

CITY COUNCIL REPORT



Meeting Date: August 25, 2015
 General Plan Element: *Economic Vitality*
 General Plan Goal: *Encourage high quality retail and entertainment*

ACTION

Discussion and possible direction to staff on the disposition of Outdoor Dining License Agreement 2004-010-COS between the city of Scottsdale (Licensor) and J.E. Southwest Group Real Estate L.L.C. (Licensee). The License area is a 440 square foot portion of a 16 foot public alley located immediately north of the 4245 North Craftsman Court building. This building has been occupied since June 2011 by Rockbar Inc., as a bar/live music venue known as Rockbar.

BACKGROUND

The purpose of this action is to provide Council with an opportunity to discuss and give direction to staff on the disposition of the existing Outdoor Dining License Agreement ("ODLA") for a licensed area located immediately north of the 4245 N. Craftsman Court building currently tenanted by Rockbar Inc.

On April 28, 2015, Council took action to deny an amendment to the Rockbar conditional use permit for live entertainment, finding that the conditional use permit criteria had not been met. During the discussion at that meeting, a Councilmember observed that, aside from the conditional use permit amendment under consideration, Rockbar might potentially be in violation of terms of the ODLA governing their use of City property adjacent to the Rockbar. Staff has reviewed this issue, and seeks direction from Council on whether the ODLA itself should be continued, modified, or terminated.

Outdoor Dining License Agreement 2004-010-COS was entered into on January 20, 2004. Recital E of the license defines "Permitted Uses:"

"Licensor desires to license to Licensee the License Area for outdoor food and beverage service (including alcohol) for immediate consumption of food prepared inside the Grill Building (the "Permitted Uses") subject to the requirements of this agreement."

Section 4.1 further clarifies "Permitted Uses:"

"Licensee shall use the License area solely for the Permitted Uses. No other activity shall be conducted at or from the License Area. The Permitted Uses are further restricted in that the Licensee shall use the License Area solely for the preparation and serving to Licensee's

invitees and guests of fully prepared food and beverages (including alcoholic beverages if permitted by law) for immediate consumption upon the License Area or upon the Grill Parcel. Outdoor cooking is not allowed. Licensee may elect to serve at the License Area food prepared at other locations outside the License Area.”

At the time of the original license, the Licensee, J.E. Southwest Group Real Estate L.L.C., occupied the 4245 N. Craftsman Court building immediately adjacent to the patio license area as ACME Bar and Grill (“ACME”). ACME provided a food and beverage service for consumption at the patio. Food was prepared inside the building. In 2011, the ACME Bar and Grill business was purchased by Rockbar, Inc. Rockbar Inc. consented to the assignment of the ODLA as Sub-licensee and agreed to the terms of the ODLA.

Today, Rockbar operates as a bar/live music venue. It does not have a kitchen within which to prepare food for service on the licensed area. Accordingly, the patio service does not include food service prepared inside the building. Although this may not be a violation of the ODLA, the use and dynamic of the patio has changed by the absence of food service. It is now a place that principally serves alcoholic and non-alcoholic beverages only to patrons of the bar/live music venue.

ANALYSIS & ASSESSMENT

Policy Implications

ODLA 2004-010-COS contains a termination right applicable to both the Licensor and Licensee. Pursuant to Section 2.5, each party has an irrevocable and unconditional right to unilaterally terminate the ODLA upon 60 days’ notice.

RESOURCE IMPACTS

Staff is prepared to implement direction received from Council related to the disposition of ODLA 2004-010-COS. If the existing ODLA is terminated, the city’s current license fee revenues will be reduced by \$1,278.20 annually.

OPTIONS & STAFF RECOMMENDATION

Recommended Approach

Council discussion may result in direction to staff, as follows:

- Allow the ODLA to remain in place unchanged, understanding that the current service at the license area (patio) is for alcoholic and non-alcoholic beverages and does not include food service prepared inside the building.
- Direct staff to present a modified ODLA to the Licensee that would clarify under what conditions the Licensee may continue to occupy the license area (patio).

- Terminate the ODLA upon 60 days' written notice to the Licensee.

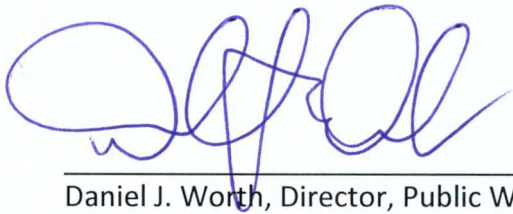
RESPONSIBLE DEPARTMENT(S)

Public Works Division, Capital Project Management

STAFF CONTACTS (S)

Martha West, Senior Real Estate Manager, mwest@scottsdaleaz.gov

APPROVED BY



Daniel J. Worth, Director, Public Works

(480) 312-5555, dworth@scottsdaleaz.gov

8-11-15

Date

ATTACHMENTS

1. Location Map
2. License Agreement No. 2004-010-COS



ATTACHMENT 1					
PROJECT TITLE					
LOCATION MAP					
DEPT	BY	DRAWN	DATE	SCALE	SHT
CPM	RAH		05/15	NTS	1 OF 1



WHEN RECORDED RETURN TO:

10032-37-1-1--
Leonardil

RETURN TO:
Lila Madden (Linda Lorbeer)
ONE STOP SHOP RECORDS
CITY OF SCOTTSDALE
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

C.O.S. No. 2004-010-COS

OUTDOOR DINING LICENSE AGREEMENT

Summary THIS LICENSE AGREEMENT (the "Agreement") is made and entered into this 20th day of January, 2004, by and between the City of Scottsdale ("Licensor"), an Arizona municipal corporation, and J.E. Southwest Group Real Estate L.L.C., an Arizona limited liability company ("Licensee").

