CITY OF FREDERICKSBURG
CITY COUNCIL MEETING

MONDAY, NOVEMBER 20, 2017 ~ 6:00 p.m.

Law Enforcement Center ~ 1601 East Main Street

Linda Langerhans, Mayor
Charlie Kiehne, Council Member
Jerry Luckenbach, Council Member
Gary Neffendorf, Council Member
Bobby Watson, Council Member
Kent Myers, City Manager

(REQUEST ALL PAGERS AND PHONES BE TURNED OFF, EXCEPT EMERGENCY ON-CALL PERSONNEL)

AGENDA

CALL TO ORDER

PLEDGE OF ALLEGIANCE

Page Ref

1. **EMPLOYEE RECOGNITIONS**

2. **PUBLIC HEARINGS**
   A. PUBLIC HEARING - Z-1710 - Conditional Use Permit for a Drive-Through Facility Associated with First United Bank — 1-8

3. **CONSENT AGENDA** - All items listed below are considered to be routine and non-controversial by the Council and will be approved by one motion. There will be no separate discussion of these items unless a council member or citizen so requests, in which case the item will be removed from the consent agenda and considered as part of the normal order of business.
   A. Consider Health Board Appointments — 9-14
   B. Consider Lease Extension - Former Texas Rangers Heritage Center — 15-18

4. **ORDINANCES - RESOLUTIONS- ACTION ITEMS**
   A. Consider Amending No Smoking Ordinance (second reading) — 19-23
   B. Consider Short Term Rental Ordinance (first reading) — 24-31
   D. Consider Lease with Touchstone Golf — 32-59

5. **INDIVIDUAL ITEMS FOR CONSIDERATION AND POSSIBLE ACTION**
   A. Consider Z-1710 for a Conditional Use Permit for a Drive-Through Facility Associated with First United Bank

6. **CITY MANAGERS REPORT**
   A. Parks Bond Election
   B. Attainable Housing
   C. Relief Route Feasibility Study
   D. University Center Master Plan
   E. Community Visioning Process

7. **ITEMS FOR FUTURE AGENDAS**

8. **PUBLIC COMMENTS** - *This time is for citizens to address the City Council on issues and items of concern not on this agenda. There will be no City Council action at this time.*

9. **COUNCIL COMMENTS** - No discussion or action may take place

10. **ADJOURN**

CITY COUNCIL MEMO

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Brian Jordan, AICP

SUBJECT: Conditional Use Permit for a drive-through facility associated with First United Bank (Z-1710).

Summary:

A Conditional Use Permit was approved in June, 2016 for Burger King Restaurant and a building for Office/Retail. The bank is replacing the office/retail portion of the development. The site area consists of 2 lots, with Lot 3 being 1.02 acres and Lot 4 being 0.86 acres, for a total area of 1.88 acres. The Burger King is under construction, as are the site improvements for the remainder of the Keller Crossing subdivision. Twenty nine parking spaces are proposed for the bank, exceeding the required number of spaces. The drive-through for the bank is located on the south side of the building, opposite the restaurant. Access to the site will be provided by a drive from Highway 16 near the electric substation, and a proposed driveway to be provided by Keller Crossing Drive, a new street proposed to serve the development. Keller Crossing Drive will connect between S. Milam and S Highway 16. The intersection of the Keller Crossing Drive and S. Milam will be restricted to right-in and right-out turning movements. Access to the bank and Burger King will be shared.

Recommendation:

The Planning and Zoning Commission voted unanimously in favor of recommending approval of the Conditional Use Permit. Staff concurs with the recommendation of approval.

Background / Analysis:

See attached Conditional Use Permit Brief for request Z-1710.

Attachments:

Conditional Use Permit Brief, Site Plan, Elevations.

Department Approval

City Manager Approval

CONDITIONAL USE PERMIT BRIEF

Request Z-1710

Project:	First United Bank
Applicant:	Kevin Spraggins, VEI Consulting Engineers
Location:	Corner of S. Milam Street and Highway 16 S.
Existing Zoning:	C-2, Commercial
Request:	Conditional Use Permit to allow a Drive-through facility associated with a bank

Site Plan Overview:

- A Conditional Use Permit was approved in June, 2016 for Burger King Restaurant and a building for Office/Retail. The bank is replacing the office/retail portion of the development.
- The site area consists of 2 lots, with Lot 3 being 1.02 acres and Lot 4 being 0.86 acres, for a total area of 1.88 acres.
- The Burger King is under construction, as are the site improvements for the remainder of the Keller Crossing subdivision.
- Twenty nine parking spaces are proposed for the bank, exceeding the required number of spaces.
- The drive-through for the bank is located on the south side of the building, opposite the restaurant.
- Access to the site will be provided by a drive from Highway 16 near the electric substation, and a proposed driveway to be provided by Keller Crossing Drive, a new street proposed to serve the development. Keller Crossing Drive will connect between S. Milam and S Highway 16. The intersection of the Keller Crossing Drive and S. Milam will be restricted to right-in and right-out turning movements.
- Access to the bank and Burger King will be shared.
- Building coverage is estimated to be approximately 20% (75% maximum allowed in the C-2 District).
- Impervious coverage is estimated to be approximately 77% (80% maximum allowed in the C-2 District).
- The bank will be a single story in height.
- The site is currently under construction, and is surrounded by vacant land and residential homes to the north, vacant land and the hospital to the east, High School parking lot and baseball field to the south and a construction company to the west.
- Adjacent zoning is C-1 to the north, C-2 to the east, PF to the south and C-2 to the west.

Review and Evaluation Criteria:

A. **CONFORMANCE WITH APPLICABLE REGULATIONS:**

- The site complies with applicable regulations, including parking, impervious coverage, building coverage and setbacks.

B. **COMPATIBILITY WITH EXISTING OR PERMITTED USES IN ABUTTING SITES:**

- The proposed bank would be compatible with existing and permitted uses.

C. **POTENTIALLY UNFAVORABLE EFFECTS OR IMPACTS ON OTHER EXISTING OR PERMITTED USES ON ABUTTING PROPERTY:**

- The proposed Keller Crossing Drive will alleviate the concerns staff had with regard to access to the property. Also, access is being shared between the two properties.

D. **MODIFICATIONS TO THE SITE PLAN WHICH WOULD RESULT IN INCREASED COMPATIBILITY AND WOULD MITIGATE POTENTIALLY UNFAVORABLE IMPACTS:**

- The proposed site plan is very similar to the approved plan from last year. And, as you may recall, the intersection of Keller Crossing Drive and Milam Street will be limited to right-in and right-out turning movements.

E. **SAFETY AND CONVENIENCE OF VEHICULAR AND PEDESTRIAN CIRCULATION IN THE VICINITY:**

- The original concern of the staff regarding access into this property was the configuration of Milam Street along with the proximity to Highway 16. It was suggested during the pre-application conference that staff would not support an access directly into the restaurant site from Milam or Highway 16. The applicant's responded by proposing an interior public street (Keller Crossing Drive) connecting Milam to Highway 16 to allow access to each lot. In addition, the street access on Milam Street will be designed to limit access to right-in or right-out turning movements. Also, the drive access on Highway 16 is proposed to accommodate 3 lanes of traffic.

  We believe this will be an acceptable solution to access and circulation in the vicinity.

F. **PROTECTION OF PERSONS AND PROPERTY FROM EROSION, FLOOD OR WATER DAMAGE, FIRE, NOISE, GLARE:**

- Appropriate plans will be in place to address flooding and water damage as part of the site construction. No issues are anticipated for other items listed.

G. **LOCATION OF LIGHTING AND TYPE OF SIGNS; THE RELATION OF SIGNS TO TRAFFIC CONTROL AND ADVERSE EFFECTS OF SIGNS ON ADJACENT PROPERTIES:**

- All signs and lighting will comply with current ordinances. Signs noted on the plan are for illustration only and shall not be considered approved as part of this plan.

H. **ADEQUACY AND CONVENIENCE OF OFF STREET PARKING AND LOADING FACILITIES:**

- Adequate parking is provided on the bank property. Cross access is provided between each of the properties so parking can be shared.

I. **DETERMINATION THAT THE PROPOSED USE IS IN ACCORDANCE WITH THE OBJECTIVES OF THESE ZONING REGULATIONS AND PURPOSES OF THE ZONE IN WHICH THE SITE IS LOCATED:**

- Affirmative.

J. **DETERMINATION THAT THE PROPOSED USE WILL COMPLY WITH EACH OF THE APPLICABLE PROVISIONS OF THE ZONING ORDINANCE:**

- Affirmative.

K. **DETERMINATION THAT THE PROPOSED USE AND SITE DEVELOPMENT, TOGETHER WITH ANY MODIFICATIONS APPLICABLE, THERETO, WILL BE COMPATIBLE WITH EXISTING OR PERMITTED USES IN THE VICINITY:**

- Affirmative

L. **DETERMINATION THAT ANY CONDITIONS APPLICABLE TO APPROVAL ARE THE MINIMUM NECESSARY TO MINIMIZE POTENTIALLY UNFAVORABLE IMPACTS ON NEARBY USES AND TO ENSURE COMPATIBILITY OF THE PROPOSED USE WITH EXISTING OR PERMITTED USES IN THE SAME DISTRICT AND THE SURROUNDING AREA:**

- See Items D and E above.

M. **DETERMINATION THAT THE PROPOSED USE TOGETHER WITH THE CONDITIONS APPLICABLE THERETO, WILL NOT BE DETRIMENTAL TO THE PUBLIC HEALTH, SAFETY, OR WELFARE OR MATERALLY INJURIOUS TO PROPERTIES OR IMPROVEMENTS IN THE VICINITY:**

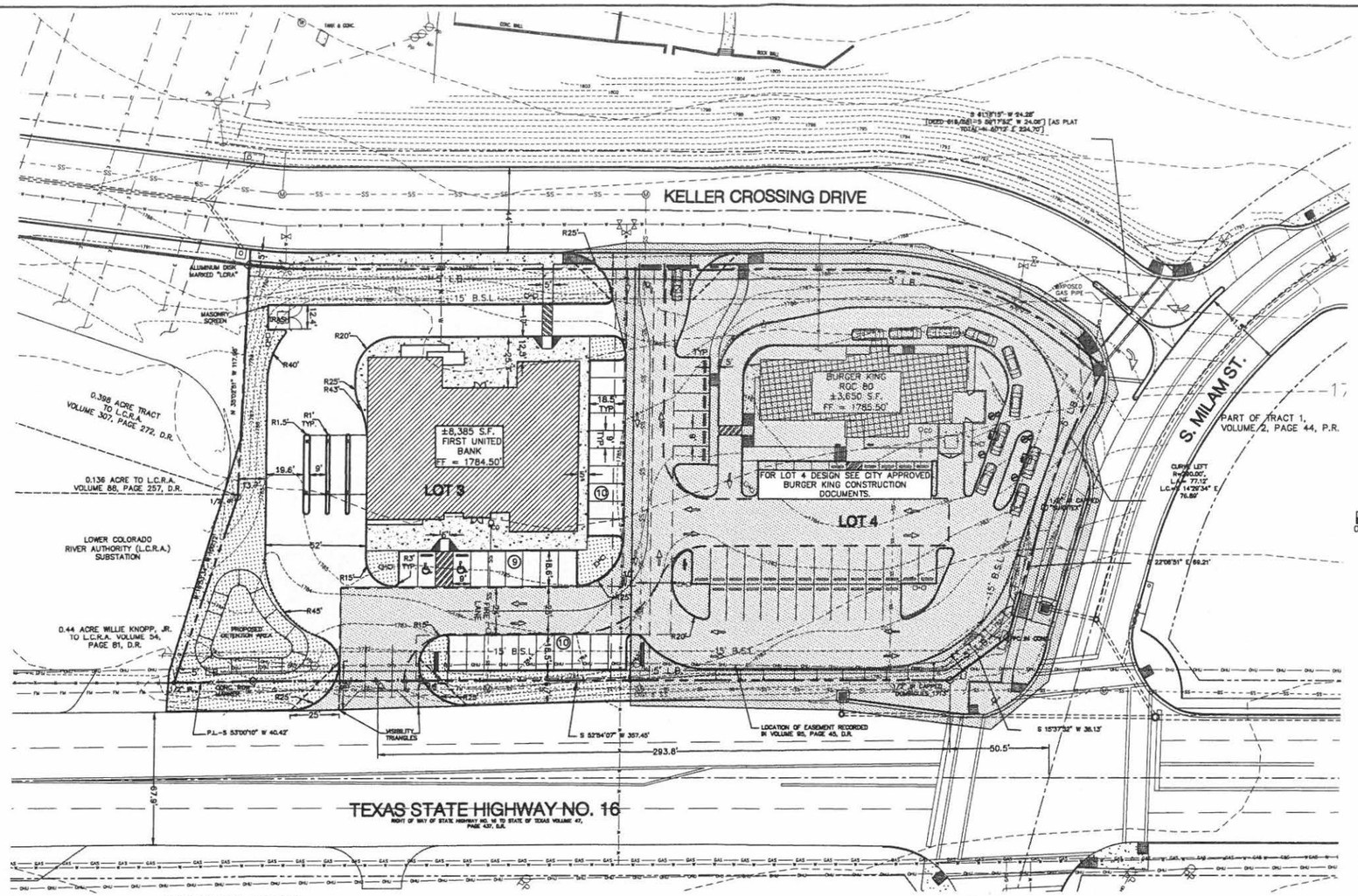
- See Items D and E above.

