



# Lewisville City Council

The agenda and backup items follow in one continuous document. However, to view documents individually, click on the bookmark tab at the left of the screen. A list of all documents contained in the packet should appear in a screen to the left. If it does not, click on the “Show/Hide Navigation Pane” button in the toolbar at the top of the page.



Click on the item you would like to view, and it will appear in the window to the right.

## A G E N D A

### LEWISVILLE CITY COUNCIL CALLED-SPECIAL MEETING SEPTEMBER 29, 2008

LEWISVILLE CITY HALL  
151 WEST CHURCH STREET  
LEWISVILLE, TEXAS 75057

#### REGULAR SESSION – 6:00 P.M.

---

Call to Order and Announce a Quorum is Present.

#### REGULAR SESSION - 6:00 P.M.

- A. **INVOCATION:** Mayor Carey
- B. **PLEDGE TO THE FLAG:** Mayor Pro Tem Thornhill
- C. **VISITORS/CITIZENS FORUM:** At this time, any person with business before the Council not scheduled on the agenda may speak to the Council. No formal action can be taken on these items at this meeting.
- D. **CONSENT AGENDA:** All of the following items on the Consent Agenda are considered to be self-explanatory by the Council and will be enacted with one motion. There will be no separate discussion of these items unless a Council Member or citizen so request. For a citizen to request removal of an item, a speaker card must be filled out and submitted to the City Secretary.
  - 1. **Approval of a Waiver of Amphitheatre Rental Fees for the Southern Denton County Neighbor to Neighbor Reception Being Held on October 16, 2008.**

**ADMINISTRATIVE COMMENTS:**

A Southern Denton County Neighbor to Neighbor reception is being held at the amphitheatre on October 16, 2008 from 5:30 p.m. to 10 p.m. Rental of the Amphitheatre is \$125 per hour (non-resident rate) with a three hour minimum, plus a \$300 deposit. They are requesting that the rental fee for this event be waived; however, they will be submitting payment for the \$300 deposit.

**RECOMMENDATION:**

That the City Council approve waiving the amphitheatre rental fees for the Southern Denton County Neighbor to Neighbor reception being held on October 16, 2008.

**E. REGULAR HEARINGS:**

**2. Consideration of an Ordinance Adopting the FY 2008-2009 Operating Budget.**

**ADMINISTRATIVE COMMENTS:**

The proposed operating budget for all funds has been prepared by staff and reviewed by the City Council. Approval of this ordinance adopts an operating budget for all funds beginning October 1, 2008 and ending September 30, 2009. Included in this year's ordinance is clarifying language regarding capital project funding. The City's practice has been to roll over the current appropriation balance in all capital projects as of September 30 to October 1. The ordinance formalizes this practice. A draft budget document is available for public review at the City Secretary's Office, the Library, and on the City website.

**RECOMMENDATION:**

That the City Council approve the proposed ordinance adopting the FY 2008-2009 Operating Budget.

**3. Consideration of a Vote to Ratify the Property Tax Revenue Increase Reflected in the FY 2008-2009 Operating Budget.**

**ADMINISTRATIVE COMMENTS:**

State law now requires that the adoption of a budget that will raise more revenue from property taxes than in the previous year also requires a separate vote of the governing body to ratify the property tax increase reflected in the budget. The FY 2008-09 budget will raise more total property taxes than last year's budget by \$1,420,277 (includes General, TIF and Debt Service funds).

**RECOMMENDATION:**

That the City Council ratify the property tax revenue increase reflected in the 2008-2009 Operating Budget.

**4. Consideration of an Ordinance Adopting the FY 2008-2009 Tax Rate.**

**ADMINISTRATIVE COMMENTS:**

This action will adopt the City's annual ad valorem tax rate for all taxable property at \$0.44021 per \$100 of assessed valuation. The rate combines the following: Maintenance and Operations \$0.32156 and Principal and Interest on Debt \$0.11865 for a total tax rate of \$0.44021. While the proposed tax rate for FY 2008-2009 is less than the 2007-2008 tax rate of \$0.44050, the proposed tax rate exceeds the effective tax rate of \$0.42922. Therefore, specific language is required in the ordinance, the vote on this ordinance must be a record vote, and the motion to adopt the ordinance must be made in the following form: "I move that property taxes be increased by the adoption of a tax rate of \$0.44021 per \$100 of assessed valuation."

**RECOMMENDATION:**

That the City Council approve the proposed ordinance adopting the FY 2008-2009 tax rate with the following motion: "I move that property taxes be increased by adoption of a tax rate of \$0.44021 per \$100 of assessed valuation through approval of the proposed ordinance."

