuance of a building permit (the "Commencement Deadline") and completed no later than 720 calendar days after the Effective Date, as evidenced by the issuance of a certificate of occupancy for the Improvements (the "Construction Deadline").

Notwithstanding anything contained in this Lease Agreement to the contrary, a failure to meet the Commencement Deadline or the Construction Deadline may, at the sole option and discretion of the Lessor, result in the immediate termination and cancellation of this Lease Agreement upon 30 days written notice of cancellation to Lessee. In such case, Lessee's rights under the Lease Agreement will immediately cease and be forfeited, and the Improvements shall be removed from the Leased Premises and the Leased Premises restored to its condition prior to the date of this Lease Agreement at the sole duty and sole expense of Lessee. If Lessee fails to remove the Improvements within 90 days after termination notice, then the Lessor may do so at the expense of the Lessee. Lessee shall pay Lessor such costs of removal and restoration within 30 days after receipt of an invoice from the Lessor. If the invoice is not paid within said time period a lien is hereby granted by Lessee and is established against Lessee's Property to secure payment. In such case Lessor is authorized to file an affidavit in the Denton County Real Property Records against Lessee's Property to evidence the lien.

D. APPROVAL OF CONSTRUCTION PLANS. Prior to commencing construction of the Improvements, Lessee shall submit to Lessor construction plans for review and approval to make certain that the construction plans are in conformity with the Site Plan. This review is in addition to any review required by the Building Official and the Director of Economic Development of the City of Denton for issuance of a building permit and to insure compliance with City Codes. No later than 60 days after the completion of the Improvements, Lessee shall deliver to Lessor as-built construction plans of the Improvements in a form acceptable to Lessor (the "As-Built Plans"). No construction activities shall commence prior to approval of the construction plans by Lessor.

E. SAFETY MEASURES DURING CONSTRUCTION. Lessee shall be responsible for providing all safety measures during construction such as barricades to insure that motorists and pedestrians are adequately protected from the construction activities.

F. LEASEHOLD CONNECTED TO LESSEE' PROPERTY. This leasehold shall not be severable from the ownership interests of Lessee's Property and the covenants, terms and conditions under this Agreement shall be binding upon and inure to the benefit of the owners and subsequent owners of Lessee's Property. Nothing contained herein shall be construed to allow assignment or sublease of this Lease Agreement without the consent of Lessor as prescribed in Section VI.

G. LEASEHOLD CONDITION. THE LEASED PREMISES IS LEASED TO LESSEE IN ITS PRESENT CONDITION "AS IS," "WHERE IS" AND "WITH ALL FAULTS." LESSEE STIPULATES THAT IT HAS THOROUGHLY INSPECTED THE LEASED PREMISES AND FINDS THAT THE LEASED PREMISES IS CURRENTLY SUITABLE FOR THE USES PERMITTED BY THIS LEASE AGREEMENT. LESSOR MAKES NO REPRESENTATION OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, CONCERNING THE LEASED PREMISES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF SUITABILITY OR FITNESS FOR PARTICULAR PURPOSE OF USE. LESSEE HEREBY

STIPULATES TO LESSOR THAT, DUE TO ITS INSPECTION OF THE LEASED PREMISES, IT IS AWARE OF THE CONDITION OF THE LEASED PREMISES.

II. TERM

The term of this Lease Agreement shall be for a period of 10 years, commencing on the 1st day of March, 2013 and continuing through the 28th day of February, 2023, unless earlier terminated under the provisions of the Lease Agreement (the "Lease Term").

III. PAYMENTS, RENTALS AND FEES

Lessee covenants and agrees to pay Lessor, as consideration for this Lease Agreement, the following payments, rentals and fees:

A. LAND RENTAL. Rent shall be due and payable in the sum of \$ 1.00 per square foot per year or \$1,089 per year (the "Original Rent"), payable as follows: (i) the sum of \$3,267.00 payable on the Effective Date hereof, as rent for the period of time from the Effective Date to February 28, 2016; and (ii) thereafter, annually in advance, with the first payment on March 1, 2016 and each subsequent payment on the same day of each year during the term of this Lease Agreement. The rent is based on the estimated square footage of the Leased Premises shown on Attachment "C", which is stipulated by Lessee to be accurate for the purposes of the payment of rent.

B. PAYMENT, PENALTY, ADJUSTMENTS. All payments due Lessor from Lessee shall be made to Lessor at the offices of the Director of Economic Development as provided in X.D below, unless otherwise designated in writing by the Lessor. If a payment is not received on or before the 15th day after the due date, a five percent (5%) penalty will be due as of the 16th day. An additional penalty of one percent (1%) of the unpaid rental amount will be due for each 30 day period thereafter that the payment is delinquent until the unpaid rental payment is made. Notwithstanding the foregoing, if Lessee fails to make its annual lease payment within 90 days of the contract due date, Lessor shall notify Lessee of such failure to make the annual lease payment and if the annual lease payment is not made within 15 days of notice to Lessee, this Lease is terminated without the necessity of any further action by Lessor. In that event, Lessee shall promptly remove any and all improvements made to the Leased Premises and shall restore the Leased Premises to the condition found prior to possession pursuant to the terms stipulated in Article I.C..