OPPOSITION/SUPPORT OF REQUEST: No comments to date.

DESIGN STANDARDS AND DESIGN GUIDELINES: This project location falls within the Design Standards and Guidelines for Entry Corridors of the Comprehensive Plan Update. Historic Preservation Officer, Anna Hudson, has worked with the architect for the project and is in support of plans. The architect's response to the design guidelines and standards is included in the packet.

PLANNING AND ZONING COMMISSION RECOMMENDATION: The Commission voted unanimously to recommend approval of the request.

STAFF RECOMMENDATION: Approval.



LOCATION MAP

SCALE: 1" = 2,000'

NOTES:

1. THIS DRAWING AND SERVICES BY VEI DO NOT INCLUDE SUBMISSION TO ARCHITECTURAL BARRIERS FOR ADA REVIEW. REVIEW, IF REQUIRED, IS BY OTHERS.
2. SIDEWALK FROM HANDICAP PARKING AREA TO BUILDING ENTRANCES MUST COMPLY WITH ALL ADA GUIDELINES.
3. THE DRAWING AND SERVICES BY VEI DO NOT INCLUDE "AS-BUILT" INSPECTIONS NOR SERVICES PAST DELIVERY OF THIS DRAWING.
4. ALL DIMENSIONS ARE MEASURED BACK TO BACK OF CURB UNLESS OTHERWISE NOTED.
5. ALL BUILDING DIMENSIONS DERIVED FROM ARCHITECTURAL DRAWINGS. DUE TO THE INHERENT INACCURACY OF REPRODUCTION, DO NOT SCALE FROM THESE DRAWINGS.
6. CONTRACTOR SHALL VERIFY ALL DIMENSIONS WITH ARCHITECT AND OWNER PRIOR TO START OF CONSTRUCTION.
7. REFER TO LANDSCAPE ARCHITECT PLANS FOR LANDSCAPE AREAS.
8. THE LOCATION OF EXISTING UNDERGROUND UTILITIES SHOWN ARE APPROXIMATE BASED ON AVAILABLE RECORDS. THE CONTRACTOR SHALL DETERMINE THE EXACT LOCATION OF ALL EXISTING UTILITIES BEFORE COMMENCING WORK. THE CONTRACTOR IS FULLY RESPONSIBLE FOR ANY AND ALL DAMAGES WHICH MAY OCCUR DURING CONSTRUCTION.
9. FIRE LANE SHALL BE MARKED PER CITY STANDARDS.
10. THIS IS NOT A PROPERTY SURVEY. ANY QUESTIONS CONCERNING PROPERTY CORNERS, PROPERTY LINES, PROPERTY BOUNDARIES AND/OR SET BACKS SHOULD BE DIRECTED TO AND/OR VERIFIED BY A REGISTERED PROFESSIONAL LAND SURVEYOR.

SUMMARY TABLE

LOT 3	
LOT AREA	43,282 sq. ft. / 0.99 Ac.
ZONING	C2 – COMMERCIAL
MINIMUM LOT AREA	5,000 sq. ft.
MINIMUM LOT WIDTH	50 ft.
MINIMUM FRONT YARD SETBACK	15 ft.
MINIMUM STREET SIDE YARD SETBACK	15 ft.
MINIMUM SIDE YARD SETBACK (INTERIOR)	0 ft.
MINIMUM REAR YARD SETBACK	0 ft.
MAXIMUM STRUCTURAL HEIGHT	3 STORIES, 38 ft.
PROPOSED STRUCTURAL HEIGHT	1 STORY, 27 ft. 7 in.
MAXIMUM LOT BUILDING COVERAGE	75%
LOT BUILDING COVERAGE PROVIDED	20%
PROPOSED BUILDINGS AREA	8,385 sq. ft. / 0.19 Ac.
MAXIMUM LOT IMPERVIOUS COVERAGE	80%
PROPOSED IMPERVIOUS PERCENTAGE	77%
PERVIOUS AREA	9,976 sq. ft. / 0.23 Ac.
IMPERVIOUS AREA	33,305 sq. ft. / 0.76 Ac.
PARKING SPACES REQUIRED (1 PER 400 sq. ft.)	21
PARKING SPACES PROVIDED (INCLUDES H.C.)	29
HANDICAP PARKING SPACES REQUIRED	1 STD. + 1 VAN
HANDICAP PARKING SPACES PROVIDED	1 STD. + 1 VAN

(6)

LEGEND

EXISTING		PROPOSED	
	EXISTING SITE IMPROVEMENTS		PROPOSED BUILDING
	PROPERTY BOUNDARY		PROPOSED CONCRETE PAVING
	ADJACENT PROPERTY BOUNDARY		PROPOSED ASPHALT PAVING
	X' B.S.L.		PROPOSED PARKING STRIPE
	EXISTING WATER LINE		PROPOSED LANDSCAPE AREAS
	EXISTING SANITARY SEWER		PROPOSED EASEMENT
	EXISTING GAS LINE		PROPOSED WATER LINE
	EXISTING OVERHEAD UTILITY LINE		PROPOSED SANITARY SEWER
	EXISTING ROAD CENTERLINE		PROPOSED 5' LANDSCAPE BUFFER
	EXISTING EASEMENT		PROPOSED FIRE LANE
	EXISTING CONTOURS		PROPOSED CONCRETE CURB
	EXISTING FENCE LINE		PROPOSED ROAD CENTERLINE
	EXISTING STORM SEWER		TRIANGULAR VISIBILITY
	EXISTING CURB INLET		PROPOSED CULVERT
	EXISTING MONUMENT SIGN		PROPOSED DUMPSTER ENCLOSURE
	IRON ROD FOUND		
	PROPERTY CORNER (AS NOTED)		PROPOSED NUMBER OF PARKING SPACES
	EXISTING WATER METER		PROPOSED WHEEL STOP
	EXISTING SANITARY SEWER MANHOLE		PROPOSED HANDICAP SPACE
	EXISTING UTILITY POLE		PROPOSED LIGHT POLE
	EXISTING STORM MANHOLE		PROPOSED CLEANOUT
	EXISTING DROP INLET		PROPOSED MONUMENT SIGN

A
SITE PLAN
FOR

FIRST UNITED BANK

LOT NO. 3 OUT OF THE
KELLER SUBDIVISION, ±.99 ACRES TOTAL

FIRST UNITED BANK — **DEVELOPER**
CONTACT: BRAD HARDIN
1710 N. LLANO
FREDERICKSBURG, TX. 78624
(830) 990-7775
FAX: (830) 997-9479

GENSLER — **ARCHITECT**
CONTACT: TAYLOR COLEMAN, AIA
TWO LINCOLN CENTER
5420 LBJ FREEWAY, STE. 1100
DALLAS, TX 75240
(214) 866-2449

VEI CONSULTING ENGINEERS — **ENGINEER**
CONTACT: KEVIN W. SPRAGGINS
507-D E. HIGHWAY ST.
FREDERICKSBURG, TX 78624
(830) 997-4744
FAX: (830) 997-6967
Texas Registration # F-165

FILE NO: 17067

DATE: 10/08/2017

SHEET: SP (1 OF 3)

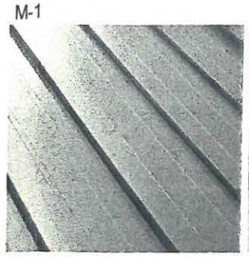
EXTERIOR MATERIALS

	MATERIAL	COLOR	
S-1	HONED AND FILLED LIMESTONE	CREAM	
S-2	LARGE FORMAT LIMESTONE	BUFF	48" X 60"
M-1	STANDING SEAM METAL ROOF	SLATE GRAY	
M-2	CORTEN STEEL	BRUSHED BLACK	VARIES
W-1	WOOD CLADDING	NATURAL STAINED	6" WIDE PANELS
W-2	EXTERIOR WOOD CLADDING	CONTRASTING NATURAL STAINED	6" WIDE PANELS

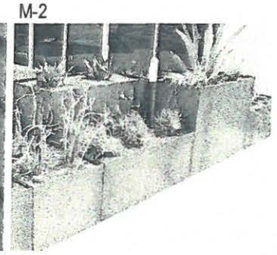
S-1

S-2

M-1

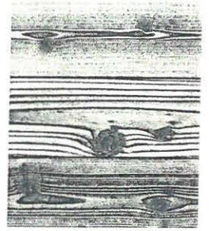


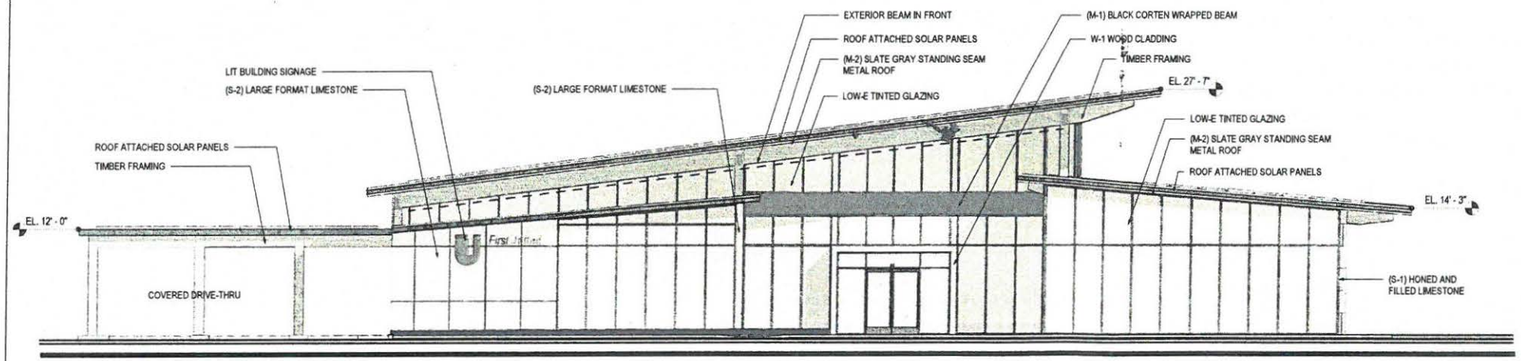
M-2



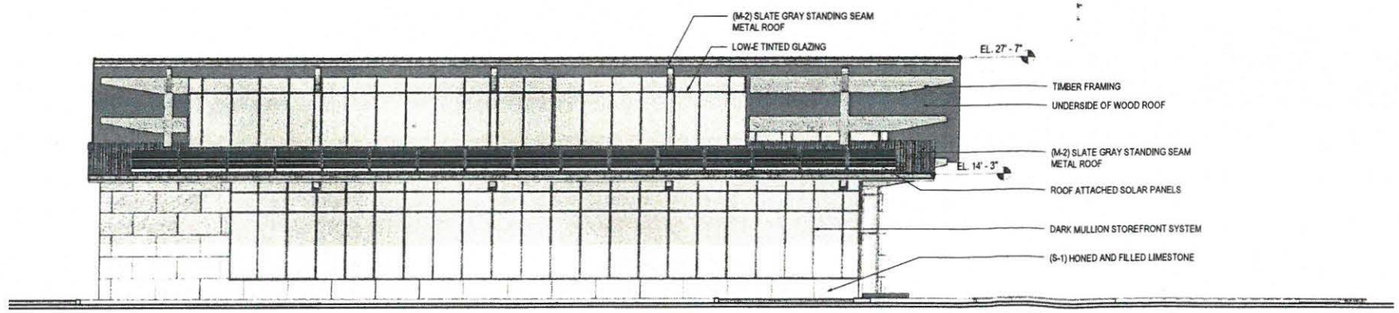
W-1

W-2





1 SOUTH FRONT ELEVATION
SCALE: 1/8" = 1'-0"



2 EAST SIDE ELEVATION
SCALE: 1/8" = 1'-0"

7

SOUTH FRONT ELEVATION

	SQ. FOOTAGE	PERCENTAGE OF FACADE
GLAZING	1,750 SF	86%
MASONRY	250 SF	13%
WOOD	25 SF	1%

EAST SIDE ELEVATION

	SQ. FOOTAGE	PERCENTAGE OF FACADE
GLAZING	1,350 SF	84%
MASONRY	260 SF	16%
WOOD	0 SF	0%

FIRST UNITED BANK OF FREDERICKSBURG

Gensler

Two Lincoln Centre
5420 LBJ Freeway Suite 1100
Dallas, TX 75240
United States

Tel 214.273.1500
Fax 214.273.1505

FirstUnited

1400 W Main Street
Durant, OK 74701
Tel (580) 924-2211

△	Date	Description

Seal / Signature

NOT FOR CONSTRUCTION

Project Name
FIRST UNITED BANK
FREDERICKSBURG

Project Number
27.6813.200

Description
P & Z ELEVATIONS

Scale
As Indicated

P.02

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EXTERIOR MATERIALS

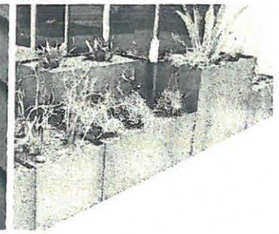
	MATERIAL	COLOR	SIZE
S-1	HONED AND FILLED LIMESTONE	CREAM	
S-2	LARGE FORMAT LIMESTONE	BUFF	48" X 60"
M-1	STANDING SEAM METAL ROOF	SLATE GRAY	
M-2	CORTEN STEEL	BRUSHED BLACK	VARIES
W-1	WOOD CLADDING	NATURAL STAINED	6" WIDE PANELS
W-2	EXTERIOR WOOD CLADDING	CONTRASTING NATURAL STAINED	6" WIDE PANELS