**5. Consideration of an Amended Lease and Management Agreement With SCI Lewisville Hotel, LTD; Consideration of an Assignment and Assumption of Lease and Management Agreement and an Assignment and Assumption of Tax Abatement Agreement With SCI Lewisville Hotel, LTD and Apple Nine Hospitality Ownership, Inc.; and Consideration of an Allonge to Note With Apple Nine Hospitality Ownership, Inc.**

**ADMINISTRATIVE COMMENTS:**

The City entered into a Lease and Management Agreement with SCI Lewisville Hotel, LTD on April 4, 2005 for the development and operation of the Lewisville Convention Center and the Hilton Garden Inn Hotel. The hotel and center are being purchased by Apple Nine Hospitality, a real estate investment trust (REIT) specializing in hotel acquisitions. The original agreement allows assignment of SCIs rights and obligations (including payment of a note in favor of the City) with the City's permission (not unreasonably withheld). Several clarifying amendments to the original lease have been made also.

**RECOMMENDATION:**

That the City Council approve the Amended Lease and Management Agreement with SCI Lewisville Hotel, LTD; approve the Assignment and Assumption of Lease and Management Agreement and the Assignment and Assumption of Tax Abatement Agreement with SCI Lewisville Hotel, LTD and Apple Nine Hospitality Ownership, Inc.; and approve the Allonge to Note with Apple Nine Hospitality Ownership, Inc.

F. **REPORTS:**

G. **CLOSED SESSION:** In Accordance with Texas Government Code, Subchapter D,

1. Section 551.072 (Real Estate): Property Acquisition
2. Section 551.087 (Economic Development): Deliberation Regarding Economic Development Negotiations

H. **RECONVENE** into Regular Session and Consider Action, if Any, on Items Discussed in Closed Session.

I. **ADJOURNMENT**

The City Council reserves the right to adjourn into closed session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Section 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development).

**MEMORANDUM**

**TO:** Mayor Gene Carey  
Mayor Pro Tem David Thornhill  
Deputy Mayor Pro Tem Lathan Watts  
Councilman Greg Tierney  
Councilman Rudy Durham  
Councilman Dean Ueckert

**FROM:** Claude King, City Manager

**DATE:** September 29, 2008

**SUBJECT:** **Approval of a Waiver of Amphitheatre Rental Fees for the Southern Denton County Neighbor to Neighbor Reception Being Held on October 16, 2008.**

**BACKGROUND**

A Southern Denton County Neighbor to Neighbor reception is being held on October 16, 2008 from 5:30 p.m. to 10 p.m. Rental of the Amphitheatre is \$125 per hour (non-resident rate) with a three hour minimum, plus a \$300 deposit. They are requesting that the rental fee for this event be waived; however, they will be submitting payment for the \$300 deposit

**RECOMMENDATION**

It is City staff's recommendation that the City Council approve waiving the amphitheatre rental fees for the Southern Denton County Neighbor to Neighbor reception being held on October 16, 2008

**MEMORANDUM**

**TO:** Mayor Gene Carey  
Mayor Pro Tem David Thornhill  
Deputy Mayor Pro Tem Lathan Watts  
Councilman Greg Tierney  
Councilman Rudy Durham  
Councilman Dean Ueckert

**FROM:** Claude King, City Manager

**DATE:** September 29, 2008

**SUBJECT: CONSIDERATION OF AN ORDINANCE ADOPTING THE FY  
2008-09 OPERATING BUDGET**

**BACKGROUND**

This action adopts the City's annual budget for all funds beginning October 1, 2008 and ending September 30, 2009. Any supplements not included in this budget require future City Council approval.

The adopted document will be published within 90 days of Council approval. A draft document with updated fund schedules will be available to the public immediately upon approval.

Included in this year's ordinance is clarifying language regarding capital project funding. The City's practice has been to roll over the current balance in all capital projects as of September 30 to October 1. The ordinance formalizes this practice.

Please contact me if you have additional questions.

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, ADOPTING AND APPROVING A BUDGET FOR THE CITY OF LEWISVILLE, TEXAS FOR THE YEAR BEGINNING OCTOBER 1, 2008, AND ENDING SEPTEMBER 30, 2009; PROVIDING FOR AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.**

**WHEREAS**, a budget for the fiscal year beginning October 1, 2008, and ending September 30, 2009, has been prepared by the City Manager, as Budget Officer for the City of Lewisville; and,

**WHEREAS**, said budget has been presented by the City Manager, together with his budget commentaries as provided for in Article 9 of the City Charter; and,

**WHEREAS**, public notice of the public hearing upon this budget have been duly and legally published as provided for in the City Charter and under the budget statute of the State of Texas; and,

**WHEREAS**, this proposed budget has been filed with the City Secretary; and,

**WHEREAS, FURTHER**, after full and final consideration, two public hearings have been held on said budget and it is in the opinion of the Mayor and City Council that the budget, as filed, is balanced and does meet the requirements of the City of Lewisville for the proper and sustained operation of the services of the City, and should be approved as presented;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:**

