



CITY OF PLANO COUNCIL AGENDA ITEM

CITY SECRETARY'S USE ONLY				
<input type="checkbox"/> Consent <input type="checkbox"/> Regular <input type="checkbox"/> Statutory				
Council Meeting Date:		8/24/15		
Department:		City Manager		
Department Head		Phyllis M. Jarrell, Special Projects		
Agenda Coordinator (include phone #): M. Martinez - 7122				
CAPTION				
<p>A Resolution of the City of Plano, Texas, approving a License Agreement by and between the City of Plano, Texas, and Last Line Pubs, LLC, a Texas Limited Liability Corporation, for use of a 545 square foot portion of property owned by the City of Plano and situated on the west side of the restaurant use located at 1004 E. 15th Street; authorizing the City Manager or his authorized designee to execute any necessary documents; and providing an effective date.</p>				
FINANCIAL SUMMARY				
<input type="checkbox"/> NOT APPLICABLE <input type="checkbox"/> OPERATING EXPENSE <input checked="" type="checkbox"/> REVENUE <input type="checkbox"/> CIP				
FISCAL YEAR:	2015-2016 thru 2025-2026	Prior Year (CIP Only)	Current Year	Future Years
		TOTALS		
Budget	0	0	0	0
Encumbered/Expended Amount	0	0	0	0
This Item	0	0	51,251	51,251
BALANCE	0	0	51,251	51,251
FUND(S): DOWNTOWN CENTER DEVELOPMENT FUND				
<p>COMMENTS: This item approves a license agreement that will permit the Fillmore Pub to establish a patio dining area on City of Plano property to the west of its main location in exchange for an annual payment of \$5,000.</p> <p>STRATEGIC PLAN GOAL: Establishing an agreement between the City of Plano and downtown merchants to allow for patio dining on City owned property relates to the City's goals of Exciting Urban Centers - Destination for Residents and Guests and Partnering for Community Benefit.</p>				
SUMMARY OF ITEM				
<p>The Fillmore Pub owner has requested to enter into a license agreement to construct a patio dining area located on public property on the west side of the restaurant. The space is presently used as a sidewalk; however, the reconstruction of the McCall Plaza will make it available for dining. The license agreement sets forth the terms and conditions and establishes an annual fee for use of the property.</p>				
List of Supporting Documents:			Other Departments, Boards, Commissions or Agencies	
Resolution, License Agreement				

A Resolution of the City of Plano, Texas, approving a License Agreement by and between the City of Plano, Texas, and Last Line Pubs, LLC, a Texas Limited Liability Corporation, for use of a 545 square foot portion of property owned by the City of Plano and situated on the west side of the restaurant use located at 1004 E. 15th Street; authorizing the City Manager or his authorized designee to execute any necessary documents; and providing an effective date.

WHEREAS, Last Line Pubs, LLC (hereinafter "Licensee") wishes to utilize a 545 square foot portion of property (hereinafter "Property") owned by the City of Plano and adjacent to its restaurant business at 1004 E. 15th Street for patio dining; and

WHEREAS, the City Council has been presented a License Agreement governing Licensee's usage of the Property, a substantial copy of which is attached hereto as Exhibit "A" and incorporated herein by reference; and;

WHEREAS, the City Council is of the opinion that the terms and conditions thereof should be approved and that the City Manager, or his designee, shall be authorized to execute it on behalf of the City of Plano.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PLANO, TEXAS, THAT:

Section I. The terms and conditions of the License Agreement, having been reviewed by the City Council of the City of Plano and found to be acceptable and in the best interests of the City of Plano and its citizens, are hereby in all things approved.

Section II. The City Manager, or his authorized designee, is hereby authorized to execute the License Agreement and all other documents in connection therewith on behalf of the City of Plano, substantially according to the terms and conditions set forth in the License Agreement.

Section III. This Resolution shall become effective immediately upon its passage.

DULY PASSED AND APPROVED this the 24th day of August, 2015.