S-1

S-2

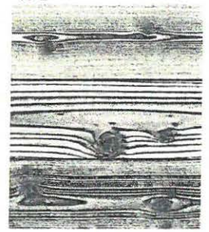
M-1

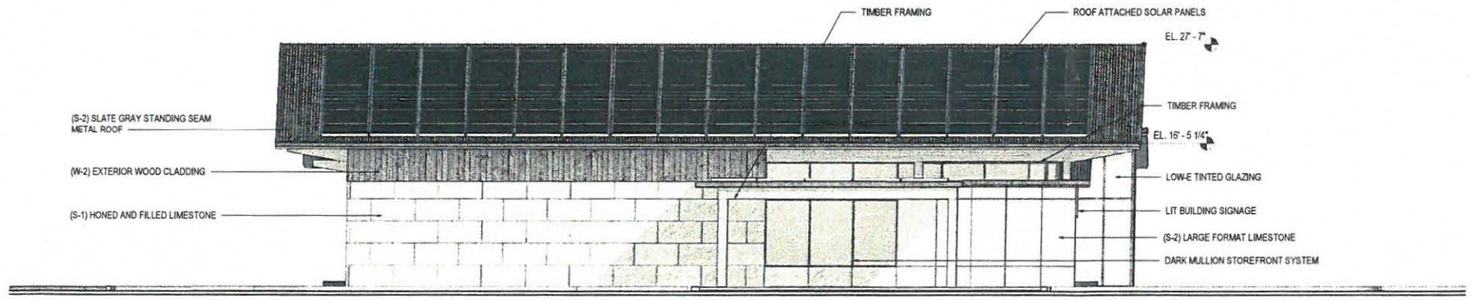
M-2



W-1

W-2

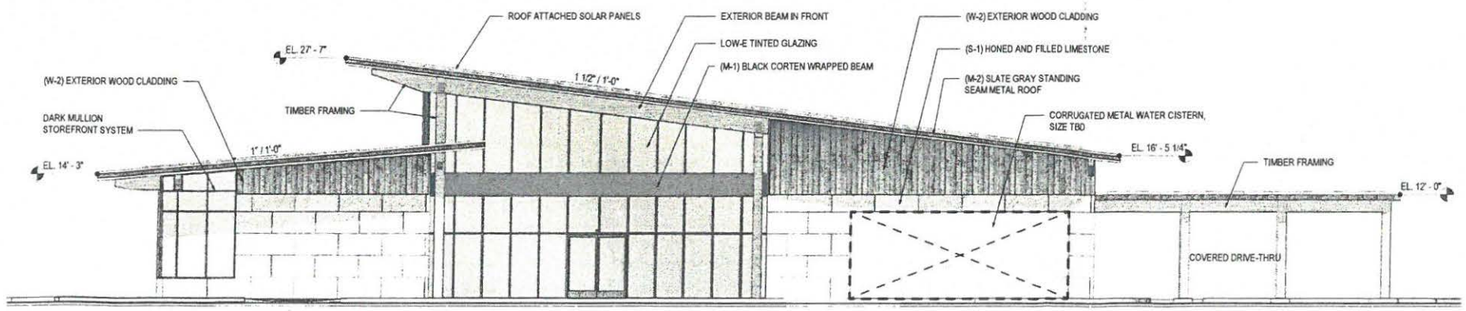




1 WEST SIDE ELEVATION
SCALE: 1/8" = 1'-0"

WEST SIDE ELEVATION

	SQ. FOOTAGE	PERCENTAGE OF FACADE
GLAZING	330 SF	23%
MASONRY	840 SF	59%
WOOD	250 SF	18%



2 NORTH BACK ELEVATION
SCALE: 1/8" = 1'-0"

NORTH BACK ELEVATION

	SQ. FOOTAGE	PERCENTAGE OF FACADE
GLAZING	1,000 SF	49%
MASONRY	730 SF	36%
WOOD	320 SF	15%

(8)

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FIRST UNITED BANK OF FREDERICKSBURG

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5420 LBJ Freeway Suite 1100
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Tel 214.273.1500
Fax 214.273.1505

First United

1400 W Main Street
Durant, OK 74701
Tel (580) 924-2211

△	Date	Description

Seal / Signature

NOT FOR CONSTRUCTION

Project Name
FIRST UNITED BANK
FREDERICKSBURG

Project Number
27.6813.200

Description
P & Z ELEVATIONS

Scale
12" = 1'-0"

P.03

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CITY COUNCIL MEMO

DATE: November 15, 2017

TO: City Council

FROM: Kelli Olfers

SUBJECT: Gillespie County Health Board Appointments

Summary:

We currently have three positions that need to be filled on the Gillespie County Health Board. Board terms are 3 years and start in January 2018.

Recommendation:

It is recommended that council approve one reappointment, Jodi Johnson. It is also recommended that the council approve two new applicants, Jesse Barter and Amy Montgomery.

Background / Analysis:

The Gillespie County Health Board is a county board that advises the City Council and Commissioners Court on items dealing with the general health and safety of Gillespie County residents.

Attachments:

See attached new applications.

Department Approval

City Manager Approval

City of Fredericksburg
Application for Consideration of Appointment

Board / Commission / Committee You Are Applying For: (Check all that may apply)

☐ Planning & Zoning ☐ Historic Review Board ☐ Board of Adjustment
☐ G.C. Economic Development Commission ☒ City/County Health Board
☐ Other _____

Name: Mr. (Title) Jesse (First) S (M.I.) Barker (Last) Date: 10.10.17

Home Address: 1210 Spotted Fawn Trail FBG TX 78624 (Street) 830 9989940 (Home Phone Number)

Mailing Address: 830-997-7470 (Street or Post Office Box #) (Business Phone Number)

Fax Number: _____ E-mail Address: jesse@four-pointwine.com

Employer: 4.0Cellars 10354 E. US Hwy 290 FBG TX 78624 (Name / Address)

Occupation: General Manager Wine Tasting Room

Are you a qualified voter of the City of Fredericksburg? ✓ Yes _____ No

Are you a City of Fredericksburg resident? ✓ Yes _____ No How Long? _____

So the council may know more about you, please complete the following:

Education: University of Houston

Volunteer Experience / Community Service: Chamber Leadership class 2015
Boys + Girls Club, St. Mary's School, iOpener

Areas of Interest: Childhood development, Mental health, monitoring growth of area

Please specify membership on any other governmental or community board/commission/committee:
Fredericksburg Chamber of Commerce Board of Director

Please provide a brief narrative outlining your reasons for seeking appointment to a board or commission.
(Resumé or additional information may be attached.)
My goal is to be a part of our communities future and continue to develop plans to help us sustain the growth in our economy.

Signature

10.10.17
Date

Please return the completed form to the City Manager's office for processing. Your application will be kept on file for 12 months.

Jesse Barter

1210 Spotted Fawn Trail Fredericksburg TX 78624 (830) 998-9940 barter62@yahoo.com

General Manager 4.0 Cellars

Fredericksburg, TX 2013-Present

Oversee operations for 4.0 Cellars hospitality operations which consist of a wine tasting room, wine club and event venue.

- Four years of double digit sales growth
- Established operating procedures
- Developed a team of 40 associates

Director of Hospitality Chalk Hill Estate Winery 2012 – 2013

Foley Family Wines – Healdsburg, CA

Responsible for Hospitality and Direct Sales at a 1,300 acre property devoted to vineyards, a winery, hospitality center, culinary garden, equestrian pavilion, guest houses, and expansive wilderness area; including 8,000 sq. ft. indoor and over 26,000 sq. ft. outdoor meeting and dining facilities

- Responsible for consumer direct retail marketing and sales goals with first year increase in revenue of 11.5%
- Supervised event sales, management, and culinary team with over $750,000 in revenues
- Oversight of VIP program for both external and internal customers
- Director of Foley Food and Wine Society
  - Newly created cross marketing platform for 12 wineries and 4 resorts based on a loyalty rewards system

Regional Hospitality Manager 2010-2012

Foley Family Wines – Los Olivos, CA

Oversight of four tasting rooms within the Foley Family Wines portfolio on the Central Coast of California. Properties include Firestone Vineyard, Foley Estates, Lincourt Winery, and EOS.

- Responsible for direct retail sales and marketing of four wineries with a combined revenue of over $3.5 million
- Built and developed a team of 5 direct report managers with a team of 75 associates
- Coordinated and oversaw the acquisition of EOS Winery, while establishing new brand identity.
- Developed events and community outreach programs to increase visitorship

Assistant Food and Beverage Manager 2008-2010

Hyatt Hotels and Resorts – Hyatt Regency Houston, TX

- Recruited by Hyatt and completed Corporate Management Training Program (CMT)
- Managed night time dining operations at Shula's Steakhouse

Education

University of Houston 2008

Bachelor of Science in Hotel Restaurant Management with emphasis in Sales and Marketing

Texas Culinary Academy 2004

Associate of applied Science in Le Cordon Bleu Culinary Arts

Other

Board of Directors for Fredericksburg Chamber of Commerce Since January 2017

City of Fredericksburg
Application for Consideration of Appointment

Board / Commission / Committee You Are Applying For: (Check all that may apply)

☐ Planning & Zoning ☐ Historic Review Board ☐ Board of Adjustment
☐ G.C. Economic Development Commission ☒ City/County Health Board
☐ Other Gillespie County Health board

Name: Amy (Title) C. (First) Montgomery (M I) (Last) Date: 10/10/17

Home Address: 615 Persimmon Ct. (Street) cell- 210-844-1987 (Home Phone Number)

Mailing Address: _____ (Street or Post Office Box #) _____ (Business Phone Number)

Fax Number: _____ E-mail Address: emontgomery1@austin.rr.com

Employer: Hill Country Memorial Hospital (Name / Address)

Occupation: Registered nurse

Are you a qualified voter of the City of Fredericksburg? ✓ Yes ____ No

Are you a City of Fredericksburg resident? ✓ Yes ____ No How long? I was raised here. I moved back in 2003 total 33 years

So the council may know more about you, please complete the following:

Education: graduated from FHS, Bachelor of Science in Nursing

Volunteer Experience / Community Service: PYSA - Soccer Coach x 4 years, Volunteer with Holy Ghost lutheran Chuch - on council, health team, Sunday School teacher

Areas of Interest: community and population health and wellness

Please specify membership on any other governmental or community board/commission/committee:

Create a Healthy Community Council through HCM Community Health Needs Assessment 2016

Please provide a brief narrative outlining your reasons for seeking appointment to a board or commission.
(Resumé or additional information may be attached.)

see attached

Amy Montgomery
Signature

10/10/17
Date

Please return the completed form to the City Manager's office for processing. Your application will be kept on file for 12 months.

126 West Main Street . Fredericksburg, TX 78624 . 830/997-7521 . 830/997-1861 (Fax) . www.fbgtx.org

October 12, 2017

I have had the privilege of working as a nurse for thirty two years. Living in a small community, provides me with many opportunities to not only take care of my community members when they are ill but to see them when they are well. So often these interactions take place in the grocery store, church functions, and local events. This exposure allows me to witness the challenges many of our citizens face when trying to recover from an illness or how they manage their wellness and preventative healthcare.

Population health is very important to me. Most of my nursing career has been spent working in outpatient areas which allows for more patient education and time spent helping connect the patient with community resources. More and more healthcare is occurring outside of the hospital walls and strong partnerships with community organizations are imperative for long term success.

I would be honored to serve on the Gillespie County Health Board and to be a part of protecting and improving our community's health and wellness. Many of the challenges and the effects they have on our citizens regarding affordable housing, mental health issues, obesity, health coverage, and child care are not to be underestimated. Thank you in advance of your consideration of my application.

Amy Montgomery, RN, BSN
615 Persimmon Ct.
Fredericksburg, TX 78624
Cell- 210-844-1987

CITY COUNCIL MEMO

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Time Extension for Completion of Phase 2-Former Texas Rangers Heritage Center

Summary:

At the last City Council meeting, the Council voted to provide a seven year time extension to the deadline for the Former Texas Rangers Foundation to complete Phase 2 of the Heritage Center project.

Recommendation:

It is recommended that the lease with the Former Texas Rangers Foundation setting a deadline for completion of Phase 2 of their Heritage Center project be extended from February 7, 2018 to February 7, 2025.

Background / Analysis:

The Former Texas Rangers Foundation recently requested a 10-year extension to the deadline for them to complete Phase 2 of their Heritage Center project which includes the Museum. The City Council approved a seven-year extension of the deadline. The attached agreement to the current lease with the Foundation includes the seven-year extension.