The Original Rent for the Leased Premises shall be readjusted every three (3) years during the Lease Term beginning March 1, 2016 on the basis of the then current United States Consumer Price Index for all urban consumers (CPI-U) for the Dallas-Fort Worth Bureau of Labor Statistics. Thereafter, the Original Rent shall be readjusted in the years 2019 and 2022.

The adjustments in the yearly rent shall be determined by multiplying the Original Rent by a fraction, the numerator of which is the index number for the last month prior to the adjustment, and the denominator of which is the index number applicable at the execution of this Lease Agreement. If the product of this multiplication is greater than

the Original Rent, Lessee shall pay this greater amount as the yearly rent until the time of the next rental adjustment as called for in this section. If the product of this multiplication is less than the Original Rent there shall be no adjustment in the annual rent at that time, and Lessee shall pay the previous year's annual rent until the time of the next rental adjustment as called for in this section. In no event shall any rental adjustment called for in this section result in an annual rent less than the previous year's annual rent. The adjustment shall be limited so that the annual rental payment determined for any given three-year period shall not exceed the annual rental payment calculated for the previous CPI adjustment by more than twenty percent (20%) percent.

If the consumer price index for all urban consumers (CPI-U) for the Dallas-Fort Worth geographical region, as compiled by the U.S. Department of Labor, Bureau of Labor Statistics, is discontinued during the Lease Term, the remaining rental adjustments called for in this section shall be made using the formula set forth above, but by substituting the index numbers for the Consumer Price Index-Seasonally Adjusted U.S. City Average For All Items For All Urban Consumers (CPI-U) for the index numbers for the CPI-U applicable to the Dallas-Fort Worth geographical region. If both the CPI-U for the Dallas-Fort Worth geographical region and the U.S. City Average are discontinued during the Lease Term, the remaining rental adjustments called for in this section shall be made using the statistics of the Bureau of Labor Statistics of the United States Department of Labor that are most nearly comparable to the CPI-U applicable to the Dallas-Fort Worth geographical region. If the Bureau of Labor Statistics of the United States Department of Labor ceases to exist or ceases to publish statistics concerning the purchasing power of the consumer dollar during the Lease Term, the remaining rental adjustments called for in this section shall be made using the most nearly comparable statistics published by a recognized financial authority selected by Lessor.

Should any taxes be levied against the Leased Premises or the Improvements, payment of such taxes shall be the sole responsibility of the Lessee.

Any provision herein, or any other document executed or delivered in connection herewith, or in any other agreement or commitment, whether written or oral, expressed or implied, to the contrary notwithstanding, Lessor shall not in any event be entitled to receive or collect, nor shall any amounts received hereunder be credited, so that Lessor shall be paid, as interest, if any, a sum greater than the maximum amount permitted by applicable law to be charged to the person, partnership, firm, corporation, or other legal entity primarily obligated to make payments under this Lease Agreement. If any construction of this Lease Agreement indicates a different right given to Lessor to ask for, demand or receive any larger sum as interest, if any, such is a mistake in calculation or wording which this clause shall override and control, it being the intention of the parties that this Lease Agreement shall in all things strictly comply and conform with applicable law. In the event that the aggregate of all consideration which constitutes interest under applicable law that is taken, reserved, contracted for, charged or received under this Lease Agreement, if any, and any other documents executed in connection herewith shall ever exceed the maximum nonusurious rate under applicable law, any sum in excess thereof shall be applied to the accrued and unpaid rent due under this Lease Agreement and if such accrued and unpaid rent is paid in full, the remaining excess, if any, shall be paid to the Lessee.

IV. RIGHTS AND OBLIGATIONS OF LESSEE

A. USE OF LEASED PREMISES. Lessee's use of the Leased Premises is limited solely to the construction, maintenance and use of the Improvements shown on the Site Plan and As-Built Plans in conjunction with Lessee's Property as, or connected with, the operations of a restaurant business related to Lessee's property, unless Lessor gives its advance written approval to the contrary.