**SECTION 1.** The budget for the fiscal year 2008-2009 be adopted and approved, and that the sums of money indicated below be approved as listed, and that the estimate of income and financial support as shown be accepted as proper and sufficient to pay such expenditures and that the City Manager be authorized to transfer funds as needed not exceeding the following total fund appropriations:

<b>General Fund</b>	<b>Expenditures</b>	<b>Debt Service</b>	<b>Total</b>
Non-Departmental	\$1,119,953	-	\$1,119,953
Mayor / Council	\$78,961	-	\$78,961
Administration	\$1,327,756	-	\$1,327,756
Public Records	\$360,623	-	\$360,623
Legal	\$602,440	-	\$602,440
Police Department	\$18,426,237	-	\$18,426,237
Fire Department	\$14,697,319	-	\$14,697,319
Public Services	\$7,162,305	-	\$7,162,305
Parks & Leisure Services	\$6,816,303	-	\$6,816,303
Community Development	\$5,339,307	-	\$5,339,307
Finance	\$1,288,993	-	\$1,288,993
Human Resources	\$728,854	-	\$728,854
Community Relations / Tourism	\$484,137	-	\$484,137
Information Technology	\$1,917,786	-	\$1,917,786
Municipal Court	\$849,460	-	\$849,460
Transfers Out	\$414,907	-	\$414,907
One-Time Expenditures	\$518,002	-	\$518,002
	<b>\$62,133,343</b>	<b>-</b>	<b>\$62,133,343</b>

<b>Utility Fund</b>	<b>Expenditures</b>	<b>Debt Service</b>	<b>Total</b>
Non-Departmental	\$3,188,702	\$7,280,918	\$10,469,620
Public Services	\$14,639,993	-	\$14,639,993
Community Development	\$96,216	-	\$96,216
Finance	\$816,285	-	\$816,285
Transfers Out	\$2,400,000	-	\$2,400,000
	<b>\$21,141,196</b>	<b>\$7,280,918</b>	<b>\$28,422,114</b>

Other Funds	Expenditures	Debt Service	Transfers Out/One Time Expenditures Out of Reserves	Total
Debt Service Fund	-	\$8,064,192	-	\$8,064,192
Hotel / Motel Tax Fund	\$1,766,894	-	-	\$1,766,894
Recreation Fund	\$388,178	-	-	\$388,178
Grant Fund	\$865,085	-	\$7,936	\$873,021
Waters Ridge PID Fund	\$57,160	-	-	\$57,160
Court Security Fund	\$78,268	-	-	\$78,268
Court Technology Fund	\$105,071	-	-	\$105,071
Police/Fire Training Fund	\$13,000	-	-	\$13,000
Law Enf. Ofc. Educ. Stand. Fund	\$13,132	-	-	\$13,132
TIF Fund	\$500	\$349,379	-	\$349,879
Records Management Fund	\$2,636	-	-	\$2,636
Juvenile Case Manager Fund	\$54,421	-	-	\$54,421
Insurance Risk Reserve Fund	\$2,034,569	-	\$101,916	\$2,136,485
Maintenance & Replacement Fund	\$3,409,646	-	\$160,636	\$3,570,282
Asset Forfeiture Fund - State	\$18,500	-	-	\$18,500
Asset Forfeiture Fund - Federal	\$10,000	-	-	\$10,000
Health Insurance Trust Fund	\$5,662,756	-	\$773,200	\$6,435,956
OPEB Liability Trust Fund	\$309,900	-	-	\$309,900
4B Sales Tax Fund	\$1,745,011	\$2,899,978	\$775,000	\$5,419,989

**SECTION 2.** All appropriations shall lapse at the end of the fiscal year.

**SECTION 3.** All capital project appropriation balances as of September 30, 2008 shall roll forward to October 1, 2009.

**SECTION 4. EMERGENCY.** It being for the public welfare that this ordinance be passed creates an emergency and public necessity, and the rule requiring this ordinance be read on three separate occasions be, and the same is, hereby waived, and this ordinance shall now be placed on its third and final reading for passage, and shall be in full force and

effect from and after its passage and approval and publication, as the law in such cases provides.

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 29<sup>th</sup> DAY OF SEPTEMBER, 2008.**

**APPROVED:**

\_\_\_\_\_  
Gene Carey, MAYOR

**ATTEST:**

\_\_\_\_\_  
Julie Heinze, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ronald J. Neiman, CITY ATTORNEY

**MEMORANDUM**

**TO:** Mayor Gene Carey  
Mayor Pro Tem David Thornhill  
Deputy Mayor Pro Tem Lathan Watts  
Councilman Greg Tierney  
Councilman Dean Ueckert  
Councilman Rudy Durham

**FROM:** Claude King, City Manager

**DATE:** September 29, 2008

**SUBJECT:** **Consideration of a Vote to Ratify the Property Tax Revenue Increase Reflected in the FY 2008-2009 Operating Budget.**

**BACKGROUND**

State law now requires that the adoption of a budget that will raise more revenue from property taxes than in the previous year also requires a separate vote of the governing body to ratify the property tax increase reflected in the budget. The FY 2008-09 budget will raise more total property taxes than last year's budget by \$1,420,277 (includes General, TIF and Debt Service funds).