Attachments:

Proposed Lease Amendment

Department Approval

City Manager Approval

SECOND AMENDMENT TO CHAPTER 380 AGREEMENT
BETWEEN THE CITY OF FREDERICKSBURG
AND FORMER TEXAS RANGERS FOUNDATION

WHEREAS, the Former Texas Rangers Foundation ("Foundation") and the City of Fredericksburg, Texas ("City") entered into a Chapter 380 Economic Development Agreement ("Agreement") on February 7, 2011, related to the construction of a Texas Rangers Heritage Center; and

WHEREAS, the Foundation and the City entered into a First Amendment to the Agreement, to clarify the timeline for completion of the Phase I and Phase II improvements to be constructed by the Foundation; and

WHEREAS, the Foundation and the City desire to enter into this Second Amendment to the Agreement, to extend the timeline for completion of the Phase II improvements to be constructed by the Foundation.

NOW, THEREFORE, in consideration of the mutual agreements set forth in the Agreement and this Second Amendment, and other good and valuable consideration, the receipt of which are hereby acknowledged, the parties hereto agree as follows:

1. Section 1.02(B) of the Agreement is hereby replaced in its entirety to read as follows:

> B. Phase II - An approximate 28,000 square feet Heritage Center to consist of educational center with approximately five galleries, interactive exhibits, library, curatorial area, administrative offices and related parking and landscaping. Such construction shall be complete and operating on or before February 7, 2025.

2. All terms referred to and not defined herein shall have the meaning ascribed to them under the Agreement. This Second Amendment shall become effective upon execution by both parties.

3. In the event of any inconsistency or conflict between the provisions of this Second Amendment and those of Agreement or First Amendment, this Second Amendment shall prevail. Except as specifically amended by this Second Amendment, the Agreement shall remain unchanged and in full force and effect.

[Signature page follows]

IN WITNESS WHEREOF, each of the parties hereto has executed this Second Amendment, or caused the same to be executed by its duly authorized representative.

FORMER TEXAS RANGERS FOUNDATION

By:_____ Date:_____
Joe Davis, President

CITY OF FREDERICKSBURG, TEXAS

By:_____ Date:_____
Kent Myers, City Manager

CITY COUNCIL MEMO

DATE: October 31, 2017

TO: Fredericksburg City Council

FROM: Kelli Olfers

SUBJECT: Amendment to No Smoking Ordinance

Summary:

Tobacco use is the single most preventable cause of disease, disability, and death in the United States. Nearly one-half million Americans still die prematurely from tobacco use each year, and more than 16 million Americans suffer from a disease caused by smoking. Despite these risks, approximately 42.1 million U.S. adults currently smoke cigarettes. And the harmful effects of smoking do not end with the smoker. Secondhand smoke exposure causes serious disease and death, and even brief exposure can be harmful to health. Each year, primarily because of exposure to secondhand smoke, an estimated 7,330 nonsmoking Americans die of lung cancer and more than 33,900 die of heart disease. Coupled with this enormous health toll is the significant economic burden. Economic costs attributable to smoking and exposure to secondhand smoke now approach $300 billion annually. *Source:* CDC's *Best Practices for Comprehensive Tobacco Control Programs - 2014*

E-cigarette use among U.S. youth and young adults is now a major public health concern. E-cigarette use has increased considerably in recent years, growing an astounding 900% among high school students from 2011 – 2015. These products are now the most commonly used form of tobacco among youth in the United States, surpassing conventional tobacco products, including cigarettes, cigars, chewing tobacco, and hookahs. E-cigarettes contain nicotine, which can cause addiction and can harm the developing adolescent brain. Preventing tobacco use in any form among youth and young adults is critical to ending the tobacco epidemic in the United States. *Source:* Vivek H. Murthy, M.D., M.B.A., U.S. Surgeon General

Recommendation:

The Gillespie County Health Board requests that City Council approve the amendment to the SMOKING IN PUBLIC PLACES ordinance that includes e-cigarettes and vaping.

Background / Analysis:

On November 7, 2002, the Fredericksburg City Council passed ordinance number 12-018 SMOKING IN PUBLIC PLACES. This ordinance restricts smoking in all public places within the city limits as *"public place"* is defined in the ordinance. The Gillespie County Health Board has researched this topic this past year and concludes that the current ordinance needs to be updated to include items that were not in existence in 2002. This amendment will update this 15 year old ordinance to include e-cigarettes and vaping as part of the no smoking ordinance.

Attachments:

Please see attached ordinance.

Kelli Oliver

Department Approval

City Manager Approval

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS, AMENDING SECTION 20-180 OF ARTICLE V. - SMOKING IN PUBLIC PLACES, OF CHAPTER 20 OF THE CODE OF ORDINANCES, BY INCLUDING THE USE OF ELECTRONIC SMOKING DEVICES IN PUBLIC AS AN ACTIVITY THAT IS PROHIBITED.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS:

Section 1. That, Section 20-180 "Definitions", of the Code of Ordinances is amended as follows:

Sec. 20-180. - Definitions.

The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bar means any commercial establishment that derives 51 percent or more of its annual gross sales receipts from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code and has a valid on-premises consumption license issued by the state alcoholic beverage commission or a portion of a commercial/food establishment that is physically separated from the rest of the establishment by an impermeable barrier exclusive of appropriate openings for ingress and egress and that portion of the establishment is independently ventilated and that portion of the establishment derives 51 percent or more of its annual gross sales receipts from the sale of alcoholic beverages as defined by the Texas Alcoholic Beverage Code and has a valid on-premises consumption license issued by the state alcoholic beverage commission.

Director means the director of the department designated by the city manager to enforce and administer this article or the director's designated representative.

Electronic Smoking Device means any product containing or delivering nicotine or any other substance intended for human consumption that can be used by a person to inhale or simulate smoking through the inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor, and any aerosol, liquid, or vapor used in such a device.

Employee means any person who is employed by any employer from direct or indirect monetary wages, commissions or profit, or is in a position that would lead one to believe that such person is so employed.

Employer means any person, partnership, corporation, association or other entity that employs one or more persons.

Enclosed means closed in by a roof and walls with appropriate openings for ingress and egress.

Food establishment means any operation engaged in the preparation or sale of prepared ready-to-eat food, if such operation accounts for more than 51 percent of annual gross sales receipts. For the purpose of this section a food establishment does not include an outdoor patio.

Governmental entity means a state, a municipality, county, school district, or appraisal district.

Health care facility means any hospital or institution that provides medical or surgical services for patients.

Independently ventilated means that the heating, ventilation and air conditioning system for a bar area does not allow for the mixing of air from the bar area to a public area or public place served by the same ventilation system or another ventilation system.

Movie theater means any establishment engaged in the business of exhibiting motion pictures to public. The same are regulated hereby even if meeting the definition of private club.

Outdoors means any area that is not enclosed.

Private club means any building, premises or portion thereof which is wholly owned or leased from other than a governmental entity by a non-profit corporation organized under chapter 501(c)(3) of the United States Internal Revenue Code, as amended.

Private office is an individual's office from which the public is not barred but to which the public goes primarily by invitation or appointment. Such office shall be an office in which there are no employees.

Public place means any enclosed area that is open to or is used by the general public, or that is a place of employment and includes, but is not limited to: retail stores, grocery stores, offices, professional, commercial or financial establishments, food establishments, movie theaters, public and private institutions of education, health care facilities, nursing and convalescent homes, residential treatment facilities, buildings owned or occupied by political subdivisions and public restrooms. For the purpose of this article, a public place does not include a private residence, bar, tobacco shop, hotel and motel rooms that are rented to guests, private clubs or outdoors or private offices. Any public places regulated by other statutes or other governmental administrative rules which conflict with or which preempt local regulation are exempt from the provisions hereof to the extent of such conflict or preemption.

Smoke or *Smoking* means inhaling, exhaling, lighting, or burning:

a) any cigar, cigarette, pipe, weed, plant, or other smoking material of any kind; or
b) any Electronic Smoking Device as defined in this Section.

~~means the carrying or holding of a lighted pipe, cigar or cigarette of any kind, or any other lighted smoking material, equipment or device, and the lighting, emitting or exhaling the smoke of a pipe, cigar, or cigarette of any kind.~~

Tobacco means any tobacco, cigarette, cigar, pipe tobacco, smokeless tobacco, snuff or any other form of tobacco, which may be utilized for smoking, chewing, inhalation or other means of ingestion or absorption.

Tobacco shop means any commercial establishment that derives 51 percent of its annual gross receipts from the sale of tobacco, Electronic Smoking Devices, and tobacco accessories.

Section 2. Severability or Invalidity. If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Section 3. Repealer. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

PASSED AND APPROVED on this the ____ day of November, 2017.

_____
Linda Langerhans, Mayor
City of Fredericksburg, Texas

ATTEST:

_____
Shelley Britton, City Secretary

APPROVED AS TO FORM:

_____
Daniel Jones, City Attorney

CITY COUNCIL MEMO

DATE: November 14, 2017

TO: Mayor and City Council

FROM: Kent Myers, City Manager

SUBJECT: Short-Term Rental Ordinance

Summary:

City staff has developed the attached short-term rental ordinance based upon comments made by the City Council at your recent Retreat.

Recommendation:

It is recommended that the City Council review the attached ordinance and provide recommended changes. These changes will then be added to the ordinance so that it can be presented to the Council for a second reading at your next meeting on December 4.

Background / Analysis:

The number of short-term rentals available within the City continues to grow with a current estimate of over 700 units. This increase has started to cause impacts in our residential neighborhoods as evidenced by an increase in the number of complaints about short-term rentals. In an effort to address these concerns, the City Council recently discussed the need for a new short-term rental ordinance. Council members also suggested certain provisions be added to this ordinance in an effort to reduce the impact to our existing neighborhoods.

The ordinance that is attached includes a number of important provisions that we will want to discuss at Monday's Council meeting including the following:

-Definitions for short-term rentals and what constitutes a "short-term rental unit".
-Expanded requirements for registration of short-term rental units including a requirement to identify a local contact person who would be available to address any complaints.
-Requirement for annual inspection of all units.
-Requirements for notification to guests of City regulations that must be followed.
-Requirement that other City ordinances involving signage, garbage, payment of HOT taxes and other regulations be met with possible revocation of permit for non-compliance.

The proposed ordinance includes a recommended fee of $150 per unit. Therefore a short-term rental that included four separate units would pay $600 a year. This is based upon the City Council direction in setting the fees at a level to get full recovery of our costs. We estimate that the fee, based upon 700 units will generate about $105,000 for the City. This should cover our costs for the new Code Enforcement Officer.

Attachments:

Proposed Short –Term Rental Ordinance

Department Approval

City Manager Approval

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS, CREATING ARTICLE V. - SHORT TERM RENTALS, OF CHAPTER 23 - PLANNING - OF THE CODE OF ORDINANCES, ESTABLISHING REGULATIONS AND A PERMITTING REQUIREMENT FOR OPERATION OF A SHORT TERM RENTAL, AND PROVIDING A PENALTY CLAUSE FOR VIOLATIONS.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FREDERICKSBURG, TEXAS:

Section 1. That, ARTICLE V. - SHORT TERM RENTALS, of Chapter 23 - PLANNING, of the Code of Ordinances, is hereby created and adopted as follows:

Chapter 23 – Planning
Article V. SHORT TERM RENTALS

Sec. 23-100. Purpose.

The purpose of this Article is to establish regulations for the use of privately owned dwellings as Short Term Rentals, to minimize negative ancillary impact on surrounding properties, and to ensure the collection and payment of Hotel Occupancy Tax.

Sec. 23-101. Definitions.

As used in this Article, the following terms shall have the following meanings:

A. City - The City of Fredericksburg, Texas.

B. Guest - The overnight occupants renting a Short Term Rental Unit for a specified period and the daytime visitors of the overnight occupants.

C. Local Contact Person - The Owner, Operator, or person designated by the Owner or the Operator, who shall be available twenty-four (24) hours per day, seven days per week, for the purpose of responding within sixty (60) minutes to complaints related to the Owner's Short Term Rental, and taking immediate remedial action to resolve such complaints.

D. Operator - The Owner or the Owner's authorized representative who is responsible for compliance with this Article while advertising and/or operating a Short Term Rental.

E. Owner - The person or entity that holds legal or equitable title to the Short Term Rental property.

F. Short Term Rental - A privately owned dwelling, including but not limited to, a single family dwelling, multiple family attached dwelling, apartment house, condominium, duplex, mobile home, or any portion of such dwellings, rented by the public for

consideration, and used for dwelling, lodging or sleeping purposes for any period less than thirty (30) consecutive days.

Any contiguous property with eight (8) or more Short Term Rental Units shall be exempt from the regulations under this Article. The following are exempt from the regulations under this Article: hotel, motel, dormitory, public or private club, recreational vehicle park, hospital and medical clinic, nursing home or convalescent home, foster home, halfway house, transitional housing facility, any housing operated or used exclusively for religious, charitable or educational purposes, and any housing owned by a governmental agency and used to house its employees or for governmental purposes.

G. Short Term Rental Permit - A permit issued by the City authorizing the use of a privately owned dwelling as a Short Term Rental.

H. Short Term Rental Unit - One or more habitable rooms forming a single habitable division within a Short Term Rental, or an entire undivided Short Term Rental, which is advertised to be occupied, is occupied, or is intended to be occupied by a single party of Guests under a single reservation and/or single rental payment.

Sec. 23-102. Short Term Rental Permit required.

A. It shall be unlawful for any person or entity to rent, or offer to rent, any Short Term Rental without a valid Short Term Rental Permit issued under this Article.

Sec. 23-103. Short Term Rental Permit registration fee and application.