Harry LaRosiliere, MAYOR

ATTEST:

Lisa C. Henderson, CITY SECRETARY

APPROVED AS TO FORM:

Paige Mims, CITY ATTORNEY

LICENSE AGREEMENT
(1004 E. 15th Street)

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

THIS LICENSE AGREEMENT is made and entered into by and between the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, hereinafter called Licensor and **Last Line Pubs, LLC, a Texas Limited Liability Corporation**, hereinafter called Licensee. In consideration of the mutual covenants and agreements set forth herein, and other good and valuable consideration, Licensor does hereby grant to Licensee a revocable nonexclusive license to use an approximate 545 square foot area of the public sidewalk immediately adjacent to the west side of the Licensee's restaurant, located at 1004 E. 15th Street, Plano, Texas 75074, more particularly described by metes and bounds in Exhibit "A" which are attached hereto and made a part hereof for all intents and purposes (hereinafter "Premises").

This License is granted subject to the terms and conditions set out below:

1. License Term. The term of this License shall continue in force for a period of 10 years, beginning on October 1, 2015 and may thereafter be renewed and extended for successive terms of 3 years subject to Licensor's written agreement to renew and extend the term. Licensee may take possession of the Premises prior to following written notice by the Licensor to the Licensee that the McCall Plaza adjacent to 1004 E. 15th Street is available to permit improvement as a patio dining area.

2. Permitted Use. Licensee's use of the Premises is limited to patio dining—the serving of food and beverages in compliance with Licensee's Certificate of Occupancy, applicable zoning regulations, applicable City ordinances and permits and all State and Federal laws and regulations. All improvements to the Premises must be approved by the City Manager or his designee. In addition, the Licensee shall obtain all plan approvals required by the City's Zoning Ordinance and all other applicable City Ordinances. In no event shall Licensee obstruct or interfere with the public's use of any sidewalk or public right-of-way, except as specifically permitted by this License Agreement.

3. Nonexclusive License. This License is nonexclusive and is subject to (i) any existing utility, drainage, or communication facility located in, under, or upon the Premises; (ii) to any existing license, easement or other similar interest in the Premises granted by Licensor to any individual, corporation or other entity, public or private; and (iii) to all other matters of record.

4. Superior Right. This License is subject and subordinate to the prior and continuing right of Licensor, its successors and assigns to use all of the public property for the public benefit. Licensor, for itself and other permitted users, reserves full rights, consistent with the rights herein granted, to construct, reconstruct, locate, relocate, maintain and operate existing and additional facilities upon, across, over and beneath the Premises.

5. Default and Termination. If either party fails to perform or observe any provision of this License, the non-defaulting party shall immediately notify the defaulting party in writing of the event or existence of any condition which would constitute a default. Such notice shall specify the nature and period of the existence thereof and what action, if any, the notifying party proposes to require with respect to curing the default. The defaulting party shall have thirty (30) days to cure after receiving written notice of default from the non-defaulting party. If a default shall continue after thirty (30) days' notice to cure the default, the non-defaulting party, may, at its option, terminate the License without the necessity of further notice to or demand upon the defaulting party. However, the non-defaulting party may, at its option, provide a written extension for additional time to cure if the defaulting party proceeds in good faith and with due diligence to remedy and correct the default, provided that the defaulting party has commenced to cure such default within thirty (30) days following notice. If such termination results from Licensee's default there shall be no prorated refund to Licensee of the unearned portion of the license fee for the then current term.

6. License Fee. Licensee shall pay Licensor the sum of **FIVE THOUSAND DOLLARS (\$5,000)** per year. The license fee will be prorated during 2015 based on the days the Premises is available to the Licensee. Thereafter, the entire license fee shall be due and payable on or before January 1st of each succeeding year beginning with January 1, 2016.

All annual license payments shall reference this License Agreement on the check and shall be paid to Licensor at the following address:

City of Plano, Texas
Attention: Accounting Department
P. O. Box 860279
Plano, TX 75086-0358

Annual License payments unpaid for thirty (30) days after their due date shall bear interest at the rate of eighteen percent (18%) per annum.

7. Liability Insurance. During the license term Licensee shall maintain a policy of general liability insurance at Licensee's expense insuring Licensee against liability assumed by Licensee hereunder and insuring Licensee and Licensor against liability arising out of or in any way incident to ownership, use, occupancy or maintenance of the Premises made the subject of this License.

Such policy or policies shall also provide that the policy is primary and shall apply without regard to other policies separately carried. The initial amount of required insurance shall be at least \$1,000,000.00. Combined Single Limit for Personal Injury, Bodily Injury including death and Property Damage and shall be subject to periodic increases based upon inflation, recommendation of professional insurance advisors, and other relevant factors.