B. STANDARDS. Lessee shall meet or exceed the following standards:

1. Address. Lessee shall file with the City Manager, or his designee and keep current its mailing addresses, telephone numbers and contacts where it can be reached in an emergency.
2. List. Lessee shall file with the City Manager, or his designee and keep current a list of its permitted tenants and sublessees.
3. Conduct. Lessee shall contractually require its employees and permitted sublessees (and sublessee's invitees) to abide by the terms of this Lease Agreement. Lessee shall promptly enforce its contractual rights in the event of a default of such covenants.
4. Utilities, Taxes and Fees. Lessee shall meet all expenses and payments in connection with the use of the Leased Premises and the rights and privileges herein granted, including the timely payment of utilities, taxes, permit fees, license fees and assessments lawfully levied or assessed.
5. Laws. Lessee shall comply with all current and future federal, state and local laws, rules, ordinances and regulations which may apply to the conduct of business contemplated on the Leased Premises, including without limitation, rules, regulations and ordinances promulgated by Lessor, and Lessee shall keep in effect and post in a prominent place all necessary and/or required licenses or permits.
6. Maintenance of Leased Premises. Lessee shall be responsible for the maintenance, repair and upkeep of the Improvements, and the mowing and maintenance of grass, other vegetation and landscaping on the Leased Premises, and shall keep the Leased Premises neat, clean and in respectable condition, as determined by Lessor, free from any objectionable matter or thing, including trash or debris.
7. Unauthorized Use of Leased Premises. Lessee may not use any of the Leased Premises for any use not authorized herein unless Lessor gives Lessee prior written approval of such additional or different use.
8. Quit Possession. Lessee shall quit possession of the Leased Premises at the end

of the Lease Term, or upon cancellation or termination of the Lease Agreement, and deliver up the Leased Premises to Lessor in the condition originally leased to Lessee, with the Improvements being removed as provided in Paragraph I.C., above.

9. Indemnity. Lessee shall indemnify, hold harmless and defend and hereby releases the Lessor, its officers, agents, elected officials and employees, from and against liability, of any kind, type or nature, for or related to any and all claims, liens, suits, demands, losses and/or actions for damages, injuries to persons (including death), property damage, (including loss of use), and expenses, including court costs, attorneys' fees and other reasonable costs, occasioned by, related to or incidental to the Lessee's, Lessee's invitees, licensees, customers, visitors, employees, agents and any other person's occupancy or use of the Leased Premises or activities conducted in connection with or incidental to this Lease Agreement, including without limitation, all such claims, liens, suits, demands, losses and/or actions based on common, constitutional or statutory law, or based in whole or in part upon the negligent or intentional acts or omissions of Lessee, its officers, agents, employees, invitees, licensees, customers, visitors or any other persons. Lessee shall at all times exercise reasonable precautions on behalf of, and be solely responsible for, the safety of its officers, employees, agents, customers, visitors, invitees, licensees and other persons, as well as their property and the Leased Premises, while in, on, or involved in any way with the use of the Leased Premises. The Lessor is not liable or responsible for the negligence or intentional acts or omissions of the Lessee, its officers, agents, employees, agents, customers, licensees, invitees, visitors and other persons and Lessee hereby releases Lessor, its officers, agents, elected officials, and employees from same. The Lessor shall assume no responsibility or liability for harm, injury, or any damaging events which are directly or indirectly attributable to premise defects, whether real or alleged, which may now exist or which may hereafter arise upon the Leased Premises, responsibility for all such defects being expressly assumed by the Lessee. Without limiting the general nature of the foregoing, the Lessee agrees that this indemnity provision applies to, among all matters as prescribed herein, all claims, suits, demands, and actions arising from all premise defects or conditions.

THE LESSOR AND THE LESSEE EXPRESSLY INTEND THIS INDEMNITY AND RELEASE PROVISION TO REQUIRE LESSEE AND HEREBY DOES REQUIRE LESSEE TO INDEMNIFY, HOLD HARMLESS AND DEFEND THE LESSOR, ITS OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES AND LESSEE HEREBY RELEASES LESSOR, AND LESSOR'S OFFICERS, AGENTS, ELECTED OFFICIALS AND EMPLOYEES FROM THE CONSEQUENCES OF THE LESSOR'S OWN NEGLIGENCE, OF ANY KIND, TYPE OR DEGREE, WHERE THAT NEGLIGENCE IS A CAUSE, IN WHOLE OR IN PART, OF THE INJURY, DEATH, OR DAMAGE.

THE INDEMNITY CONTAINED IN THIS PARAGRAPH (A) IS INDEPENDENT OF LESSEE'S INSURANCE, (B) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (C) WILL SURVIVE THE END OF THE TERM, AND (D) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF LESSOR, BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE LESSOR'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LESSOR.

C. **SIGNS.** No signs, posters, or other similar devices ("Signage") shall be placed on the exterior of the Improvements or on any portion of the Leased Premises without the prior written approval of Lessor and, if permitted, shall be in conformance with the Denton City Code. Lessee, at its sole expense, shall be responsible for the creation, installation and maintenance of all such Signage. Without limiting the generality of Paragraph IV.B.9., above, Lessee shall pay to Lessor any and all damages, injuries, or repairs resulting from the installation, maintenance or repair of any such Signage. Any permitted Signage placed on the Leased Premises shall be maintained at all times in a safe, neat, sightly and good physical condition. All Signage shall be removed from the Leased Premises by Lessee immediately upon receipt of instructions for removal of same from Lessor, including without limitation, upon expiration or termination of this Lease Agreement. If Lessee fails to remove the Signage within 90 days after termination or upon instruction by Lessor, as the case may be, then the Lessor may do so at the sole cost and expense of the Lessee. Lessee shall pay Lessor such costs of removal within 30 days after receipt of an invoice from the Lessor. If the invoice is not paid within said time period a lien is hereby granted by Lessee and is established against Lessee's Property to secure payment. In such case Lessor is authorized to file an affidavit in the Denton County Real Property Records against Lessee's Property to evidence the lien.