A. An applicant shall submit an application for a Short Term Rental Permit using a format and method promulgated by the City Manager or his/her designee. The application form shall require, at a minimum, the following information from applicants:

1. The name, address, email and telephone number of the Owner of the Short Term Rental.
2. The name, address, email and telephone number of the Operator of the Short Term Rental.
3. The name, address, email and twenty-four (24) hour telephone number of the Local Contact Person.
4. The name and address of the proposed Short Term Rental Unit.
5. The number of bedrooms and the proposed overnight and daytime occupancy limit of the proposed Short Term Rental unit.
6. A diagram showing the proposed layout of the property use and on-site parking available for the proposed Short Term Rental unit.
7. The proposed food service to be offered to Guests of the proposed Short Term Rental unit.

8. Such other information as the City Manager, or his/her designee, deems reasonably necessary to administer this Article.

B. An applicant must pay to the City an annual permit fee of one hundred fifty dollars ($150.00) with any submitted Short Term Rental Permit application.

C. A separate Short Term Rental Permit application and annual permit fee must be submitted for each individual Short Term Rental Unit. Each individual Short Term Rental Unit shall be assigned a unique permit number upon permit issuance by the City.

D. Prior to issuance of a Short Term Rental Permit, the Operator shall allow an on-site inspection of the Short Term Rental Unit by the City, to ensure compliance with the following:

1. The requirements set forth in Sec. 23-104(A) of this Article.

2. The requirements set forth in Sec. 23-104(B)(1) through 23-104(B)(5) of this Article.

3. Any other regulations set forth in this Article as the City Manager deems reasonably necessary to administer this Article.

E. The Short Term Rental Permit shall expire on March 31st of each year. The Short Term Rental Permit shall expire immediately upon any change in Owner of the Short Term Rental Unit.

F. The Owner has a duty to notify the City within twenty (20) calendar days, in writing, of any changes to information submitted as part of an application under this Article.

G. An application for Short Term Rental Permit may be denied if the Owner has had a prior Short Term Rental Permit suspended or revoked for the same Short Term Rental property within the past twelve (12) calendar months.

Sec. 23-104. Short Term Rental operational requirements.

A. At any time when a Short Term Rental Unit is occupied by Guests, advertised to be occupied, or intended to be occupied by Guests, the Operator shall post the following information in a prominent location within the Short Term Rental Unit, on the form promulgated by the City:

1. The unique Short Term Rental Permit number assigned to the Short Term Rental Unit;
2. Operator name and number;
3. Local Contact Person name and number;
4. The location of any on-site and off-site parking spaces available for Guests;
5. The overnight and daytime occupancy limits;
6. Instructions to Guests concerning proper handling of garbage and garbage containers, including notice of garbage collection day when applicable;
7. Notification that the Guests are responsible for compliance with all applicable laws, rules and regulations pertaining to the use and occupancy of the Short Term Rental unit,

and the Guests and/or Owner may be cited and fined by the City for violations of this Article; and

8. Notification that weddings, parties or other large gatherings are prohibited at the Short Term Rental Unit, excepting Short Term Rentals located in the Commercial Zoning District.

B. At any time when a Short Term Rental Unit is occupied by Guests, advertised to be occupied, or intended to be occupied by Guests, the Operator shall operate the Short Term Rental Unit in compliance with the following:

1. State of Texas and City of Fredericksburg building codes for existing or new construction, as applicable, including ADA standards.

2. Regulations for fire protection set forth in the appropriate National Fire Protection Association (NFPA) 101 Life Safety Code and the International Construction Codes, as adopted by the City at the time of application.

3. City of Fredericksburg Sign Ordinance, as applicable, set forth in Chapter 29 of the Code of Ordinances.

4. State of Texas and Gillespie County Health Division requirements for commercial food service, as applicable.

5. Maximum occupancy limits as set by the City Fire Marshall or his/her designee.

6. Weddings, parties or other large gatherings are prohibited at the Short Term Rental Unit, excepting Short Term Rentals located in the Commercial Zoning District.

7. City of Fredericksburg Hotel Occupancy Tax Ordinance, set forth in Chapter 41 of this Code of Ordinances.

8. City of Fredericksburg Noise and Sound Level Regulation Ordinance, set forth in Chapter 20 of this Code of Ordinances.

9. City of Fredericksburg Garbage Collection Ordinance, set forth in Chapter 32 of this Code of Ordinances.

10. The Local Contact Person shall be available twenty-four (24) hours per day, seven days a week, at any time when a Short Term Rental Unit is occupied or intended to be occupied by Guests, for the purpose of responding within sixty (60) minutes to complaints regarding the condition, operation, or conduct of Guests of the Short Term Rental Unit. The Local Contact Person shall respond within sixty (60) minutes of being notified of complaints regarding the condition, operation, or conduct of Guests of the Short Term Rental Unit, and shall take immediate remedial action to resolve such complaints.

C. Any advertisement that promotes the availability of a Short Term Rental Unit, listed in any medium, including but not limited to newspaper, magazine, brochure, website, or mobile application, shall include the current Short Term Rental Permit number assigned by the City.

Sec. 23-105. Notification of complaints.

Complaints related to the operation of a Short Term Rental, including but not limited to complaints concerning noise, garbage, parking, and disorderly conduct by Guests, shall be reported to the City Code Enforcement office.

Sec. 23-106. Compliance with other law.

The Owner, Operator, Local Contact Person, and Guests shall comply with all applicable laws, rules and regulations pertaining to the use and occupancy of a Short Term Rental Unit. The Owner shall not be relieved from any civil or criminal liability for a violation of this Article, regardless of whether such violation is committed by the Owner, Operator, Local Contact Person, or Guest of the Owner's Short Term Rental Unit.

Nothing in this Article shall be construed to relieve any person or Owner of any other applicable requirements of federal, state, or local law, rules, or regulations. Nothing in this Article shall be construed to provide any property owner with the right or privilege to violate any private conditions, covenants, and restrictions applicable to the Owner's property that may prohibit the use of such Owner's property as a Short Term Rental as defined in this Article.

Sec. 23-107. Compliance and Penalty provision.

A. It shall be unlawful for any person or entity to violate any restriction or provision of this Article. Proof that a violation of this Article occurred at a Short Term Rental Unit shall create a rebuttable presumption that the Owner of said Short Term Rental Unit committed the violation.

B. Any violation of this Article is a Class C misdemeanor offense, and upon conviction, shall be punished by a fine as set forth in Section 1-6 of this Code of Ordinances.

C. Prosecution under this Article shall not require the pleading or proving of any culpable mental state.

D. Penalties provided for in this Article are in addition to any other criminal or civil remedies that the City may pursue under City ordinances and/or State law.

Sec. 23-108. Permit suspension or revocation; Appeal.

Upon conviction for a violation of this Article, the City Manager may suspend or revoke any Short Term Rental Permits issued for any Short Term Rental Units located upon the same Short Term Rental property where the violation occurred. The City Manager shall notify an Owner of a suspension or revocation under this Section in writing, delivered by Certified Mail, Return Receipt Requested, and mailed to the address of the Owner as set forth on the most recent permit application submitted to the City.

An Owner may appeal a suspension or revocation under this Section by filing a written

appeal with the City Manager within ten (10) business days following the date said notice was deposited in the U.S. Mail. Following a timely filing of an appeal hereunder, the Owner may present evidence to the City Manager related to the suspension or revocation under this Article. Following the City Manager's final decision on appeal, the Owner may appeal an adverse decision of the City Manager by filing a written appeal with the City Council within five (5) business days following the date of the City Manager's final decision.

{End of code text}

Section 2. Severability or Invalidity. If any provision of this ordinance or the application hereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the ordinance which can be given effect without defeating the purpose or objective of the provisions, and to this end, the provisions of this ordinance are declared to be severable.

Section 3. Repealer. All ordinances and parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

Section 4. Penalty. That any person, firm, or corporation violating any of the provisions of this ordinance shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine as provided in Section 1-6 of the Code of Ordinances.

PASSED AND APPROVED on this the ____ day of _____, 2017.

_____
Linda Langerhans, Mayor
City of Fredericksburg, Texas

ATTEST:

_____
Shelley Britton, City Secretary

APPROVED AS TO FORM:

_____
Daniel Jones, City Attorney

CITY COUNCIL MEMO

DATE: November 20, 2017

TO: Mayor and City Council

FROM: Clinton Bailey, P.E., Assistant City Manager/Director of Public Works and Utilities

SUBJECT: Consider Approval of Golf Course Net Lease Agreement with Touchstone Golf

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Summary:

This item is for the consideration of approval of a proposed Golf Course Net Lease Agreement with Touchstone Golf. If approved, Touchstone Golf would assume operation of Lady Bird Golf Course on January 1, 2018.

Recommendation:

It is recommended that the City Council approve the proposed Golf Course Net Lease Agreement with Touchstone Golf.

Background / Analysis:

Included in the background information for this item is a "Golf Course Net Lease Agreement Summary of Terms" which includes a brief summary of both the Basic Terms and the Powers and Responsibilities of Touchstone.

As a supplement to the Basic Terms regarding the proposed fees paid to Touchstone and lease payments paid to the City, the following scenarios are provided as hypothetical examples of operating costs during the first year and subsequent years of operation under the proposed net lease:

Year One (January 1, 2018 – September 30, 2018)

Fees that apply to this period are:

1) A $5000/month administrative fee paid to Touchstone
2) A 20% incentive fee paid to Touchstone based on an increase in Net Operating Income

During the first year, Touchstone will operate under the City's adopted budget for approximately 30 days and then will develop a revised operating budget that will be approved around February 15, 2018. For the first 9 months of operation, this hypothetical example assumes an increase in Net Operating Income (NOI) of $200,000 comparing the 9 months ending 9/30/18 to the 9 months ending 9/30/17.

Administrative Fee: 9 months x $5000/month = $45,000

20% Incentive Fee: 20% of $200,000 = $40,000

Total Fees Paid to Touchstone during first 9 months of operation: $95,000

Year Two (October 1, 2018 – September 30, 2019)

Fees that apply to this period are:

1) A $5000/month administrative fee paid to Touchstone
2) Lease Payment to City of Fredericksburg based on positive Cash Flow for the entire year

This hypothetical example would apply to Touchstone's first full year of operation and subsequent years of operation. For this example, assume that during year 1 of full operation the positive Cash Flow of the Golf Course operation is $500,000.

According to the proposed Net Lease Agreement, Touchstone would receive 30% of positive Cash Flow or $60,000, whichever is less, on an annual basis. What this essentially relates to is a cap of $60,000 on the total amount of revenue Touchstone can receive on an annual basis from positive Cash Flow. The City would receive 70% of positive Cash Flow plus any additional revenue in excess of Touchstone's $60,000 cap on an annual basis. In the example below, Touchstone would receive $60,000 which is less than 30% of $500,000 and the City would receive the balance of $90,000 in addition to the 70% of $500,000 for their net lease payment.

Administrative Fee: 12 months x $5000/month = $60,000

Touchstone's Portion of Positive Cash Flow: $60,000

Total Payments to Touchstone: $120,000

Lease Payment to City: 70% of $500,000 + $90,000 (30% of $500,000 - $60,000) = $440,000

Total Revenue Received by the City of Fredericksburg during year 1 of full operation: $380,000

Department Approval

City Manager Approval

GOLF COURSE
NET LEASE AGREEMENT

SUMMARY OF TERMS

BASIC TERMS

1. Lease Term: Five (5) years, beginning January 1, 2018 and ending December 31, 2022, (the "**Initial Term**") unless extended as provided.

2. Extension: One (1) five year extension option of the Initial Term ("**Renewal Term'**) exercisable by TOUCHSTONE if the Golf Course Facility has achieved positive EBITDA for the period ending September 30 of the fifth year of the Initial Term. Otherwise the extension shall be by mutual agreement.

3. Administrative Fee: $5,000 per month.

4. Incentive Fee: 20% of the annual improvement in Net Operating Income (NOI). For the first period, it will be 20% of the improvement in NOI when comparing the 9 months ending 9/30/18 to the 9 months ending 9/30/17.

5. Lease Payment to LANDLORD: Upon the Golf Course Facility generating positive Cash Flow for a full calendar year in an amount of equal to or great than $100,000, LANDLORD shall receive 70% of such Cash Flow and TOUCHSTONE shall receive the lesser of (i) $60,000 and (ii) 30% of such Cash Flow. In any period for which TOUCHSTONE is paid TOUCHSTONE'S Lease Payment, TOUCHSTONE's Incentive Fee for such Incentive Fee Period shall not apply.

7. Delivery Date for initial operating budget, business plan and five (5) year facility improvement plan: February 15, 2018.

8. Delivery Date for subsequent annual operating budgets, business plans and facility improvement plans (as applicable): On or before August 1st of each year.