Licensors, its elected officials, officers, agents and employees must be named as an additional insured under all liability insurance policies required by this Agreement. All policies shall be endorsed to provide a waiver of subrogation in favor of the Licensor. All policies shall be endorsed to include the following provision: "It is agreed that this policy is not subject to cancellation, nonrenewal, material change, or reduction in coverage until ten (10) days prior written notice has been given to the City Manager of the City of Plano." The Insurance carrier must be authorized to do business in the State of Texas and the City prefers that the insurance company be rated B VII or better by AM Best rating. A certificate of insurance reflecting the required coverage shall be presented to Licensor prior to Licensor's approval and execution of this Agreement. Subsequent certificates of insurance shall be provided to Licensor whenever Licensee renews, changes or amends their insurance policies or upon request by Licensor.

8. Indemnity. LICENSEE SHALL DEFEND, INDEMNIFY, PROTECT AND HOLD LICENSOR, ITS OFFICERS, DIRECTORS, PARENTS, SUBSIDIARIES, AFFILIATES, AGENTS, SERVANTS AND EMPLOYEES HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS, EXPENSES (INCLUDING BUT NOT LIMITED TO ATTORNEY'S FEES), DEMANDS, JUDGMENTS AND CAUSES OF ACTION OF EVERY KIND AND CHARACTER, INCLUDING BUT NOT LIMITED TO CLAIMS IN CONTRACT, TORT, INCLUDING NEGLIGENCE, OR STRICT LIABILITY ARISING IN FAVOR OF ANY PERSON (INCLUDING BUT NOT LIMITED TO EMPLOYEES, SERVANTS, AGENTS, CUSTOMERS OR INVITEES OF LICENSEE) OR ENTITY FOR PERSONAL INJURY, BODILY INJURY, INCLUDING DEATH, OR DAMAGE TO PROPERTY WHETHER OR NOT ARISING FROM THE SOLE OR CONCURRENT NEGLIGENCE OR FAULT OF LICENSOR OR EMPLOYEES OR INDEPENDENT CONTRACTORS DIRECTLY RESPONSIBLE TO LICENSOR ARISING OUT OF, INCIDENT TO, OR IN ANY WAY CONNECTED WITH LICENSEE'S EXERCISE OF RIGHTS HEREIN GRANTED OR OBLIGATIONS PURSUANT THERETO, INCLUDING BUT NOT LIMITED TO SEPARATE OPERATIONS BEING PERFORMED ON THE PROPERTY OR ANY CONDITION OF THE PROPERTY.

9. Compliance With Law. Licensee shall, at its own cost and expense, comply with all applicable laws, including but not limited to existing zoning ordinances, governmental rules and regulations enacted or promulgated by any governmental authority, and shall promptly execute and fulfill all orders and requirements imposed by such governmental authorities for the correction,

prevention and abatement of nuisances in or upon or connected with said premises because of Licensee's use thereof. Licensee shall also comply with all laws and regulations pertaining to hazardous waste, hazardous materials and the environment.

10. Condition Upon Termination. Upon termination of this Agreement, Licensee shall immediately vacate the subject premises, removing all improvements and personal property so as to return the Premises to the condition in which they existed prior to Licensee's occupation of the property. All personal property not removed at Licensor's request shall become Licensor's property at no cost or expense to Licensor.

11. Assignment and Subletting. This Agreement is personal to Licensee and may not be sold, transferred, assigned or sublet without prior written approval by an authorized representative of Licensor.

12. Lien on Property. During the period that this Agreement is in effect, Licensee shall take whatever steps are necessary to prevent any liens, including, but not limited to, mechanics liens and materialmen's liens, from attaching to Licensor's property. Licensee shall immediately pay such sums as may be necessary to discharge liens and encumbrances filed with respect to all or any portion of the Licensor's property resulting from the construction, maintenance or presence of any of Licensee's property.

13. Maintenance of Property. Licensee, at its own cost and expense, shall at all times during the term of this Agreement keep clean and maintain, or cause to be kept clean and maintained, the Premises and all property which may be placed on the Premises by Licensee with Licensor's consent, in a good state of appearance and repair. The Licensor reserves the right to make periodic inspections to insure that the Premises are being maintained and used as allowed by this License.