**RECOMMENDATION:**

That the City Council ratify the property tax revenue increase reflected in the 2008-09 Operating Budget.

Please contact me if you have additional questions.

**MEMORANDUM**

**TO:** Mayor Gene Carey  
Mayor Pro Tem David Thornhill  
Deputy Mayor Pro Tem Lathan Watts  
Councilman Greg Tierney  
Councilman Dean Ueckert  
Councilman Rudy Durham

**FROM:** Claude King, City Manager

**DATE:** September 18, 2008

**SUBJECT:** **Consideration of an Ordinance Adopting the FY 2008-2009 Tax Rate**

This action adopts the City's annual ad valorem tax rate for all taxable property at \$0.44021 per \$100 of assessed valuation. The rate must be adopted in two parts:

Maintenance and Operation	\$0.32156
Principal and Interest on Debt	<u>\$0.11865</u>
Total Tax Rate	\$0.44021

The total tax rate for FY 2008-2009 is less than the current fiscal year tax rate of \$0.44050 due to a decrease in the maintenance and operation rate from \$0.32184 to \$0.32156 and in the debt rate from \$0.11866 to \$0.11865.

It is City staff's recommendation that the City Council approve the proposed ordinance adopting the FY 2008-2009 tax rate with the following motion: "I move that property taxes be increased by adoption of a tax rate of \$0.44021 per \$100 of assessed valuation through approval of the proposed ordinance."

**ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, ESTABLISHING THE TAX RATE AND TAX LEVY FOR THE CITY OF LEWISVILLE, TEXAS FOR THE YEAR 2008-2009, UPON ALL TAXABLE PROPERTY IN SAID CITY IN CONFORMITY WITH THE LAWS OF THE STATE OF TEXAS, AND THE CHARTER PROVISIONS AND ALL ORDINANCES OF SAID CITY; PROVIDING A REPEALER; PROVIDING FOR SEVERABILITY; PROVIDING FOR AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.**

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF LEWISVILLE, TEXAS, THAT:**

**SECTION 1.** There shall be, and the same is hereby levied and assessed, to be collected for the taxable year 2008, an ad valorem tax of forty-four and twenty-one thousandths cents (\$0.44021) on each One Hundred Dollars (\$100) valuation of property located within the present city limits of the City of Lewisville, Texas made taxable by law, which said taxes when collected shall be appropriated among the funds and departments of said city government of the City of Lewisville, Texas, for Fiscal Year 2008-2009 for the purposes hereinafter set forth as follows, to wit:

<b>Maintenance and Operation</b>	<b>\$0.32156</b>
<b>Principal and Interest on Debt of this City</b>	<b><u>\$0.11865</u></b>
<b>TOTAL TAX RATE</b>	<b>\$0.44021</b>

**SECTION 2. THIS TAX RATE WILL RAISE MORE TAXES FOR MAINTENANCE AND OPERATIONS THAN LAST YEAR'S TAX RATE.**

**ORDINANCE NO.** \_\_\_\_\_**Page 2**

THE TAX RATE WILL RAISE TAXES FOR MAINTENANCE AND OPERATIONS ON A \$100,000 HOME BY APPROXIMATELY \$0.00.

**SECTION 3.** The Finance Department of the City of Lewisville, Texas, is hereby directed to assess, extend, and enter upon the tax rolls of the City for the current taxable year 2008 the amounts and rates herein levied and same when collected shall be deposited in the depository of the City to be distributed in accordance with the provisions of this ordinance.

**SECTION 4. REPEALER.** Every ordinance or parts of ordinances found to be in conflict herewith are hereby repealed.

**SECTION 5. SEVERABILITY.** If any section, sentence, clause, or phrase of this ordinance shall for any reason be held to be invalid, such decision shall not affect the validity of the remaining sections, sentences, clauses, or phrases of this ordinance, but they shall remain in effect.

**SECTION 6. EFFECTIVE DATE.** This ordinance shall become effective immediately upon its passage and publication as required by law.

**SECTION 7. EMERGENCY.** It being for the public welfare that this ordinance be passed creates an emergency and public necessity, and the rule requiring this ordinance be read on three separate occasions be, and the same is hereby waived, and this ordinance shall be in full force and effect from and after its passage and approval and publication, as the law in such cases provides.