D. ENTRY. Lessor and its designees shall have the right to enter the Leased Premises upon reasonable advance notice (written or oral) and at any reasonable times for the purposes of inspecting the Leased Premises, and performing any work which Lessor elects to perform under this Lease Agreement. Nothing in this section shall imply any duty upon Lessor to do any work, which under any other provision of this Lease Agreement Lessee is required to perform, and any performance by Lessor shall not constitute a waiver of Lessee's default. In the event of an emergency, as determined by Lessor, Lessor, by and through the City of Denton Fire Department, City of Denton Police Department, or other department or agent of the Lessor, as applicable, may enter the Leased Premises without the notice prescribed herein.

V. COVENANTS BY LESSOR

Lessor hereby agrees as follows:

PEACEFUL ENJOYMENT. Upon payment of all rent, fees, and performance of

the covenants and agreements on the part of Lessee to be performed hereunder, and subject to the terms of this Lease Agreement, Lessee shall peaceably hold and enjoy the Leased Premises and all rights and privileges herein granted. Notwithstanding the foregoing, the parties understand and stipulate that the Leased Premises constitutes city property. In that regard, Lessor shall not be liable to Lessee in the event a court of competent jurisdiction enjoins Lessee from using the Leased Premises under this Lease Agreement for any reason. In such case, Lessee's sole and exclusive remedy will be termination of the Lease Agreement.

VI. ASSIGNMENT OF LEASE

Lessee shall not assign or sublet this Lease Agreement, in whole or in part, without the written consent of Lessor, which consent will not be unreasonably withheld. Any attempted assignment or sublease of this Lease Agreement without the written consent of Lessor shall be void.

VII. INSURANCE

A. **REQUIRED INSURANCE.** Lessee shall maintain continuously in effect at all times during the Lease Term, at Lessee's sole expense, the following minimum insurance coverages:

1. Comprehensive Commercial (Public) General Liability covering the Lessee and its company, its employees, agents, tenants, customers, invitees and independent contractors. Coverage shall be in an amount not less than \$1,000,000 per occurrence and provide coverage for premises/operations, products/completed operations and contractual liability.
2. All risk property insurance on a replacement cost basis covering loss or damage to the Improvements. Without limiting the generality of Article IV.B.9., above, under no circumstances shall the Lessor be liable for any damages to fixtures, merchandise or other personal property of the Lessee or its tenants, including the Improvements.

B. **COVERAGE REQUIREMENTS.** All insurance coverages shall comply with the following requirements:

1. All liability policies shall name the City of Denton, and its officers and employees as additional named insureds and provide for a minimum of 30 days written notice to the City of any cancellation or material change to the policy.
2. All insurance required by this Lease Agreement must be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies are subject to the examination and approval of the City's office of Risk Management for their adequacy as to content, form of protection and providing company.

3. Required insurance naming the City as an additional insured must be primary insurance and not contributing with any other insurance available to the City whether from a third party liability policy or other. Said limits of insurance shall in no way limit the liability of the Lessee hereunder.
4. The Lessor shall be provided with a copy of all such policies and renewal certificates. Failure of Lessee to comply with the minimum specified amounts or types of insurance as required by Lessor shall constitute Lessee's default of this Lease Agreement.
5. During the Lease Term, or any extension thereof, Lessor herein reserves the right to adjust or increase the liability insurance amounts required of the Lessee, and to require any additional rider, provisions, or certificates of insurance, and Lessee hereby agrees to provide any such insurance requirements as may be required by Lessor.

VIII. DEFAULT OF LESSEE/REMEDIES OF LESSOR

A. **DEFAULT.** In the event that Lessee shall file a voluntary petition in bankruptcy or proceedings in bankruptcy shall be instituted against it and Lessee thereafter is adjudicated bankrupt pursuant to such proceedings; or any court shall take jurisdiction of Lessee and its assets pursuant to proceedings brought under the provisions of any Federal reorganization act; or Lessee shall apply for or consent to the appointment of a receiver, trustee, or liquidator of itself or all or a substantial part of its assets; or Lessee shall be divested of its estate herein by other operation of law; or Lessee shall fail to perform, keep and observe any of the terms, covenants, or conditions herein contained, or on its part to be performed, Lessee shall be in default under this Lease Agreement and the Lessor may give Lessee written notice to correct such condition or cure such default and, if any condition or default shall be continuing thirty (30) days after the receipt of such notice by Lessee, then Lessor may exercise any right or remedy available to it by law, equity, contract or otherwise, including without limitation, termination of this Lease Agreement.

IX. CANCELLATION AND REMEDIES OF LESSEE

A. **JUDICIAL ACTION.** Lessee may cancel this Lease Agreement and terminate its obligations hereunder, by thirty (30) days written notice, upon or after the issuance by any court of competent jurisdiction of a permanent injunction preventing or restraining its use of the Leased Premises or any part thereof for purposes and uses authorized by this Lease Agreement.