POWERS AND RESPONSIBILITIES OF TOUCHSTONE

1. Provide day-to-day management and oversight of operation of the Golf Course Facility;

2. Arranging for the employment of competent management that are trained in the necessary facets of Golf Course Facility management, with sufficient experience in the Golf Course Facility industry to oversee management of the Golf Course Facility;

3. Arranging for the employment of a competent staff and deploying such staff and other resources to insure proper care of the buildings, grounds and Golf Course Facility;

4. Managing all hiring, training and termination of all Golf Course Facility management and personnel, including administering all labor relations. The general manager shall be subject to the approval of LANDLORD. All personnel of the Golf Course Facility shall be employees of TOUCHSTONE or its affiliate;

5. Oversee the accounting process including planning and budgeting; daily and monthly sales reporting, producing monthly financial statements; processing all expenses for payment; reviewing monthly cash flow statements; bank account reconciliations, and procession payroll;

6. Preparing and maintaining accurately in all material respects the books, accounts, and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility;

7. Oversee the planning and implementation of all marketing programs, including developing and executing a business plan (including, if applicable to the Golf Course Facility, a lodging/golf package plan, tournament/catering event sales plan, e-marketing, promoting the food and beverage operation, implementing pricing and revenue management techniques, and placing appropriate media/advertising;

8. Arranging for the purchase of such supplies and equipment as is reasonably necessary in order to operate the Golf Course Facility consistent with the calendar year budget, business plan, and facility improvement plan and to the extent not included in the calendar year budget, business plan, and facility improvement plan approved by the LANDLORD, to seek appropriate approval of the LANDLORD in compliance with LANDLORD'S acquisition policy;

9. Maintaining the golf course and all of its facilities in a condition consistent with quality levels defined in the calendar year budget, business plan, and facility improvement plan;

10. Coordinating with LANDLORD to cause the Golf Course Facility to operate in compliance with applicable laws and regulations;

11. Overseeing all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Course Facility and coordinate such operations with the City Manager;

12. Implementation of Touchstone Golf's national accounts relationships, purchase supplies and equipment, as needed, to operate the Golf Course Facility; and

13. Implementation of the Touchstone Golf Foundation to enhance guest experience.

RECORDS, ACCOUNTS AND REPORTS

TOUCHSTONE shall provide monthly financial statements including a balance sheet, statement of operations and other financial data reasonably requested by LANDLORD no later than twenty-five (25) days following the end of each month, as may be available utilizing current accounting systems maintained by the Golf Course Facility or provided by LANDLORD. TOUCHSTONE is not responsible for the preparation of any state or federal income tax returns of the LANDLORD for the Golf Course Facility.

GOLF COURSE
NET LEASE AGREEMENT

DRAFT OF 11/13/2017 FOR DISCUSSION PURPOSES

This GOLF COURSE NET LEASE AGREEMENT (as amended, "**Agreement**") is made this ____ day of _____, 2017, between TOUCHSTONE GOLF, LLC ("**TOUCHSTONE**"), a Delaware limited liability company and THE CITY OF FREDERICKSBURG ("**LANDLORD**").

A. LANDLORD holds title to an 18-hole golf course facility and other amenities known as Lady Bird Johnson Municipal Golf Course, including clubhouse, food and beverage operations, and all improvements and business operations thereof or in connection therewith ("**Golf Course Facility**"). This legal boundary of the Golf Course Facility is found on Exhibit "C".

B. LANDLORD is in need of a professional manager of the complete operation of the Golf Course Facility, including, but not limited to, administration of all receipts and disbursements, operation and maintenance of the golf course, clubhouse, related facilities and equipment golf course, marketing, sales and membership development.

C. LANDLORD desires that TOUCHSTONE to enter into to this Agreement to authorize TOUCHSTONE to provide the administrative services which are necessary for the operations of the Golf Course Facility in a professional manner with budgets and operations structured to attempt to accomplish LANDLORD's financial needs.

D. TOUCHSTONE has agreed to provide such services on the terms and conditions herein contained.

I.
BASIC TERMS

A. Basic Terms:

1. Lease Term: Five (5) years, beginning January 1, 2018 and ending December 31, 2022, (the "**Initial Term**") unless extended as provided.

2. Extension: One (1) five year extension option of the Initial Term ("**Renewal Term'**) exercisable by TOUCHSTONE, provided the following conditions have been met, by TOUCHSTONE giving written notice exercising such option at least ninety (90) days prior to the end of the Initial Term. The condition which permit such exercise by TOUCHSTONE is that the Golf Course Facility has achieved positive EBITDA for the period ending September 30 of the fifth year of the Initial Term. Otherwise the extension shall be by mutual agreement.

3. Administrative Fee: $5,000 per month.

4. Incentive Fee: In addition to the Administrative Fee as provided for above, TOUCHSTONE shall be paid an incentive fee (the "**Incentive Fee**") based on increases/improvements in Net Operating Income ("**NOI**") as such figure is calculated pursuant to Exhibit "B" (Sample Incentive Fee Calculation). The incentive fee for each Incentive Fee Period shall equal twenty percent (20%) of the improvement in NOI over the NOI for the preceding Incentive Fee Period. As used herein, "Incentive Fee Period" shall mean the calendar year.

5. Lease Payment to LANDLORD: It is the intent of the parties to transition from the payment of the Administrative Fee and the Incentive Fee to a lease payment to LANDLORD to be based on a division of positive Golf Course Facility Cash Flow as set forth below. Upon the Golf Course Facility generating positive Cash Flow (as such term is defined below) for a full calendar year in an amount of equal to or great than $100,000, LANDLORD shall receive 70% of such Cash Flow ("**LANDLORD's Lease Payment**") and TOUCHSTONE shall receive the lesser of (i) $60,000 and (ii) 30% of such Cash Flow ("**TOUCHSTONE's Lease Payment**"). In any period for which TOUCHSTONE is paid TOUCHSTONE'S Lease Payment, TOUCHSTONE's Incentive Fee for such Incentive Fee Period shall not apply.

In any year after positive Cash Flow of $100,000 or more was achieved in which Cash Flow is less than $100,000, for the following period TOUCHSTONE would earn its Administrative Fee and Incentive Fee, if any. Touchstone's Lease Payment for the prior year shall be excluded for the purposes of calculating the Incentive Fee for the current year. In no event shall Touchstone earn less than its Administrative Fee, plus any Incentive Fee.

Payment of TOUCHSTONE'S Incentive Fees and all Lease Payments shall occur within sixty (60) days of each calendar year-end after all financial statements for such period are finalized and approved. LANDLORD shall be responsible for maintaining adequate working capital in the Golf Course Facility operating account to fund TOUCHSTONE'S Incentive Fee, LANDLORD's Lease Payment and TOUCHSTONE's Lease Payment.

"**Cash Flow**" shall mean all revenue, less operating expenses, interest expense, and capital lease payments. Operating expenses shall exclude any Incentive Fee that is earned but not payable because Touchstone is entitled to Touchstone Lease Payment for such year. Capital injections by LANDLORD for the period, if any, shall be excluded from the calculation of Cash Flow. Capital expenditures by LANDLORD shall also be excluded from the calculation of Cash Flow.

6. Facility Description: 18-hole golf course, _____ square foot clubhouse, and _____.

7. Delivery Date for initial operating budget, business plan and five (5) year facility improvement plan: February 15, 2018.

8. Delivery Date for subsequent annual operating budgets, business plans and facility improvement plans (as applicable): On or before August 1st of each year.

9. Special Provisions:

(a) Liquor License: LANDLORD currently holds a liquor license for the Golf Course Facility (the "**Liquor License**") issued by the Texas Alcoholic Beverage Commission (the "**TABC**"). Unless the LANDLORD and TOUCHSTONE mutually agree otherwise, LANDLORD shall continue to hold the Liquor License throughout the term and all alcoholilc beverage sold at the Golf Course Facility shall be purchased in the LANDLORD'S name from licensed Texas distributors and the Golf Course Facility shall be operated in compliance with the rules and regulations of the TABC.

10. Addresses for Notices:

If to Touchstone:	Mr. Stephen T. Harker President and Chief Executive Officer Touchstone Golf, LLC 1052 Overlook Road Berkeley, California 94708 E-mail: sharker@touchstonegolf.com
and	Mr. Douglas J. Harker Executive Vice President Touchstone Golf, LLC 11612 Bee Cave Road, Suite 150 Austin, Texas 78738 E-mail: dharker@touchstonegolf.com
If to LANDLORD:	The City of Fredericksburg Attention: Mayor 126 West Main Street Fredericksburg, Texas 78624 E-mail: _____
Copy to:	The City of Fredericksburg Attention: City Manager 126 West Main Street Fredericksburg, Texas 78624 E-mail: _____

The singular includes the plural and words importing one gender include the other gender.

11. The headings in this Agreement are for convenience only and shall not affect its interpretation.

II.
REPRESENTATIONS AND RESPONSIBILITIES

Each party hereby warrants and represents that it has full authority to enter into this Agreement and to perform hereunder. Each party agrees to cooperate with the other and its officers, employees, agents and contractors in connection with this Agreement.

III.
POWERS AND RESPONSIBILITIES OF TOUCHSTONE

A. LANDLORD hereby leases the Golf Course Facility to TOUCHSTONE and TOUCHSTONE hereby accepts such lease on the terms and conditions herein contained. Without limiting the generality of the foregoing, TOUCHSTONE shall provide to LANDLORD the services more particularly set out in this Section III.

B. TOUCHSTONE will operate the Golf Course Facility in a good, workmanlike and professional manner by:

1. Provide day-to-day management and oversight of operation of the Golf Course Facility;

2. Arranging for the employment of competent management that are trained in the necessary facets of Golf Course Facility management, with sufficient experience in the Golf Course Facility industry to oversee management of the Golf Course Facility;

3. Arranging for the employment of a competent staff and deploying such staff and other resources to insure proper care of the buildings, grounds and Golf Course Facility;

4. Managing all hiring, training and termination of all Golf Course Facility management and personnel, including administering all labor relations. The general manager shall be subject to the approval of LANDLORD. All personnel of the Golf Course Facility shall be employees of TOUCHSTONE or its affiliate;

5. Oversee the accounting process including planning and budgeting; daily and monthly sales reporting, producing monthly financial statements; processing all expenses for payment; reviewing monthly cash flow statements; bank account reconciliations, and procession payroll;

6. Preparing and maintaining accurately in all material respects the books, accounts, and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility;

7. Oversee the planning and implementation of all marketing programs, including developing and executing a business plan (including, if applicable to the Golf Course Facility, a lodging/golf package plan, tournament/catering event sales plan, e-marketing, promoting the food and beverage operation, implementing pricing and revenue management techniques, and placing appropriate media/advertising;

8. Arranging for the purchase of such supplies and equipment as is reasonably necessary in order to operate the Golf Course Facility consistent with the calendar year budget, business plan, and facility improvement plan and to the extent not included in the calendar year budget, business plan, and facility improvement plan approved by the LANDLORD, to seek appropriate approval of the LANDLORD in compliance with LANDLORD'S acquisition policy;

9. Maintaining the golf course and all of its facilities in a condition consistent with quality levels defined in the calendar year budget, business plan, and facility improvement plan;

10. Coordinating with LANDLORD to cause the Golf Course Facility to operate in compliance with applicable laws and regulations;

11. Overseeing all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Course Facility and coordinate such operations with the City Manager;

12. Implementation of Touchstone Golf's national accounts relationships, purchase supplies and equipment, as needed, to operate the Golf Course Facility; and

13. Implementation of the Touchstone Golf Foundation to enhance guest service and community outreach.

C. Subject to any provisions to the contrary herein contained, TOUCHSTONE may sublease the whole or any part of the performance of its obligations and duties herein described to any wholly-owned subsidiary of TOUCHSTONE, or to any other person, firm or corporation approved by LANDLORD. The subleasing of the whole or any part of its obligations and duties as aforesaid shall not relieve TOUCHSTONE from liability for the performance of such obligations and duties before or after such sublease.

D. For the term of this Agreement, LANDLORD will carry reasonable amounts of liability and property and contents insurance insuring all Golf Course Facility assets and operations, including improvements now or hereafter located on the Golf Course Facility real estate, against loss or damage by fire and other casualty, including theft, vandalism and malicious mischief, and such other risks common to Golf Course Facility properties. LANDLORD will also provide other insurance coverage as it considers necessary and normal for the operation of the Golf Course Facility, including but not limited to worker's compensation, automobile liability and liquor liability insurance/DRAM shop insurance. LANDLORD at its discretion may provide crime and business interruption coverage. To the extent available, all of the foregoing insurance policies, shall include waivers of subrogation and shall provide coverage from cross liability among co-insureds and shall name TOUCHSTONE as an additional insured.

E. Unless otherwise directed by LANDLORD all contracts and agreements which relate specifically to the Golf Course Facility shall be entered into by and in the name of LANDLORD. No contract or agreement shall be entered into without LANDLORD approval unless in accordance with the calendar year budget, business plan, and facility improvement plan budget or, in the alternative, terminable on thirty (30) days' notice. TOUCHSTONE shall

provide LANDLORD copies of all such contracts and agreements which are binding upon or obligate LANDLORD within ten (10) business days of their execution.

F. TOUCHSTONE shall pay promptly all operating expenses of the Golf Course Facility unless the amounts thereof are in dispute. In addition, TOUCHSTONE will calculate any moneys or fees due TOUCHSTONE in accordance with this Agreement. TOUCHSTONE is authorized to pay its fees and expenses owing under this Agreement from the bank account utilized to pay operating expenses for the Golf Course Facility. No director or officer of TOUCHSTONE shall have any interest in any concession at the Golf Course Facility nor in any contract for the Golf Course Facility without approval by the LANDLORD or its designee. LANDLORD shall designate bank account(s) necessary to fulfill the payment of expenses and shall authorize TOUCHSTONE and Golf Course Facility employees, as necessary, to make deposits and authorize disbursements from such accounts which authorization shall be presumed for individuals named on bank resolutions and/or signature cards. LANDLORD shall approve the individuals authorized to make such disbursements in writing upon submission of a request for designees by TOUCHSTONE.