ORDINANCE NO. \_\_\_\_\_

Page 3

**DULY PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF  
LEWISVILLE, TEXAS, BY A VOTE OF \_\_\_\_ TO \_\_\_\_, ON THIS THE 29<sup>th</sup> DAY OF  
SEPTEMBER, 2008.**

**APPROVED:**

\_\_\_\_\_  
Gene Carey, MAYOR

**ATTEST:**

\_\_\_\_\_  
Julie Heinze, CITY SECRETARY

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Ronald J. Neiman, CITY ATTORNEY

**FIRST AMENDMENT TO LEASE AND MANAGEMENT AGREEMENT**

THIS FIRST AMENDMENT TO LEASE AND MANAGEMENT AGREEMENT (the "Amendment") is dated effective as of September \_\_\_\_, 2008 (the "Effective Date"), by and between the City of Lewisville, Texas, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager, (the "City") and SCI Lewisville Hotel, Ltd, (the "Owner"), duly acting herein by and through its General Partner, Lewisville Welcome, Ltd., (the "General Partner").

**RECITALS**

A. The City and Owner entered into that certain Lease and Management Agreement (the "Lease") dated April 4, 2005, pursuant to which, among other things, the City leases the Convention Center from Owner.

B. The City and Owner wish to amend the terms of the Lease in order to clarify certain terms and provisions of the Lease as provided herein.

**AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing premises, and the covenants and agreements of the parties set forth herein below, together with other good and valuable consideration received by each of the parties, the receipt and sufficiency of which are hereby acknowledged and confessed by each of the parties, the parties do hereby agree as follows:

1. SECTION 2.1. Section 2.1 of the Lease is hereby amended to include the following new definition:

**"City-sponsored events"** shall mean events coordinated and hosted by the City and not by a third party. Examples of City-sponsored events include department banquets, training programs, symposiums, workshops and meetings that may include representatives from other municipalities, and leisure service events and activities such as the Daddy-Daughter Dance. Examples of third party events include the Texas Fire Fighter Olympics and any event coordinated and sponsored by organizations other than the City."

2. SECTION 4.3. The current language in section 4.3 of the Lease is hereby deleted in its entirety and replaced with the following new language:

**4.3 Lease Purposes and Conditions of Use.** The City may use the Convention Center or the meeting space of the Hotel for the purpose of a convention center complex in accordance with Chapter 351, Texas Tax Code, and for no other purpose without the written consent of Owner.

City shall be entitled to use of the main ballroom, meeting rooms and board rooms when said rooms are available and mutually approved by the Owner and City, and Owner shall not withhold use of said rooms without justifiable cause. The City's use, shall with the exception of the Up-Front Lease Payment and the cost of food and beverage services provided by the Owner, if any, be cost and care free. The Owner shall equip and furnish the Convention Center in such manner that is readily useable by the City as a convention center complex for the booking of business conventions, meetings, and similar activities. This section includes, but is not limited to, furnishings, water setup, and pre-event and post-event cleaning. The City will be allowed to provide its own audio-visual equipment at no additional cost to the City or to rent the audio-visual equipment from the provider that rents said equipment to the Owner at a discounted rate thereby eliminating the commission normally paid to the Owner for rentals of said equipment."

3. SECTION 4.3.1. The Lease is hereby amended to include the following new section:

"4.3.1 **Food and Beverage.** The Owner shall offer the City a discounted menu to be available for City-sponsored events held at the Convention Center. The discount shall be at least 35 percent below regular menu price. Menu choices should include at least three breakfast options (continental, buffet and plated), three lunch buffet options, three plated lunch options, three dinner buffet options, three plated dinner options, snacks and beverages. Menu options and prices shall not be changed without prior written notice. The City can order food selections not shown on the discounted menu, but pricing for such selections will be negotiated at market rate. The City will not be required to meet a minimum food and beverage purchase in order to secure use of Convention Center rooms. City staff will be allowed to provide their own packaged snacks at City events only."

4. SECTION 4.4. The current language in section 4.4 of the Lease is hereby deleted in its entirety and replaced with the following new language:

"4.4 **Management of Convention Center.** During the Term of this Agreement, the Owner shall manage and operate the Convention Center on behalf of the City in order to maximize the promotion of tourism and the convention center and hotel industry in the City. The Owner shall recognize the importance of working with City sales staff in attempting to book activities at the Convention Center that have the potential of producing local hotel stays exceeding the room capacity of the Hotel."

5. SECTION 7.4. The current language in section 7.4 of the Lease is hereby deleted in its entirety and replaced with the following new language:

“7.4 Community Support. The Owner, throughout the term of this Agreement, shall maintain a continuous membership in the Lewisville Area Chamber of Commerce and sponsor annually a City of Lewisville program or event selected by City staff through a minimum donation valued at \$35,000, either all in services or \$15,000 in cash and the balance in services.”

6. Ratification. Except as expressly provided in this Amendment, all of the terms and provisions of the Lease shall remain unaffected, unchanged and unimpaired by reason of this Amendment. The Lease as amended herein is hereby ratified, confirmed and continued in full force and effect.