B. **CONVENIENCE.** Lessee may cancel this Lease Agreement and terminate its obligations hereunder anytime after the Effective Date hereof, by thirty (30) days written notice to Lessor.

C. **RENT PAYMENTS/RESTORATION.** In the event of the cancellation of this Lease Agreement pursuant to the terms of Section IX.A. or Section IX.B., above, Lessee shall promptly remove any and all Improvements made to the Leased Premises and shall

restore the Leased Premises to the condition found prior to possession pursuant to the terms stipulated in Section I.C. Lessor shall be entitled to retain the balance of any and all rent payments previously made by Lessee, same being stipulated by Lessee as being the administrative costs incurred by Lessor in entering into this Lease Agreement, and the parties shall have no further obligations to each other, except for Lessee restoration of the Leased Premises as set forth herein.

D. DEFAULT. In the event of a material breach by Lessor of any of the covenants or agreements contained herein and the failure of Lessor to remedy such breach after ninety (90) days of receipt of written notice of the existence of such breach provided by Lessee to Lessor, then the Lessee, as its sole and exclusive remedy for such breach by Lessor may terminate this Lease Agreement.

X. MISCELLANEOUS PROVISIONS

A. ENTIRE AGREEMENT. This Lease Agreement constitutes the entire understanding between the parties and as of its Effective Date supersedes all prior or independent agreements between the parties covering the subject matter hereof. Any change or modification hereof shall be in writing signed by both parties. The Recitals of this Lease Agreement are represented by the parties hereto to be accurate, and constitute a part of the substantive agreement.

B. BINDING EFFECT. All covenants, stipulations and agreements herein shall extend to, bind and inure to the benefit of the legal representatives, successors and permitted assigns of the respective parties hereto.

C. SEVERABILITY. If a provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Lease Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the parties.

D. NOTICE. Any notice given by one party to the other in connection with this Lease Agreement shall be in writing and shall be sent by certified mail, return receipt requested, with postage fees prepaid, or via facsimile as follows:

1. If to Lessor, addressed to:

City Manager
215 E. McKinney
Denton, Texas 76201
Fax No. 940,349,8596

w/copy to:

Director of Economic Development
City of Denton
215 East McKinney Street
Denton, Texas 76201

Fax No. 940.349.8596

2. If to Lessee, addressed to:

VOW 210 Hickory LLC
c/o Versus Real Estate Services
1696 S. Loop 288
Denton, TX 76205
Fax No. 940.381.0077

Notice shall be deemed delivered and received for all purposes when placed in the United States mail, as set forth herein, or when delivered by telephonic facsimile to the other party at the facsimile number(s) provided above.

E. HEADINGS. The headings used in this Lease Agreement are intended for convenience of reference only and do not define or limit the scope or meaning of any provision of this Agreement.

F. GOVERNING LAW AND VENUE. THIS LEASE AGREEMENT IS TO BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS AND IS FULLY PERFORMABLE IN DENTON COUNTY, TEXAS. EXCLUSIVE VENUE FOR ANY LAWSUIT TO ENFORCE THE TERMS OR CONDITIONS OF THIS LEASE AGREEMENT SHALL BE A COURT OF COMPETENT JURISDICTION IN DENTON COUNTY, TEXAS.

G. NO WAIVER. No waiver by Lessor or Lessee of any default or breach of covenant or term of this Lease Agreement may be treated as a waiver of any subsequent default or breach of the same or any other covenant or term of this Lease Agreement.

H. NO AGENCY. During all times that this Lease Agreement is in effect, the parties agree that Lessee is not, and shall not be deemed, an agent or employee of the Lessor. Nothing contained herein shall be construed to create a joint venture, partnership or joint enterprise.


I. SURVIVAL. The terms and provisions of Paragraphs I.C., III.B., IV.B. and IV.C., shall survive the termination of this Lease Agreement.

J. DELEGATION. Any action that is to be or could be taken by the Lessor hereunder is hereby delegated by the City Council of the City of Denton to the City Manager or his designee.

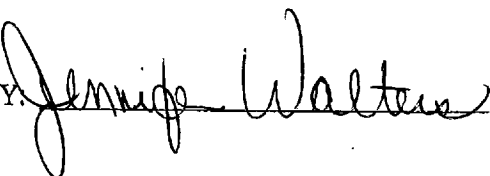
K. RECORDATION. This Lease Agreement shall be recorded in the Real Property Records of Denton County, Texas. Upon termination of this Lease Agreement as provided herein, either party may request the execution and delivery of a Memorandum of Release (herein so called) to be recorded in the Real Property Records, Denton County, Texas, as constructive notice of termination of this Lease Agreement. The execution and delivery of the Memorandum of Release shall not be unreasonably withheld by either party.