G. TOUCHSTONE does not give any general or specific guarantee as to the profitability of the Golf Course Facility, the attendance thereat or the revenues therefrom.

H. Upon expiration of the term of this Agreement, or upon the prior termination of this Agreement, and in any year prior to such expiration or termination, TOUCHSTONE agrees and covenants to cooperate fully with LANDLORD or LANDLORD's designated successor tenant or manager (subject to compliance with the restrictions elsewhere in this Agreement) in the smooth and businesslike transfer of the operations of Golf Course Facility including but not limited to assignment of accounts, contracts, policies, licenses, permits and improvements in connection with the Golf Course Facility to LANDLORD or LANDLORD's designees, except such proprietary rights as to which TOUCHSTONE has the sole or exclusive rights, and TOUCHSTONE agrees and covenants to execute all documents required or convenient to accomplish any such transfer in a timely, effective and efficient manner. On the expiration or on the termination of this Agreement for any reason, all Golf Course Facility property and interests therein, including cash, accounts, books, records, contracts; policies; licenses, permits and improvements in the Golf Course Facility property, except proprietary rights as to which TOUCHSTONE has the sole and exclusive rights and property as to which the parties have agreed shall be the property of TOUCHSTONE, will be promptly turned over to LANDLORD and be the property of LANDLORD. LANDLORD shall assume the leases of all equipment located at the Golf Course Facility unless TOUCHSTONE elects otherwise in writing. TOUCHSTONE shall execute and deliver to LANDLORD all documents necessary to legally effectuate each of the transactions. Unless otherwise agreed in writing by the parties hereto, TOUCHSTONE shall remove its personnel and personal property from the Golf Course Facility upon such expiration or termination. Upon such expiration or termination, TOUCHSTONE shall surrender to LANDLORD all cash and other assets of the Golf Course Facility. The duties of TOUCHSTONE set forth in this Section are expressly conditioned upon LANDLORD'S full payment of the Administrative Fee, any Incentive Fee, any TOUCHSTONE Lease Payment and any fee due upon termination as set forth in this Agreement.

I. TOUCHSTONE shall not make, or suffer to be made, any alterations of the Golf Course Facility or any part thereof if the cost of such alteration in the aggregate would be in excess of $_____ unless already included within the then approved budget (either operating or capital) for the Golf Course Facility without the prior written consent of LANDLORD. TOUCHSTONE shall use its best efforts to keep the Golf Course Facility premises and LANDLORD's property in which such premises are situated free from any liens arising out of any work performed or material furnished to the property, subject only to the right to diligently contest such liens. .

J. TOUCHSTONE shall not discriminate against any employee or applicant for employment because of race, color, creed, sex, age, national origin or non-disqualifying handicap. TOUCHSTONE shall not discriminate because of race, religion, color, ancestry, sex, national origin or non-disqualifying handicap against any person by refusing to furnish such person any service or privilege offered to or enjoyed by the general public, nor shall TOUCHSTONE or its employees publicize the Golf Course Facility in any manner that would directly or inferentially reflect on the acceptability of the patronage of any person because of race, religion, color, ancestry, sex, national origin or non-disqualifying handicap, nor shall the Golf Course Facility be so used.

IV.
ADMINISTRATIVE COMPENSATION

The following payments and consideration shall be made to TOUCHSTONE under this Agreement:

A. The Administrative Fee set forth in Section I to be paid to TOUCHSTONE, with the first payment of the Administrative Fee payable within five (5) days of the execution of this Agreement and thereafter payable monthly in advance during the Lease Term.

B. In addition to the Administrative Fee, TOUCHSTONE will receive the Incentive Fee described in Section I, payable as set forth in the Basic Terms. LANDLORD shall have the right to contest such calculation, but the payment shall be made based on TOUCHSTONE'S calculation, with reservation of the LANDLORD'S right to contest.

C. TOUCHSTONE shall be reimbursed for reasonable out-of-pocket expenses, reasonable travel and lodging expenses as provided for in the applicable budget or as otherwise approved by LANDLORD. Such expenses shall be paid from the bank account utilized to pay operating expenses upon presentation of reasonable documentation of such expense.

V.
PLANNING AND BUDGETS

On or before the dates set forth in Section I, TOUCHSTONE shall have prepared an annual operating and capital budget for the remaining months of the current calendar year and no later than the dates set out in Section I for the subsequent calendar year(s). Until such time that the annual operating budget is complete and submitted to LANDLORD, TOUCHSTONE shall use its best commercially reasonable efforts to operate the Golf Course Facility under the

existing budget framework provided by TOUCHSTONE to LANDLORD or in a manner consistent with the current market position of the Golf Course Facility.

VI.
RECORDS, ACCOUNTS AND REPORTS

A. TOUCHSTONE shall maintain books, accounts and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility accurate in all material respects with periodic reporting to the LANDLORD as may be available utilizing current accounting systems maintained by the Golf Course Facility or its affiliates.

B. TOUCHSTONE shall provide monthly financial statements including a balance sheet, statement of operations and other financial data reasonably requested by LANDLORD no later than twenty-five (25) days following the end of each month, as may be available utilizing current accounting systems maintained by the Golf Course Facility or provided by LANDLORD. TOUCHSTONE is not responsible for the preparation of any state or federal income tax returns of the LANDLORD for the Golf Course Facility.

C. LANDLORD shall have the right, upon request, to examine all books and records and to, at LANDLORD's expense, request an audit.

VII.
RESPONSIBILITY FOR EXPENSES

A. Everything done by TOUCHSTONE pursuant to and in the performance of this Agreement and all expenses incurred by it under this Agreement shall be for and on behalf of LANDLORD. LANDLORD shall pay and be responsible for all costs and expenses of maintaining, operating and supervising the operation of the Golf Course Facility, provided they are in accordance with the contracts and consistent with the approved budget or within permitted variances provided for elsewhere in this Agreement, to include, but not limited to the following:

1. The salaries, fringe benefits, workers compensation insurance and expenses of employees;

2. All costs and expenses of any advertising or business promotion;

3. Costs of goods sold, including inventory and supplies necessary to conduct the business of the Golf Course Facility;

4. All expenditures for capital expenditures, repairs and maintenance, equipment and supplies;

5. Premiums for insurance maintained;

6. All expenses of regulatory compliance, permits, etc., it being specifically agreed that (i) legal fees incurred in connection with regulatory compliance for such liquor licenses, food service, etc. are approved, and (ii) reasonable and necessary legal fees of attorney's retained by LANDLORD or otherwise approved by LANDLORD in

advance, directly related to the operation and protection of the Golf Course Facility and LANDLORD's and TOUCHSTONE'S liability are approved;

7. Cost and expenses of utilities;

8. General and administrative and accounting costs, including forms and checks;

9. If included within the budget, consulting fees for certain expertise (e.g. agronomy) needed to address specific needs of the Golf Course Facility or if not included in the budget, if approved by LANDLORD and

10. Administrative and Incentive Fees and reimbursable expenses of TOUCHSTONE as set forth herein.

TOUCHSTONE acknowledges that expenditures by LANDLORD as required by this Agreement are subject to budget approval and appropriations by LANDLORD in accordance with applicable law.

B. LANDLORD is responsible for providing sufficient funds to cover the operating expenses for the Golf Course Facility. TOUCHSTONE, acting as the tenant of LANDLORD, will deposit all revenues of the Golf Course Facility into an operating account or accounts for the Golf Course Facility and TOUCHSTONE will have authority to draw upon the funds in the account to cover operating expenses. In the event that funds in an account are not sufficient to cover operating expenses, TOUCHSTONE shall advise LANDLORD of the shortfall or potential shortfall and LANDLORD shall deposit additional funds into the appropriate account in a timely manner in order to insure that sufficient funds are available to meet the operational requirements, including the Administrative Fee, of the Golf Course Facility. Touchstone will have no obligation to contribute funds to the accounts of the Golf Course Facility.

C. TOUCHSTONE may cause the Golf Course Facility to incur any expense (i) that is included in the approved annual operating budget; (ii) that is needed to remedy any emergency situation that, in TOUCHSTONE'S professional judgment, is potentially hazardous, unsafe or damaging to the Golf Course Facility or to persons reasonably expected to be present at the Golf Course Facility (e.g., employees, patrons, authorized visitors) ("**Emergency Expenditure**"), as more particularly set forth hereinabove; or (iii) as otherwise expressly approved by LANDLORD. TOUCHSTONE shall not incur any expense that is not consistent with the annual operating budget without the prior written consent of the LANDLORD, except in the case of an emergency (as elsewhere provided in this Agreement) or as otherwise provided in this Agreement. TOUCHSTONE shall not enter into any contract, even if otherwise authorized hereunder, which binds or purports to bind LANDLORD or the Golf Course Facility without the prior written approval of LANDLORD if the term of such contract exceeds the Lease Term unless such contract is terminable on thirty (30) days' notice. Excepting only Emergency Expenditures or expenditures included in the approved budget, TOUCHSTONE shall not incur any single expense, even if otherwise authorized hereunder, which is chargeable to LANDLORD or to the Golf Course Facility if the amount equals or exceeds five thousand dollars ($5,000).

D. The annual operating budget may contain a "contingency" line item in an amount not to exceed three percent (3%) of the total annual operating budget. TOUCHSTONE may reallocate portions of the contingency to other items in the annual operating budget. TOUCHSTONE may also reallocate among line items, provided the total expenses to be incurred do not increase. No other reallocations of line items may be made by TOUCHSTONE without the prior written consent of LANDLORD. Unbudgeted minor expenditures unforeseen at the time of preparation of the annual operating budget, and reasonably deemed necessary by TOUCHSTONE, may be made without LANDLORD's authorization except that unbudgeted expenditures in excess of 5% of any major subtotaled line item's budget may not be made without LANDLORD's written approval in advance. In the event such request is submitted and LANDLORD does not respond within five (5) business days of receipt of the request, LANDLORD shall be deemed to have consented to such unbudgeted expenditures.

E. To the extent employees remain employed by an affiliate of LANDLORD, the Golf Course Facility will also be responsible for reimbursing such affiliate for all costs of such employees, including but not limited to salaries, wages, benefits, taxes, insurance and payroll processing costs, as applicable.

VIII.
TERMINATION

A. The term of this Agreement shall be for the Initial Term plus Renewal Terms, if applicable.

B. This Agreement may sooner be terminated:

1. At any time by mutual agreement between TOUCHSTONE and LANDLORD.

2. Except as to matters subject to subsection 3 below as to which there is no cure period, upon the failure of the defaulting party to correct a material breach of this Agreement after the non-defaulting party has given not less than fifteen (15) days written notice of the default in writing to the defaulting party. In the event the material breach is of a type that requires longer than fifteen (15) days to cure, the defaulting has taken steps before the end of the fifteen (15) day period to remedy the breach as are proper and diligent in all the circumstances and the defaulting party is diligently pursuing such cure. Any notice given pursuant to this subsection shall specify the full particulars of the default alleged.

3. Immediately upon written notice from TOUCHSTONE to LANDLORD in the event LANDLORD fails to make any required deposit to pay expenses of the Golf Course Facility (including the Administrative, Incentive Fee or Lease Payment) as required by this Agreement.

C. In the event of termination of this Agreement, except pursuant to paragraphs B2 or B3, LANDLORD agrees LANDLORD shall not hire, for a period of one (1) year following such termination, any general manager or golf course superintendent placed at the Golf Course

Facility by TOUCHSTONE, without the express written consent of TOUCHSTONE which may be granted or withheld in TOUCHSTONE'S sole and absolute discretion.

IX.
INDEMNITY

TOUCHSTONE shall not be liable to the LANDLORD for any loss or damage other than to the extent caused by TOUCHSTONE'S gross negligence or willful misconduct or TOUCHSTONE'S material breach of this Agreement and the LANDLORD both waives and releases TOUCHSTONE, its officers and employees and any other affiliated entities from any such liability for all injury, loss, damages, costs and expenses (including attorney's fees) collectively, the ("**damages**") arising from any cause whatsoever arising out of or resulting from TOUCHSTONE actions under this Agreement, except to the extent such damages shall be caused by TOUCHSTONE'S own gross negligence, willful misconduct or TOUCHSTONE'S material breach of this Agreement. LANDLORD, to the extent permitted by applicable law, does hereby indemnify and save harmless TOUCHSTONE, its officers and employees and any other affiliated entities from any such liability for all injury, loss, damages, costs and expenses (including attorney's fees) collectively, the ("**damages**") arising from any cause or condition related to the Golf Course Facility, whatsoever arising out of or resulting from TOUCHSTONE undertaking its duties under this Agreement, except to the extent such damages shall be caused by TOUCHSTONE'S gross negligence, willful misconduct or TOUCHSTONE'S material breach of this Agreement. TOUCHSTONE hereby agrees to indemnify and save harmless LANDLORD, its officers and employees and any other affiliated entities from any such liability for all injury, loss, damages, costs and expenses (including attorney's fees) collectively, the ("**damages**") to the extent such damages shall be caused by TOUCHSTONE'S own gross negligence, willful misconduct or TOUCHSTONE'S material breach of this Agreement.