7. Counterparts. This Amendment may be executed in counterparts, in which case all such counterparts taken together shall constitute one and the same instrument which is binding upon all parties hereto, notwithstanding that all of the parties are not signatories to the original or the same counterpart. Facsimile signatures shall be treated as original signatures heron.

(EXECUTION PAGE FOLLOWS)

IN WITNESS WHEREOF, the parties have executed this Amendment as of the Effective Date stated above.

**OWNER:**

**SCI LEWISVILLE HOTEL LTD.,**  
a Texas limited partnership

By: Lewisville Welcome, Ltd.,  
a Texas limited partnership,  
its general partner

By: Pittman Lewisville, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Ted. R. Pittman  
Managing Member

By: LJM Lewisville, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Lawrence J. Masi  
Managing Member

By: GHG Lewisville, LP,  
an Ohio limited liability company,  
its general partner

By: RSV Lewisville, LLC,  
an Ohio limited liability  
company,  
its general partner

By: \_\_\_\_\_  
Robert F. Voelker,  
Managing Member

**CITY:**  
**CITY OF LEWISVILLE, TEXAS**

By: \_\_\_\_\_  
Claude King,  
City Manager

Attest:

By: \_\_\_\_\_  
Julie Heinze,  
City Secretary

Approved as to form:

By: \_\_\_\_\_  
Ronald J. Neiman,  
City Attorney

**ASSIGNMENT AND ASSUMPTION OF  
LEASE AND MANAGEMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF LEASE AND MANAGEMENT AGREEMENT (this "Agreement") is made this \_\_\_ day of September, 2008 by and among SCI LEWISVILLE HOTEL LTD. ("Owner"), duly acting herein by and through its General Partner, Lewisville Welcome, Ltd. ("General Partner"); the CITY OF LEWISVILLE, TEXAS, a home rule city and municipal corporation of Denton County, Texas, duly acting by and through its City Manager ("City"); and APPLE NINE HOSPITALITY OWNERSHIP, INC., a Virginia corporation ("Apple").

**RECITALS**

A. City and Owner entered into that certain Lease and Management Agreement (the "Lease") dated April 4, 2005, pursuant to which, among other things, the City leases the Convention Center from Owner;

B. In connection with certain Management Fee True Up obligations of Owner, Owner executed a promissory note dated \_\_\_\_\_ in favor of City in the principal amount of \$3,750,000 (the "Note").

C. Simultaneously, herewith, Apple purchased the Hotel (including the Convention Center) from Owner.

D. Owner desires to assign to Apple all of its right, title and interest in and to the Lease to Apple, and Apple desires to assume Owner's right, title and interest in and to the Lease.

E. Owner desires to assign its obligations under the Note to Apple, and Apple desires to assume Owner's obligations under the Note.

F. Capitalized terms used, but not otherwise defined herein, shall have the meaning ascribed to them in the Lease.

**AGREEMENT**

NOW, for and in consideration of the sum of \$10.00, cash in hand paid, the above recitals, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. Owner hereby assigns to Apple, and Apple hereby assumes from Owner, all of Owner's right, title and interest in and to the Lease.

2. Owner hereby assigns to Apple, and Apple hereby assumes from Owner, all of Owner's obligations under the Note.

3. Owner hereby agrees to defend, indemnify and hold harmless Apple from and against any and all claims, suits, damages and losses arising out of the Lease and Note prior to the date hereof. Apple hereby agrees to defend, indemnify and hold harmless Owner from and against any and all claims, suits, damages and losses arising out of the Lease and Note from and after the date hereof.

4. City agrees that from and after the date hereof, the term "Owner" as defined and used in the Lease shall mean and refer to Apple.

5. Apple agrees to abide by the terms of the Lease and Note from and after the date hereof.
6. Owner and City hereby represent and warrant to Apple the following:
  - a. The Lease is in full force and effect. There has been one amendment to the Lease, a true and correct copy of which is attached hereto as Exhibit A. There have been no other modifications or amendments (written or oral) to the Lease.
  - b. Neither Owner nor City has defaulted under the Lease and no event has occurred that but for the passage of time would give rise to a default under the Lease or Note, as applicable.
  - c. The Effective Date of the Lease is \_\_\_\_\_.
  - d. The expiration Date of the Lease is December 31, \_\_\_\_\_.
  - e. Other than the outstanding principal balance of the Note, which is \$3,750,000, there are no past due amounts owing from or to City or Owner, as the case may be.
7. This Agreement may be executed in any number of identical counterparts, each an original and all of which, when taken together, shall constitute one and the same instrument.

