

LEASE OF REAL PROPERTY  
RENEWAL TERM

THIS RENEWAL TERM LEASE is made on this the \_\_\_\_\_ day of \_\_\_\_\_, 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 Resigstered 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.

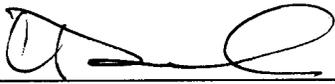
## XXV. AMENDMENT OF LEASE

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

SIGNED this the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

LESSEE:  
DELUXE BURGER BAR  
OF COLLEGE STATION, INC.

LESSOR:  
CITY OF COLLEGE STATION

BY:   
Constandinos Dallis, President

BY: \_\_\_\_\_  
Ron Silvia, Mayor

ATTEST:

\_\_\_\_\_  
Connie Hooks, City Secretary

APPROVED:

\_\_\_\_\_  
Thomas E. Brymer, City Manager

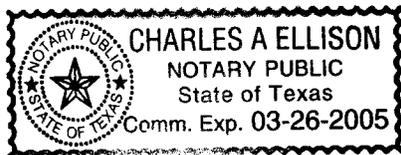
\_\_\_\_\_  
City Attorney

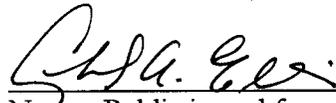
\_\_\_\_\_  
Charles Cryan, Director of Fiscal Services

STATE OF TEXAS        )  
                                  )  
COUNTY OF BRAZOS    )

ACKNOWLEDGMENT

This instrument was acknowledged before me on the 20<sup>TH</sup> day of November, 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.



  
Notary Public in and for  
the State of Texas

STATE OF TEXAS        )  
                                  )  
COUNTY OF BRAZOS    )

ACKNOWLEDGMENT

This instrument was acknowledged on the \_\_\_\_\_ day of \_\_\_\_\_, 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.

\_\_\_\_\_  
Notary Public in and for  
The State of Texas