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


CITY OF DENTON, TEXAS

BY: 
GEORGE C. CAMPBELL, CITY MANAGER

ATTEST:
JENNIFER WALTERS, CITY SECRETARY

BY: 

APPROVED AS TO LEGAL FORM:
ANITA BURGESS, CITY ATTORNEY

BY: 

VOW 210 Hickory Partners LLC,
a Texas limited partnership

By: Cliff Watt

Name: CLIFF WATT

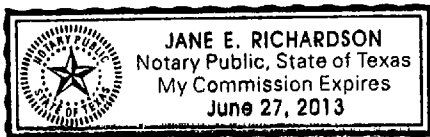
Title: Member

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

COUNTY OF DENTON §

This instrument was acknowledged before me on the 15th day of January, 2013
by George C. Campbell, City Manager of the City of Denton, Texas, on behalf of said
municipality.



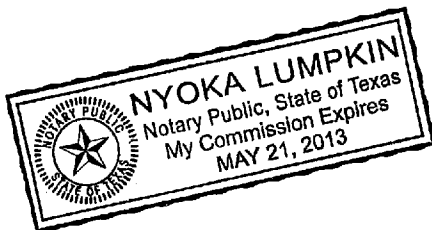
Jane E. Richardson
NOTARY PUBLIC, STATE OF TEXAS

ACKNOWLEDGMENTS

THE STATE OF TEXAS §

Lubbock
COUNTY OF ~~DENTON~~ §

This instrument was acknowledged before me on the 8th day of January, 2013 by
Cliff Watt, Member, of VOW 210 Hickory LLC, a Texas limited liability
company, on behalf of said limited liability company.



Nyoka Lumpkin
NOTARY PUBLIC, STATE OF TEXAS

ATTACHMENT "A"

35783
02/28/08

210-214 E. HICKORY STREET

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE H. SISCO SURVEY, ABSTRACT NUMBER 1184, DENTON COUNTY, TEXAS, AND BEING PART OF LOT 3, BLOCK 20, ORIGINAL TOWN OF DENTON, AN ADDITION TO DENTON COUNTY, TEXAS, RECORDED IN VOLUME 4, PAGE 53, DEED RECORDS, DENTON COUNTY, TEXAS AND ALL OF A TRACT DESCRIBED IN A DEED TO THE ADAMS TRUST, RECORDED UNDER DEED NUMBER 2007-132305, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

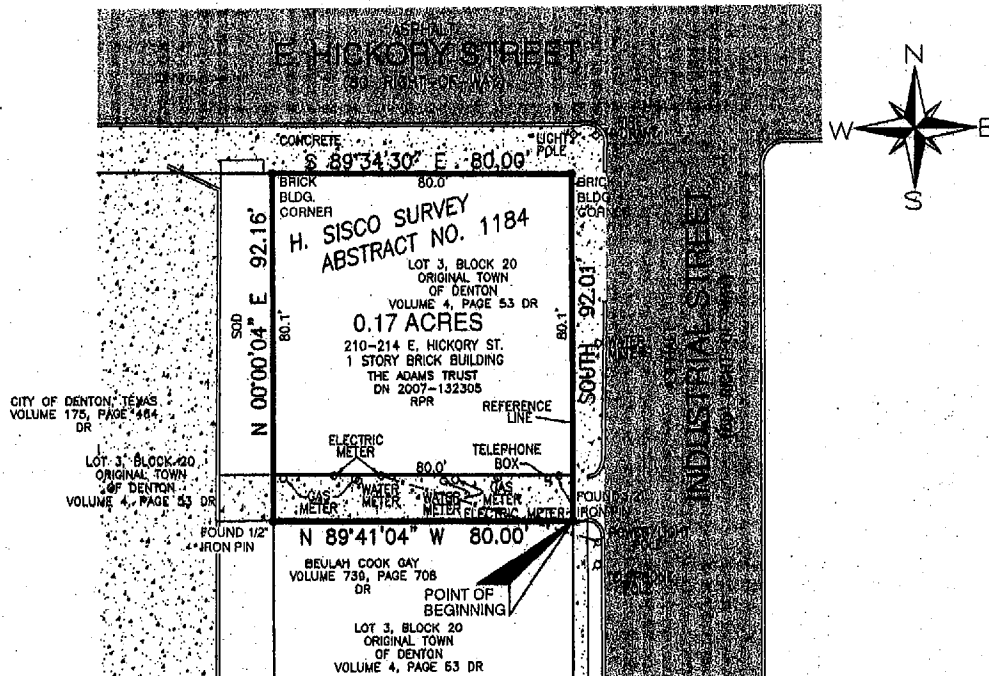
BEGINNING AT A 1/2 INCH IRON PIN FOUND AT THE SOUTHEAST CORNER OF SAID ADAMS TRACT AND THE NORTHEAST CORNER OF A TRACT DESCRIBED IN A DEED TO BEULAH COOK GAY, RECORDED IN VOLUME 739, PAGE 708, DEED RECORDS, DENTON COUNTY, TEXAS, SAID PIN ALSO BEING ON THE WEST LINE OF INDUSTRIAL STREET;