**[SIGNATURES APPEAR ON THE NEXT TWO PAGES]**

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

**OWNER:**

**SCI LEWISVILLE HOTEL LTD.,**

a Texas limited partnership

By: Lewisville Welcome, Ltd.,  
a Texas limited partnership,  
its general partner

By: Pittman Lewisville, LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
Ted R. Pittman  
Managing Member

By: LJM Lewisville, LLC,  
a Texas limited liability company,  
its general partner

By: \_\_\_\_\_  
Lawrence J. Masi,  
Managing Member

By: GHG Lewisville, LP,  
an Ohio limited partnership,  
its general partner

By: RSV Lewisville, LLC,  
an Ohio limited liability  
company, its general partner

By: \_\_\_\_\_  
Robert F. Voelker,  
Managing Member

**APPLE:**

APPLE NINE HOSPITALITY OWNERSHIP, INC.

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

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

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

**CITY:**

**CITY OF LEWISVILLE, TEXAS**

\_\_\_\_\_  
Claude King, City Manager

**Approved as to form:**

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

**EXHIBIT A**

[see attached copy of First Amendment to Lease]

**ASSIGNMENT AND ASSUMPTION OF TAX ABATEMENT AGREEMENT**

THIS ASSIGNMENT AND ASSUMPTION OF TAX ABATEMENT AGREEMENT ("Assignment"), is executed and delivered as of \_\_\_\_\_, 2008 (the "Effective Date"), by and between SCI Lewisville Hotel Ltd., a Texas limited partnership ("Assignor") and Apple Nine Hospitality Ownership, Inc., a Virginia corporation ("Assignee").

**W I T N E S S E T H:**

WHEREAS, Assignor and Assignee have entered into a Purchase Contract dated as of July 31, 2007, as from time to time amended (the "Agreement"), wherein Assignee has agreed to purchase from Assignor that certain 165-room hotel property commonly known as the Hilton Garden Inn Dallas/Lewisville located at 785 SH 121 Bypass, Lewisville, Texas 75067 (the "Hotel");

WHEREAS, in connection with such transaction, Assignor desires to assign to Assignee all of Assignor's right, title, estate and interest in and to that certain Tax Abatement Agreement, by and between Second Century Investments ("SCI"), predecessor-in-interest to Assignor and the City of Lewisville, Texas dated as of April 4, 2005 ("Abatement Agreement") (a copy of the Abatement Agreement is attached hereto as **Exhibit A**); and

WHEREAS, Assignee desires to accept such assignment in accordance with the terms hereof.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and sufficient consideration, the parties hereto agree as follows:

1. Effective as of the Effective Date, Assignor hereby assigns to Assignee all of Assignor's right, title, and interest in and to the Abatement Agreement.
2. Assignee hereby assumes all of the obligations of Assignor under the Abatement Agreement assigned hereby to the extent such obligations first arise, are first incurred or are first required to be performed after the Effective Date, and Assignor shall remain responsible for its obligations under the Abatement Agreement assumed hereby to the extent such obligations first arise, are first incurred or are first required to be performed prior to the Effective Date.
3. This Assignment is being executed and delivered as a condition to the Agreement and is expressly made subject to and with the benefit of the representations, warranties, covenants, terms, conditions, limitations and other provisions of the Agreement, which are incorporated herein by reference. In the event of any conflict between the representations, warranties, covenants, terms, conditions, limitations and other provisions of the Agreement and this Assignment, the representations, warranties, covenants, terms, conditions, limitations and other provisions of the Agreement shall prevail and be controlling. Capitalized terms used herein without definition which are defined in the Agreement shall have the meanings given to those terms in the Agreement.

4. This Assignment may be modified, amended or otherwise altered only in writing, signed by Assignor and Assignee, or their respective successors or assigns.

5. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

6. This Assignment may be executed in two or more counterparts with the same effect as if all parties had executed the same document.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment as of the date first above written.

**ASSIGNOR:**

SCI Lewisville Hotel Ltd.

By: Lewisville Welcome, Ltd., its general partner

By: GHG Lewisville LP, a general partner

By: RSV Lewisville LLC, its general partner

\_\_\_\_\_  
Robert F. Voelker, sole member

By: Pittman Lewisville, LLC, a general partner

\_\_\_\_\_  
Ted R. Pittman, sole member

By: LJM Lewisville, LLC, a general partner

\_\_\_\_\_  
Lawrence J. Masi, sole member

**ASSIGNEE:**

Apple Nine Hospitality Ownership, Inc.