14. Notices. All written notices required under this License must be hand delivered or sent by certified mail, return receipt requested, and addressed to the proper party at the following addresses:

LICENSOR

City of Plano, Texas
Attention: City Manager
P. O. Box 860358
Plano, TX 75086-0358

with copy to:

City of Plano, Texas
Attention: City Attorney
P. O. Box 860358
Plano, TX 75086-0358

LICENSEE

Mr. Gabriel Whatley
Last Line Pubs, LLC
1004 E. 15th Street
Plano, Texas 75074

Each party may change the address to which notices are to be sent by giving the other party notice, within ten (10) days, of the new address in the manner provided by this paragraph.

15. Prior Agreements. This Agreement constitutes the sole and only Agreement of the parties to the License and supersedes any prior understandings or written or oral agreements between the parties respecting the subject matter of this License.

16. Texas Law. This Agreement shall be construed under, and in accordance with, the laws of the State of Texas. Venue shall lie in Collin County, Texas.

17. Amendment. No amendment, modification, or alteration of the terms of this License shall be binding unless it is in writing, dated subsequent to this License, and duly executed by the parties to this License.

18. Severability. In the event a term, condition, or provision of this Agreement is determined to be void, unenforceable, or unlawful by a court of competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect.

[THIS SPACE INTENTIONALLY LEFT BLANK]

EXECUTED as of the _____ day of _____, 2015.

LICENSOR

CITY OF PLANO, TEXAS
a home-rule municipal corporation

By:

Bruce D. Glasscock
CITY MANAGER

LICENSEE

Last Line Pubs, LLC
a Texas Limited Liability Corporation
dba The Fillmore Pub

By:

Gabriel Whatley
Manager

ACKNOWLEDGMENTS

STATE OF TEXAS §
§
COUNTY OF COLLIN §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **Bruce D. Glasscock**, City Manager of the **CITY OF PLANO, TEXAS**, a home-rule municipal corporation, on behalf of said corporation.

Notary Public, State of Texas

STATE OF TEXAS §
 §
COUNTY OF _____ §

This instrument was acknowledged before me on the _____ day of _____, 2015, by **Gabriel Whatley**, Manager of **Last Line Pubs, LLC**, a Texas Limited Liability Corporation, on behalf of said corporation and partnership.

Notary Public, State of Texas

EXHIBIT "A"
Description of Area

December 11, 2013

CITY OF PLANO, TEXAS
PROPOSED McCALL PLAZA LEASE AREA

DESCRIPTION

BEING A 545 SQUARE FOOT PARCEL OF LAND IN THE JOSEPH KLEPPER SURVEY, ABSTRACT NO. 213, COLLIN COUNTY, TEXAS, SAID PARCEL BEING OUT OF A TRACT OF LAND (TRACT B) AS DEEDED TO THE CITY OF PLANO AND RECORDED IN VOLUME 2348, PAGE 49 OF THE DEED RECORDS OF COLLIN COUNTY, TEXAS, (DRCCT), AS SHOWN ON THE ATTACHED EXHIBIT A AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

IT IS THE INTENT TO DESCRIBE A GENERALLY "L" SHAPED PARCEL OF LAND BEING BOUNDED ON THE NORTH BY THE SOUTH LINE OF THE RIGHT OF WAY FOR 15TH STREET, BEING BOUNDED ON THE EAST BY THE EAST LINE OF SAID CITY OF PLANO TRACT B;

The POINT OF BEGINNING is the point of intersection of the east line of said City of Plano Tract B with the south line of the Right of Way for 15th Street, said point being the northwest corner of a tract of land as deeded to Metropolitan Mammoth Jack, LTD. and recorded in Volume 5827, Page 5269, DRCCT, and being the northwest corner of Block 14, Railroad Addition-Plano, an addition to the City of Plano as recorded in Cabinet W, Page 246, of the Plat Records of Collin County, Texas, said point being in the exterior wall of an existing building;

THENCE South 01°01'04" East, with the east line of said City of Plano tract and said Metropolitan Mammoth tract, a distance of 56.00 feet to a point;

THENCE South 89°42'46" West, departing said common line and crossing said City of Plano tract, a distance of 9.53 feet to an "X" cut in concrete set to mark the point, said point being near the center of an existing planter wall;

THENCE North 00°30'25" West, with said wall, a distance of 49.38 feet to an "X" cut in concrete set to mark the point;

THENCE South 88°58'56" West, with said wall, a distance of 4.26 feet to an "X" cut in concrete set to mark the point;

THENCE North 00°20'21" West, a distance of 6.25 feet to an "X" cut in concrete set to mark the point, said point being on the south line of the Right of Way for 15th Street;

THENCE North 87°53'56" East with said Right of Way line, a distance of 13.28 feet to the POINT OF BEGINNING, and containing 545 square feet of land.