X.
REPRESENTATIONS AND WARRANTIES

A. LANDLORD represents and warrants to TOUCHSTONE as follows:

1. LANDLORD is duly organized and validly existing under the laws of the state of its creation and is qualified to do business and is in good standing in the state in which the Golf Course Facility is located, with full power and authority to enter into and execute this Agreement and to consummate the transactions contemplated hereby. LANDLORD has received all requisite partner or corporate approvals necessary for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and this Agreement constitutes the legal, valid and binding obligation of LANDLORD, enforceable against LANDLORD in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions.

2. Except as disclosed in writing to TOUCHSTONE prior to the execution hereof or disclosed on Exhibit "A", to the best of LANDLORD's knowledge, LANDLORD has not received written notice from any governmental authority that the

existing use, maintenance and operation of the Golf Course Facility or any portion thereof violates any law or ordinance which has not been cured and to the best of LANDLORD'S knowledge, the Golf Course Facility is currently in compliance with applicable laws and ordinances, including without limitation, applicable liquor license rules and regulations. LANDLORD has not received any written notice from any mortgagee, insurance company, fire marshal or building inspector requiring or requesting the performance of any work or alterations to the Improvements which has not been performed.

3. LANDLORD has filed all federal, state, county, municipal and city income and other tax returns and reports required to have been filed by LANDLORD with respect to the Golf Course Facility, and has paid all taxes which have become due pursuant to such returns or pursuant to any assessments received by LANDLORD or is contesting such taxes in accordance with the requirements of applicable law.

4. There are no actions, suits, or proceedings pending or, to the best of LANDLORD's knowledge, threatened in any court or before or by any governmental authority against or affecting LANDLORD related to the Golf Course Facility, except as disclosed in Exhibit "A" attached hereto and made a part hereof.

5. The LANDLORD is not aware of any contracts or other obligations outstanding for the sale, exchange or transfer of the Golf Course Facility or any portion thereof.

B. TOUCHSTONE represents and warrants to LANDLORD as follows:

1. TOUCHSTONE is duly organized and validly existing under the laws of the state of its creation as a Delaware limited liability company, and is qualified to do business and is in good standing in the state in which the Golf Course Facility is located, with full power and authority to enter into and execute this Agreement and to consummate the transactions contemplated hereby. TOUCHSTONE has received all requisite partner or corporate approvals necessary for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and this Agreement constitutes the legal, valid and binding obligation of TOUCHSTONE, enforceable against TOUCHSTONE in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting debtors' and creditors' rights generally and general equitable provisions.

XI.
CONFIDENTIALITY

A. , each party at all times hereafter shall attempt to preserve the secrecy and confidentiality of all the other party's confidential information (as defined hereafter) as it relates to the operation of Golf Course Facility, shall not attempt to use or in any way appropriate the same for its own use or benefit and shall not knowingly disclose or knowingly permit to be disclosed to any person (other than employees of LANDLORD and TOUCHSTONE)

confidential information without the prior written consent of the applicable party, except as required by law, including without limitation the applicable public disclosure requirements of applicable law with respect to LANDLORD. Nothing contained in this Agreement shall obligate either party to transfer to the other party any confidential information at any time, including,' upon termination of this Agreement. "Confidential information" means all information and data related to TOUCHSTONE, used by TOUCHSTONE in connection with TOUCHSTONE'S obligations hereunder and related to other golf course facilities of TOUCHSTONE, which information and data relates to TOUCHSTONE trade secrets, ideas, know-how, improvements, inventions, technologies or internal business facts (including financial and operating information), except such information or data which is generally available to the public without LANDLORD's fault or is acquired in good faith by LANDLORD from a third party who LANDLORD has no reason to believe acquired the same in other than good faith and' who is not under any obligation to TOUCHSTONE in respect thereof.

B. TOUCHSTONE is permitted to identify its relationship with the Golf Course Facility in its advertising and marketing literature and website, including a photograph of the Golf Course Facility acceptable to LANDLORD, with a generic reference stating that the Golf Course Facility, is a client (or upon expiration of the Lease Term, was a client) of TOUCHSTONE.

XII.
FORCE MAJEURE

A. For the purposes of this Section XII, "force majeure" shall mean an act of God, strike, lockout or other industrial disturbance, act of a public enemy, war blockade, public riot, lightning, fire, storm, earthquake, flood, explosion, governmental restraint, breakage or accidents to equipment and any other cause, whether of the kind specifically enumerated above or otherwise, which shall not reasonably be within the control of the party claiming suspension. Force Majeure does not include any financial incapacity.

B. If TOUCHSTONE or LANDLORD is unable, wholly or in part, by reason of force majeure (as herein defined) to carry out an obligation under this Agreement, such obligation shall be suspended so far as it is affected by such force majeure during the continuance thereof. The party unable to perform shall give the other party prompt notice of such force majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing such obligation. The party unable to perform shall use all possible diligence to remove such force majeure as quickly as possible.

C. The requirement that any "force majeure" shall be removed with all possible diligence shall not require the settlement by the party unable to perform due to strikes, lockouts or other labor disputes or the meeting of any claims of or demands by any supplier or government entity contrary to the wishes of TOUCHSTONE or LANDLORD or which may be harmful to LANDLORD or to TOUCHSTONE.

XIII.
NO WAIVER

No delay or failure on the part of any party in exercising airy right hereunder shall impair any such right or any remedy of the party so delaying or failing, nor shall it be construed to be a waiver of any continuing breach or default hereunder or any acquiescence therein or of any similar breach or default thereafter occurring, nor shall any waiver of any single breach or default hereunder be deemed a waiver of any other breach or default theretofore or thereafter occurring.

XIV.
AMENDMENTS

This Agreement can be changed, waived, released or discharged only by written amendment executed by the parties hereto.

XV.
SEVERABILITY

A. If it is held by a court of competent jurisdiction that:

1. any part of this Agreement is void, voidable, illegal or unenforceable; or

2. this Agreement would be void, voidable, illegal or unenforceable unless any part of this Agreement were severed from this Agreement;

3. that part shall be severable from and shall not affect the continued operation of the rest of this Agreement.

B. The provisions of Section XV(A) shall not apply if the part of the Agreement affected is a substantive part in which event the parties shall in good faith renegotiate the provisions of the part so affected.

XVI.
ASSIGNMENT

A. This Agreement shall be binding on all parties hereto and their respective successors and assigns.

B. A party shall not assign its rights and shall not be (except as provided herein) released from its obligations in, to, or under, this Agreement.

XVII.
COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which, when so executed, shall be deemed to be an original and such counterparts shall together constitute an agreement.

XVIII.
NOTICES

Any notice, document or other item to be given delivered, furnished or received under this Agreement shall be deemed given, delivered, furnished or received when given in writing and personally delivered to an officer of the applicable party, sent by e-mail, receipt of which is confirmed, or upon delivery by a national overnight courier service to the addresses set forth in this Agreement or such other address as the party has notified the other party is their current delivery address.

XIX.
MISCELLANEOUS

A. The relationship between LANDLORD and TOUCHSTONE is that of landlord and tenant, and except as herein expressly provided, neither party is granted any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of or in the name of the other or to bind the other in any manner or thing whatsoever.

B. This Agreement constitutes the entire agreement between the parties as to the leasing of the Golf Course Facility, and all prior or contemporaneous, oral or written agreements or instruments are merged herein.

C. The remedies provided herein for breach of this Agreement are not exclusive; and, in event of breach, the parties hereto have all the remedies provided by law.

D. This Agreement is not intended and does not create any rights or interest in persons not a party hereto.

E. In those circumstances provided herein in which approval by a party is required, such approval shall not be unreasonably withheld, conditioned or delayed.

XX.
APPLICABLE LAW

This Agreement is subject to the law of the state in which the Golf Course Facility is located and the parties submit to the jurisdiction of the courts of that State.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have signed this agreement on the date first hereinbefore written.

TOUCHSTONE GOLF, LLC, a Delaware limited liability company

By: _____
Stephen T. Harker, Chief Executive Officer

THE CITY OF FREDERICKSBURG

By: _____
Name: _____
Title: _____

GOLF COURSE NEW LEASE AGREEMENT

LIST OF EXHIBITS

Exhibit "A" Known Litigation and Other Matters

Exhibit "B" Sample Incentive Fee Calculation

Exhibit "C" Property Description

EXHIBIT "A"

KNOWN LITIGATION AND OTHER MATTERS

EXHIBIT "B"

SAMPLE INCENTIVE FEE CALCULATION

Incentive Calculation	
Current Year Net Operating Income ("**NOI**")	-250,000
Prior Year New Operating Income	-500,000
Improvement	$250,000
Incentive Percentage	20%
Incentive Fee to Touchstone Golf	$50,000
Note: Not actual numbers, for example sake only.	

"NOI" = Earnings before the deduction of interest expense, taxes, depreciation and amortization. The calculation equates to revenue minus operating expenses. Operating expenses include, but are not limited to, property taxes, operating leases and administrative fees, but excluding any prior year or current year incentive fees for purposes of an accurate comparison of improvement. Any capital injections by the LANDLORD shall not be included as revenue.

EXHIBIT "C"

PROPERTY DESCRIPTION

[TO BE ADDED]

GOLF COURSE
NET LEASE AGREEMENT

SUMMARY OF TERMS

BASIC TERMS

1. Lease Term: Five (5) years, beginning January 1, 2018 and ending December 31, 2022, (the "**Initial Term**") unless extended as provided.

2. Extension: One (1) five year extension option of the Initial Term ("**Renewal Term'**) exercisable by TOUCHSTONE if the Golf Course Facility has achieved positive EBITDA for the period ending September 30 of the fifth year of the Initial Term. Otherwise the extension shall be by mutual agreement.

3. Administrative Fee: $5,000 per month.

4. Incentive Fee: 20% of the annual improvement in NOI. For the first period, it will be 20% of the improvement in NOI when comparing the 9 months ending 9/30/18 to the 9 months ending 9/30/17.

5. Lease Payment to LANDLORD: Upon the Golf Course Facility generating positive Cash Flow for a full calendar year in an amount of equal to or great than $100,000, LANDLORD shall receive 70% of such Cash Flow and TOUCHSTONE shall receive the lesser of (i) $60,000 and (ii) 30% of such Cash Flow. In any period for which TOUCHSTONE is paid TOUCHSTONE'S Lease Payment, TOUCHSTONE's Incentive Fee for such Incentive Fee Period shall not apply.

7. Delivery Date for initial operating budget, business plan and five (5) year facility improvement plan: February 15, 2018.

8. Delivery Date for subsequent annual operating budgets, business plans and facility improvement plans (as applicable): On or before August 1st of each year.

POWERS AND RESPONSIBILITIES OF TOUCHSTONE

1. Provide day-to-day management and oversight of operation of the Golf Course Facility;

2. Arranging for the employment of competent management that are trained in the necessary facets of Golf Course Facility management, with sufficient experience in the Golf Course Facility industry to oversee management of the Golf Course Facility;

3. Arranging for the employment of a competent staff and deploying such staff and other resources to insure proper care of the buildings, grounds and Golf Course Facility;

4. Managing all hiring, training and termination of all Golf Course Facility management and personnel, including administering all labor relations. The general manager shall be subject to the approval of LANDLORD. All personnel of the Golf Course Facility shall be employees of TOUCHSTONE or its affiliate;

5. Oversee the accounting process including planning and budgeting; daily and monthly sales reporting, producing monthly financial statements; processing all expenses for payment; reviewing monthly cash flow statements; bank account reconciliations, and procession payroll;

6. Preparing and maintaining accurately in all material respects the books, accounts, and records of the operations of the Golf Course Facility and all transactions related to the Golf Course Facility;

7. Oversee the planning and implementation of all marketing programs, including developing and executing a business plan (including, if applicable to the Golf Course Facility, a lodging/golf package plan, tournament/catering event sales plan, e-marketing, promoting the food and beverage operation, implementing pricing and revenue management techniques, and placing appropriate media/advertising;

8. Arranging for the purchase of such supplies and equipment as is reasonably necessary in order to operate the Golf Course Facility consistent with the calendar year budget, business plan, and facility improvement plan and to the extent not included in the calendar year budget, business plan, and facility improvement plan approved by the LANDLORD, to seek appropriate approval of the LANDLORD in compliance with LANDLORD'S acquisition policy;

9. Maintaining the golf course and all of its facilities in a condition consistent with quality levels defined in the calendar year budget, business plan, and facility improvement plan;

10. Coordinating with LANDLORD to cause the Golf Course Facility to operate in compliance with applicable laws and regulations;

11. Overseeing all other matters reasonably necessary for the efficient performance of the operations in connection with the Golf Course Facility and coordinate such operations with the City Manager;

12. Implementation of Touchstone Golf's national accounts relationships, purchase supplies and equipment, as needed, to operate the Golf Course Facility; and

13. Implementation of the Touchstone Golf Foundation to enhance guest experience.

RECORDS, ACCOUNTS AND REPORTS

TOUCHSTONE shall provide monthly financial statements including a balance sheet, statement of operations and other financial data reasonably requested by LANDLORD no later than twenty-five (25) days following the end of each month, as may be available utilizing current accounting systems maintained by the Golf Course Facility or provided by LANDLORD. TOUCHSTONE is not responsible for the preparation of any state or federal income tax returns of the LANDLORD for the Golf Course Facility.