THENCE NORTH 89 DEGREES 41 MINUTES 04 SECONDS WEST WITH THE SOUTH LINE OF SAID ADAMS TRACT AND THE NORTH LINE OF SAID GAY TRACT, A DISTANCE OF 80.00 FEET TO A 1/2 INCH IRON PIN FOUND AT THE SOUTHWEST CORNER OF SAID ADAMS TRACT AND THE NORTHWEST CORNER OF SAID GAY TRACT, SAID PIN ALSO BEING ON THE EAST LINE OF A TRACT DESCRIBED IN A DEED TO THE CITY OF DENTON, TEXAS, RECORDED IN VOLUME 175, PAGE 464, DEED RECORDS, DENTON COUNTY, TEXAS;

THENCE NORTH 00 DEGREES 00 MINUTES 04 SECONDS EAST WITH THE WEST LINE OF SAID ADAMS TRACT AND THE EAST LINE OF SAID CITY OF DENTON TRACT, A DISTANCE OF 92.16 FEET TO A BRICK BUILDING CORNER AT THE NORTHWEST CORNER OF SAID ADAMS TRACT AND THE NORTHEAST CORNER OF SAID CITY OF DENTON TRACT, SAID BRICK BUILDING CORNER ALSO BEING ON THE SOUTH LINE OF HICKORY STREET;

THENCE SOUTH 89 DEGREES 34 MINUTES 30 SECONDS EAST WITH THE NORTH LINE OF SAID ADAMS TRACT AND THE SOUTH LINE OF HICKORY STREET, A DISTANCE OF 80.00 FEET TO A BRICK BUILDING CORNER AT THE NORTHEAST CORNER OF SAID ADAMS TRACT AT THE INTERSECTION OF THE SOUTH LINE OF HICKORY STREET AND THE WEST LINE OF INDUSTRIAL STREET, SAID CORNER BEING THE NORTHEAST CORNER OF SAID LOT 3, BLOCK 20;

THENCE SOUTH WITH THE EAST LINE OF SAID ADAMS TRACT AND THE WEST LINE OF INDUSTRIAL STREET, A DISTANCE OF 92.01 FEET TO THE POINT OF BEGINNING AND CONTAINING IN ALL 0.17 ACRES OF LAND.



NOTES:

EASEMENTS SHOWN HEREON ARE AS LISTED IN THE TITLE RESOURCES GUARANTY COMPANY'S TITLE COMMITMENT OF No. 281076, EFFECTIVE DATE JANUARY 16, 2008. NONE LISTED.

BEARING OF SOUTH IS BASED ON THE EAST LINE OF THE TRACT DESCRIBED IN A DEED TO THE ADAMS TRUST, RECORDED UNDER DEED NUMBER 2007-132305, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS.

BY GRAPHIC PLOTTING ONLY, THIS PROPERTY IS WITHIN ZONE "X", AREAS DETERMINED TO BE OUTSIDE OF A DESIGNATED 100 YEAR OR 500 YEAR FLOODPLAIN AS SHOWN BY FIRM MAP COMMUNITY-PANEL NUMBER 48121C0380 E, DATED APRIL 2, 1997. NO SURVEYING WAS PERFORMED TO DETERMINE THIS FLOOD ZONE.

SURVEYOR'S CERTIFICATE

I, BRAD G. SHELTON, DO HEREBY CERTIFY THAT A SURVEY WAS MADE ON THE GROUND THIS 28th DAY OF FEBRUARY, 2008 OF THE PROPERTY DESCRIBED HEREON AND THERE ARE NO (VISIBLE) ENCROACHMENTS, PROTRUSIONS, OR OVERLAPPING OF IMPROVEMENTS, EXCEPT AS SHOWN HEREON.

BRAD G. SHELTON
REGISTERED PROFESSIONAL LAND SURVEYOR
STATE OF TEXAS NO. 5452



GF No. 281076

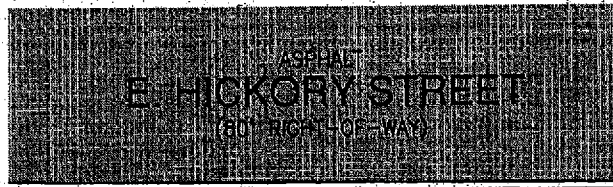
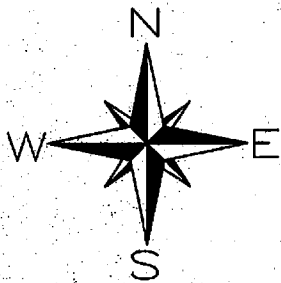


**Metroplex
Surveying, Inc.**

940-387-0506 223 W. HICKORY, DENTON, TEXAS 76201 info@metroplexsurveying.com

DWN. JRH	SCALE 1"=30'
CKD. MRK	DATE 02/28/08
REV.	JOB NO. 35783

ATTACHMENT "B"



S 89°34'28" E
13.37'