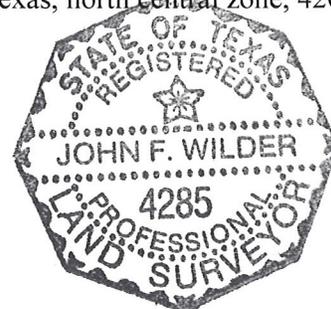
NOTE:

Bearings are based on state plane coordinates (NAD 83), for the State of Texas, north central zone, 4202

John F. Wilder, R.P.L.S.
Texas Registration No. 4285,
BW2 Engineers, Inc.

12-11-13

Date



SURVEY: JOSEPH KLEPPER SURVEY, ABSTRACT No. 213

LOCATION: PLANO, COLLIN COUNTY, TEXAS

PLAT OF EXHIBIT 'A': 545 S.F. LEASE AREA

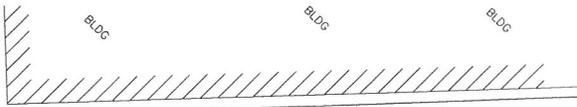
PROPOSED McCALL PLAZA
LEASE AREA
CITY OF PLANO, TEXAS

NOTE: THE BASIS OF BEARINGS FOR THIS SURVEY IS THE CITY OF PLANO TRACT B - VOLUME 348, PG. 49

LINE TABLE

NUMBER	DIRECTION	DISTANCE
L2	S 01°01'04" E	56.00'
L3	S 89°42'46" W	9.53'
L4	N 00°30'25" W	49.38'
L5	S 88°58'56" W	4.26'
L6	N 00°20'21" W	6.25'
L7	N 87°53'56" E	13.28'

o = "X" CUT SET



R.O.W.

15TH STREET

FIFTEENTH STREET
(70' R.O.W.)

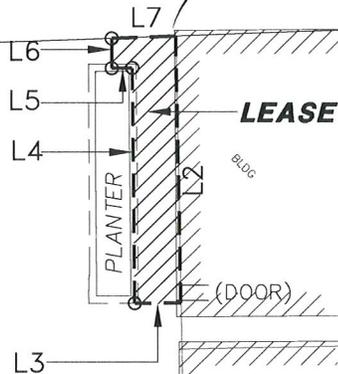
P.O.B.

R.O.W.

D.A.R.T.

TRACT B

OWNER:
CITY OF PLANO
VOL. 348, PG. 49
D.R.C.C.T.



OWNER:
METROPOLITAN MAMMOTH
JACK, LTD.
VOL. 5827, PG. 5269
D.R.C.C.T.

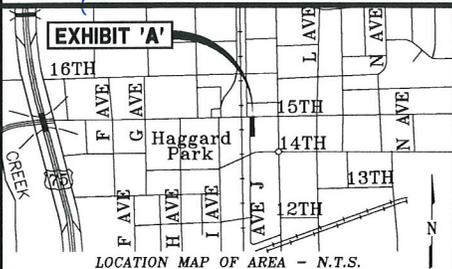
BLOCK 14
RAILROAD ADDITION
PLANO
CAB. W, PG. 246
P.R.C.C.T.

John F. Wilder 12.11.13

JOHN F. WILDER, R.P.L.S. 4285

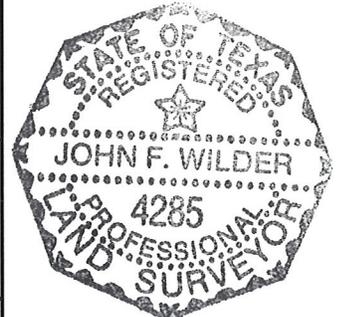
DATE

AREA: 545 S.F.



BW2 Engineers, Inc.

1919 S. Shiloh Road
Suite 500, L.B. 27
Garland, Texas 75042
(972) 864-8200 (T) (972) 864-8220 (F)
Firm Registration No. F-5290



BW2 JOB NO: 13-1617

DRAWN BY: BW2

DATE: NOV. 2013

CHECKED BY: BW2

J:\13-1617\DRAWINGS\EASEMENTS\ESMT01.DWG

PAGE 2 OF 2