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

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

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

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, a Notary Public in and for said County and State, did personally appear SCI Lewisville Hotel, Ltd., by Lewisville Welcome Ltd., its general partner, by GHG Lewisville LP, its general partner, by RSV Lewisville LLC, its general partner by Robert F. Voelker, sole member, who acknowledged to me that he did sign the foregoing instrument as such president and that the same is his free act and deed, both individually and as such president of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, a Notary Public in and for said County and State, did personally appear SCI Lewisville Hotel, Ltd., by Lewisville Welcome Ltd., its general partner, by Pittman Lewisville LLC, its general partner by Ted Pittman, sole member, who acknowledged to me that he did sign the foregoing instrument as such president and that the same is his free act and deed, both individually and as such president of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, a Notary Public in and for said County and State, did personally appear SCI Lewisville Hotel, Ltd., by Lewisville Welcome Ltd., its general partner, by LJM Lewisville LLC, its general partner by Lawrence Masi, sole member, who acknowledged to me that he did sign the foregoing instrument as such president and that the same is his free act and deed, both individually and as such president of said company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

**BEFORE ME**, a Notary Public in and for said County and State, did personally appear \_\_\_\_\_, by \_\_\_\_\_, its \_\_\_\_\_, who acknowledged to me that \_\_\_\_\_ did sign the foregoing instrument as such \_\_\_\_\_ and that the same is \_\_\_\_\_ free act and deed, both individually and as such \_\_\_\_\_.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
NOTARY PUBLIC  
My commission expires:\_\_\_\_\_

This instrument prepared by:  
Michael DeMinico, Esq.  
BAKER & HOSTETLER LLP  
3200 National City Center  
1900 East 9th Street  
Cleveland, Ohio 44114  
(216) 621-0200

**ACKNOWLEDGEMENT**

Pursuant to Section 7.1 of the Abatement Agreement, the undersigned, City of Lewisville, Texas hereby acknowledge that SCI Lewisville Hotel Ltd., successor-in-interest to Second Century Investments, has agreed to sell the Hotel to Apple Nine Hospitality Ownership, Inc., and in connection therewith, the undersigned hereby consents to the assignment of the Abatement Agreement. The undersigned also hereby acknowledges that: (i) the Abatement Agreement is in full force and effect, (ii) that set forth on Exhibit A is the full and complete copy of the Abatement Agreement and it has not been amended, revoked or modified, (iii) Assignor is not in default under the Abatement Agreement, nor has the undersigned has sent any notice to Assignor, which if not cured within the applicable cure period under the Abatement Agreement could result in a default thereunder, (iv) the undersigned is not aware of any circumstance or situation which could, upon the giving of notice to Assignor and Assignor's failure to cure, would constitute a default under the Abatement Agreement, and (v) the Abatement Agreement commenced on \_\_\_\_\_ and expires on \_\_\_\_\_.

CITY OF LEWISVILLE, TEXAS

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

**EXHIBIT A**

**[see attached copy of the Abatement Agreement]**

**ALLONGE TO NOTE**

This Allonge is to be firmly affixed and attached to the Note as a part thereof.

\_\_\_\_\_, 2008

A. The City of Lewisville, a Texas home-rule municipality (the "City") is the owner and holder of that certain Note, dated April 8, 2005 (the "Note"), made by SCI Lewisville Hotel Ltd., a Texas limited partnership ("Original Borrower"), evidencing a loan in the original principal amount of \$3,750,000.00 (the "Loan").

B. Original Borrower, with the consent of the City, has transferred the property more particularly described on Exhibit A attached hereto (the "Property") to Apple Nine Hospitality Ownership, Inc., a Virginia corporation ("Assuming Borrower"), and in connection therewith Assuming Borrower agreed to assume the Loan and the obligations of the Original Borrower under the Note (the "Assumption").

C. In connection with the Assumption, Original Borrower, Assuming Borrower and the City entered into an Assignment and Assumption of Lease and Management Agreement of even date herewith.

NOW, THEREFORE, FOR VALUE RECEIVED, Assuming Borrower represents, warrants and agrees, in favor of the City, its successors and assigns as follows:

1. Confirmation of Recitals. Each of the foregoing statements is incorporated herein and is made a part hereof.
2. Loan Terms to Remain Same. The terms of the Note, including, without limitation, the rate of interest and the amount of installments due thereunder are unchanged and shall remain in full force and effect, enforceable against Assuming Borrower in accordance therewith. Notwithstanding the foregoing, the third full paragraph of the Note shall be deleted in its entirety.
3. Confirmation of Obligations. Assuming Borrower hereby confirms its obligation to pay, perform and discharge each and every obligation of payment and performance under and pursuant to the Note in accordance with its terms.
4. Miscellaneous. This Allonge shall be interpreted, construed and enforced according to the laws of the State of Texas, and shall be binding upon and inure to the benefit of Assuming Borrower and the City and their respective legal representatives, successors-in-title and assigns whether by voluntary action of the parties or by operation of law.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned has executed and delivered this Allonge to Note as of the date and year first above written.

**ASSUMING BORROWER:**

**APPLE NINE HOSPITALITY  
OWNERSHIP, INC.,** a Virginia corporation

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

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

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

Acknowledged, agreed to and accepted:

**THE CITY OF LEWISVILLE,** a Texas home-rule municipality

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

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

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