

LICENSE AGREEMENT FOR USE OF CITY PROPERTY

This License Agreement ("Agreement") is entered into on the ____ day of _____, by and between the CITY OF GLENDALE, an Arizona municipality ("Licensor"), and THT 28, LLC, an Arizona limited liability company ("Licensee").

RECITALS

1. Licensee is the owner of certain real property in Glendale, and desires to use adjacent City property whose descriptions are attached on Exhibit A (the "Property") and a depiction of the Properties attached on Exhibit B;
2. Licensee desires to maintain the Property as described below and use the Property for purpose of public parking adjacent to the restaurant seating area, and in compliance with all Glendale City Codes, including the International Building Code, and shall maintain the Property described in Exhibits A and B;
3. Licensee also intends to utilize the space from time to time for special events conducted in compliance with all Glendale City Codes; and
4. Licensor desires to license the use of such Property to Licensee based upon the following terms and conditions.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals which are integral to this License and are incorporated into and made part of i this Agreement, the parties agree as follows:

1. Consideration. For and in consideration of the use of the property, owned by the Licensor, Licensee agrees to pay the sum of One Dollar (\$1.00) per license term as defined in paragraph 2, maintain the property in good condition, including but not limited to keeping the property clean and free of weeds and trash, shall limit the use of the property to those described in the agreement, and shall return the property in its original condition upon termination of this agreement.
2. Term of Agreement. The License shall be in effect commencing upon the execution of this License and shall expire sixty (60) months thereafter. This License may be extended, upon written request by the Licensee, and mutual consent and approval of the City, for two (2) additional 60-month terms at the sole discretion of the Licensor. Approval by the Licensor shall be delivered in writing to the Licensee.
3. Early Termination. Either the Licensee or the Licensor may cancel this License for no cause upon no less than sixty (60) days advance written notice of the intent to terminate the License.
4. License Fee. Other than the initial fee from Licensee to the Licensor of One Dollar (\$1.00) for this License, payable at the execution hereof, Licensee shall make an additional payment to Licensor of One Dollar (\$1.00) for each sixty (60)-month renewal of the License.
5. Use of Property. Licensee desires to maintain the City owned Property as depicted in green in the attached Exhibit "A" (the "License Area") and use the Property for purpose of public parking adjacent to the restaurant seating area, and in compliance with all Glendale City Codes, including the International Building Code, and shall maintain the Property described; License also intends to utilize the space from time to time for special events conducted in compliance with all Glendale City Codes, and will maintain public access at all times.

6. Existing Utilities and Appurtenances. Licensee also recognizes and agrees not to interfere with rights of ingress and egress and rights of maintenance and passage of Licensor, and any other existing utilities for repairs and inspection of utilities or other appurtenances to the Property.
7. Improvements to Property. Licensee agrees that she/he may make non-permanent, non-habitable structural improvements to the property upon written approval of the Licensor. Licensee shall provide Licensor written requests for improvements which shall include detailed descriptions of the proposed improvements. Licensor shall respond in no less than thirty (30) days in writing of approval or disapproval. Improvements to the property shall remain the property of the Licensor unless agreed to in writing between the Licensee and Licensor. All improvements made by Licensee to the Property are subject to all applicable codes, ordinances and laws, including the Americans with Disabilities Act.
8. Maintenance of Improvements. Licensee shall keep and maintain in good repair and safe condition the Property and each and every part thereof during the term of this License.
9. Default. Notwithstanding the Termination provision in Section 3, if Licensee shall fail to fulfill or perform any of these License agreements and provisions, and if said nonfulfillment or nonperformance shall continue for a period of thirty (30) days after written notice has been given by the Licensor to the Licensee, then upon the expiration of said thirty (30) days, but not before, the Licensee shall be in default under this License. Upon default, it shall be lawful and optional for the Licensor to declare a termination of this License and to retake possession of the Property as one of its remedies. Such default period shall not exceed ten (10) days for matters posing risk to safety of the public or others using or passing on the Property.
10. Successor and Assigns. This License shall not be assignable or transferrable and shall terminate upon transfer of ownership of the Licensee's owned and adjacent property, of which sale the Licensee shall give at least thirty (30) days advance, written notice to the Licensor.
11. Severability. In the event any term or provision of this License is declared by a court of competent jurisdiction to be invalid or illegal for any reason, this License shall be interpreted as if such invalid or illegal provision were not a part.
12. Recording. It is intended that this License be recorded. Either party may record a notice of termination of this License.
13. Termination of License. Upon termination of such License by either party, the improvements made to the Property by Licensee shall remain the Property of the Licensor, except those provided in Section 7 to be removed by the Licensee. Upon termination, property shall be returned in its original condition, or a condition agreed to by the Licensor at the termination of the agreement.
14. Notices. All notices required or permitted hereunder shall be in writing and shall be deemed duly given upon receipt if either personally delivered or sent by certified mail, return receipt requested, addressed to the parties as follows:

City of Glendale
Attn: City Manager
5850 W. Glendale Avenue, Suite 431
Glendale, AZ 85301

THT 28, LLC

15. Licensee's Insurance. The Licensee shall procure and at all times maintain throughout the term of the Lease the following types and amounts of insurance for its operations in the Licensed Area. Failure to obtain the required documents prior to occupancy shall not waive the Licensee's obligation to provide.
- A. Commercial general liability insurance including contractual liability coverage with minimum limits of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage and Two Million Dollars (\$2,000,000.00) aggregate.
 - B. Insurance shall:
 - i. Be from a company rated at least A-by AM Best;
 - ii. Be endorsed to name the City, its officers, officials, employees, an volunteers as additional insureds;
 - iii. Be primary insurance as respects the City, its officers, officials, employees, or volunteers. Any insurance or self-insurance maintained by the City shall be excess of Licensee's insurance and shall not contribute with it; and
 - iv. Grant to City a waiver of any right to subrogation which any insurer of said Licensee may acquire against the City by virtue of payment of any loss. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.
 - v. Provide that coverage shall not be cancelled except with 30-day written notice to the City.
 - C. Indemnification. The Licensee shall defend, indemnify and hold harmless the City and its elected or appointed officials, agents, boards, commissions and employees (hereinafter referred to collectively as the "City" in this Section) from all loss, damages or claims of whatever nature, including attorney's fees, expert witness fees and costs of litigation, that arise out of any act or omission of the Licensee or its agents, employees and invitees (hereinafter referred to collectively as "Licensee" in this Section) in connection with the Licensee's operations in the Licensed Area and that result directly in the injury to, or death of, any person or the damage to or loss of any property, or that arise out of the failure of Licensee to comply with any provision of this Agreement. The City shall in all instances, except for loss, damages or claims resulting from the sole negligence or willful acts of the City, be indemnified by Licensee against all losses, damages or claims. The City shall give the Licensee prompt notice of any claim made or suit instituted that may subject the Licensee to liability under this Section, and Licensee shall have the right to compromise and defend the same to the extend of its own interest. The City shall have the right but not the duty, to participate in the defense of any claim or litigation with attorneys of the City's selection and at the City's sole cost without relieving the Licensee of any obligations under this Agreement. Licensee's obligations under this Section survive any termination of this Agreement or the Licensee's activities in the Licensed Area.
16. Archaeological. Licensee shall notify Licensor should any cultural resources or human remains be found on the Licensed Property, and when appropriate, shall be responsible for other notifications and legal requirements. All costs are the responsibility of the Licensee.
17. Environmental Compliance. Licensee hereby assumes and accepts all liability and responsibility for initiation and completion of response, cleanup, and corrective and remedial action, and the cost

thereof, required on the Licensed Property and any other affected premises due to any action taken by Licensee or its contractors, subcontractors, agents, or representatives during use of the Licensed Property that results in release or threatened release of any hazardous substance within the meaning of the Federal Comprehensive Environmental Quality Act – A.R.S. § 49-101 et seq., as such laws may have been or may be amended from time and Recovery Act (Underground Storage Tanks) – 42 U.S.C. § 6991a et seq., or the Arizona Underground Storage Tank Law – A.R.S. § 49-1001 et seq., such laws may have been or may be amended from time to time. This Section shall survive termination of this Agreement.

18. Assignment. Licensee may assign this License to a third party only upon the written approval of Licensors, which Licensors may withhold in its sole and absolute discretion.

[SIGNATURES ON FOLLOWING PAGE.]

The parties enter into this Agreement effective as of the date shown above.

City of Glendale,
an Arizona municipal corporation

By: Kevin R. Phelps
Its: City Manager


ATTEST:

Julie K. Bower
City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey
City Attorney

THT 28, LLC,
an Arizona limited liability company



By: Abdo LATTOUF
Its: MANAGER MCBAR

EXHIBIT A
License Agreement

PROPERTY DESCRIPTION

Real Property is described as follows:

- a. 57th Drive ROW south of Lamar Road (back of sidewalk south)
- b. Alley between 57th Avenue and 57th Drive south of Lamar Road
- c. Assessor Parcel 146-02-089
- d. Assessor Parcel 146-02-088
- e. Assessor Parcel 146-02-087
- f. Assessor Parcel 146-02-086
- g. Assessor Parcel 146-02-085 (to be included once transfer with ADOT is complete)

EXHIBIT A
License Agreement
PROPERTY MAP