BRICK
BLDG.
CORNER

CONCRETE

POINT OF
BEGINNING

LOT 3, BLOCK 20
ORIGINAL TOWN
OF DENTON
VOLUME 4, PAGE 53 DR

210-214 E. HICKORY ST.
1 STORY BRICK BUILDING
THE ADAMS TRUST
DN 2007-132305
RPR

H. SISCO SURVEY
ABSTRACT NO. 1184

CITY OF DENTON, TEXAS
VOLUME 175, PAGE 464
DR

LOT 3, BLOCK 20
ORIGINAL TOWN
OF DENTON
VOLUME 4, PAGE 53 DR

0.025 ACRES

N 00°31'05" E 80.20'

SOD

S 00°00'04" W 80.01'

FOUND 5/8"
IRON PIN

ELECTRIC
METER

GAS
METER

WATER
METER

S 89°38'52" W
14.09'

BEULAH COOK GAY
VOLUME 739, PAGE 708
DR

LOT 3, BLOCK 20
ORIGINAL TOWN
OF DENTON
VOLUME 4, PAGE 53 DR

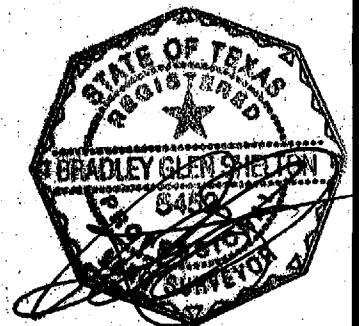


SCALE IN FEET



Metroplex Surveying, Inc.

940-387-0506 223 W. HICKORY, DENTON, TEXAS 76201 info@metroplexsurveying.com



DWN. JRH	CKD. MRK	SCALE 1"=20'	DATE 12/19/08	JOB NO. 36060
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ATTACHMENT "C"

ALL THAT CERTAIN TRACT OR PARCEL OF LAND LYING AND BEING SITUATED IN THE H. SISCO SURVEY, ABSTRACT NUMBER 1184, DENTON COUNTY, TEXAS, AND BEING PART OF A TRACT DESCRIBED IN A DEED TO THE CITY OF DENTON, RECORDED IN VOLUME 175, PAGE 464, DENTON COUNTY, TEXAS, AND PART OF LOT 3, BLOCK 20, ORIGINAL TOWN OF DENTON, AN ADDITION TO THE CITY OF DENTON, DENTON COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4, PAGE 53, DEED RECORDS, DENTON COUNTY, TEXAS;

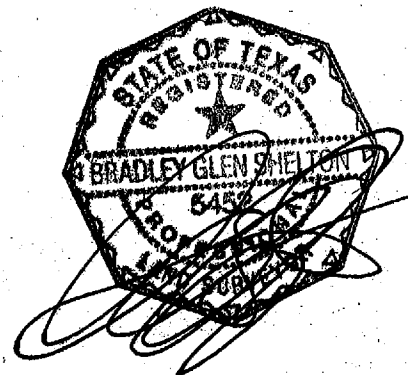
BEGINNING AT A BRICK BUILDING AT THE NORTHEAST CORNER OF SAID CITY OF DENTON TRACT AND THE NORTHWEST CORNER OF A TRACT DESCRIBED IN A DEED TO THE ADAMS TRUST, RECORDED UNDER DOCUMENT NUMBER 2007-132305, REAL PROPERTY RECORDS, DENTON COUNTY, TEXAS;

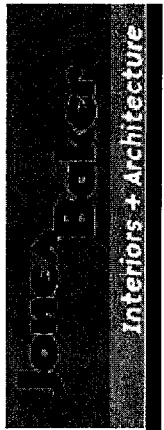
THENCE SOUTH 00 DEGREES 00 MINUTES 04 SECONDS WEST WITH THE EAST LINE OF SAID CITY OF DENTON TRACT AND THE WEST LINE OF SAID ADAMS TRACT, A DISTANCE OF 80.01 FEET TO A POINT ON THE EAST LINE OF SAID CITY OF DENTON TRACT AND THE WEST LINE OF SAID ADAMS TRACT;

THENCE SOUTH 89 DEGREES 38 MINUTES 52 SECONDS WEST, A DISTANCE OF 14.09 FEET;

THENCE NORTH 00 DEGREES 31 MINUTES 05 SECONDS EAST, A DISTANCE OF 80.20 FEET TO A POINT ON THE NORTH LINE OF SAID CITY OF DENTON TRACT AND THE SOUTH RIGHT-OF-WAY LINE OF EAST HICKORY STREET;

THENCE SOUTH 89 DEGREES 34 MINUTES 28 SECONDS EAST WITH THE NORTH LINE OF SAID CITY OF DENTON TRACT AND THE SOUTH RIGHT-OF-WAY LINE OF EAST HICKORY STREET, A DISTANCE OF 13.37 FEET TO THE POINT OF BEGINNING AND CONTAINING IN ALL 0.025 ACRES OF LAND.





RUSTY TACO

210 E. HICKORY ST. DENTON TX