WITNESSETH

A. Licensor is the owner of a public alley and related public real property (the "Alley") being generally the public parcels within the area bounded by Third Avenue, Craftsman Court, Scottsdale Road, and Fifth Avenue within the City of Scottsdale, Maricopa County, Arizona.

B. Licensor is the owner of certain real property (the "License Area") located within the Alley comprising approximately four hundred forty (440) square feet of land described on Exhibit "A" attached hereto.

C. As of the date of this Agreement, the License Area is improved with paving, utilities, and other facilities.

D. Licensee represents to Licensor that Licensee is the owner of the existing bar and grill building immediately south of and adjacent to the License Area (the "Grill Building"), which is located on the parcel of real property (the "Grill Parcel") owned by License Holder and described on Exhibit "B" attached hereto.

E. Licensor desires to license to Licensee the License Area for outdoor food and beverage service (including alcohol) for immediate consumption of food prepared inside the Grill Building (the "Permitted Uses") subject to the requirements of this Agreement.

F. Licensor desires to reserve rights to construct and use additional improvements upon the License Area subject to the requirements of this Agreement.

NOW, THEREFORE, for and in consideration of the foregoing, the amounts hereinafter to be paid by Licensee, and the covenants and agreements contained herein to be kept and performed by Licensee, and other good and valuable consideration, Licensor and Licensee agree as follows:

I. PREMISES

1. License Area.

1.1 Restrictions on License Area. The License Area includes and is limited to the areas described in the drawing attached hereto as Exhibit "C" (the "Site Plan"), which is labeled as "Outdoor Seating Addition."

1.2 Reconfiguration. Licensors shall have the unilateral right to modify the entirety of the Alley from time to time during the term of this Agreement. Any relocation of then existing improvements installed by Licensee upon the License Area required by Licensors's reconfiguration shall be at Licensors's expense and shall be preceded by sixty (60) days notice of the work by Licensors to Licensee. Licensors may also unilaterally regulate, reroute, close and otherwise alter pedestrian and vehicular traffic access to the Alley and travel within any area of the Alley without Licensee's consent. This paragraph shall not detract from such rights as Licensee may have to continued access to and from the public street system and the Grill Parcel.

1.3 Condition of License Area. Licensee has examined, studied and inspected the License Area, and the Alley, and the License Area is being made available in an "as is" condition without any express or implied warranties of any kind, including without limitation any warranties or representations as to their condition or fitness for any use. Licensee has obtained such information and professional advice as Licensee has determined to be necessary related to this Agreement or this transaction. Licensee has had extensive prior experience with the Alley and the License Area and is familiar with their condition.

1.4 Delay in Use. Notwithstanding the preceding paragraph concerning the condition of the License Area, Licensee shall not use the License Area until the License Area has been resurfaced (the "Resurfacing Work") with a material approved by Licensors in its sole discretion. In the event Licensors has not performed the Resurfacing Work by January 1, 2005, Licensee shall have the right to do so at Licensee's expense, subject to Licensee's compliance with the approval processes of this Agreement.

1.5 Licensors's Fixtures and Personality. Licensors is not obligated to provide to Licensee any fixtures or personal property owned by Licensors. Any and all of Licensors's property as may come into the possession of Licensee or be used by Licensee shall be returned to Licensors by Licensee at termination of this Agreement and shall be maintained in good working condition by Licensee from time to time at Licensee's expense and replaced by Licensee at Licensee's expense when worn out and shall be owned at all times by Licensors with Licensee being solely responsible for the condition thereof. All such personal property is provided "as is" and Licensee accepts all responsibility for its condition and shall thoroughly inspect the same before use. Without Licensors's prior written consent, Licensee shall not remove, damage or alter in any way any improvements or fixtures upon the License Area (whether installed by Licensee, Licensors or otherwise) or any personal property of Licensors, except as otherwise expressly provided in this Agreement.

1.6 Prior Contracts. Licensee's rights hereunder are subject to all covenants, conditions, restrictions, easements, agreements, liens, reservations and encumbrances upon, and all other recorded or unrecorded conditions of title to, the License Area. Licensee has obtained any title insurance or information Licensee deems appropriate. Licensors does not warrant title to the

License Area. Licensee's rights hereunder are further subject to all present and future building restrictions, regulations, zoning laws, ordinances, resolutions, and orders of all bodies, bureaus, commissions and bodies of any municipal, county, state, or federal authority, now or hereafter having jurisdiction over the License Area or Licensee's use thereof.

1.7 Reservation for Existing Utilities. Licensors reserves from this Agreement an easement for repair, replacement and maintenance of any and all pipes, wires, cables or other utilities existing upon the License Area as of the date of this Agreement. In the event of construction work within the License Area related to such utilities, Licensee shall, if requested by Licensors, temporarily remove its improvements at Licensee's expense so that Licensors shall have convenient access to such utilities.

1.8 Reservation for Licensors Use and Future Improvements. Notwithstanding anything contained in this Agreement to the contrary, Licensors reserves the right to use and allow others to use any existing or future improvements upon the License Area and to construct new improvements upon the License Area so long as such improvements do not, in Licensors reasonable discretion, materially and substantially impair Licensee's ability to utilize the License Area for the Permitted Uses. All of Licensors reserved rights under various provisions of this Agreement shall be cumulative to each other. Licensee shall not obstruct public use of other portions of the Alley.

1.9 Rights in Adjacent Property. Licensee's rights are expressly limited to the real property defined as the "License Area" in this Agreement. Without limitation, in the event any public right-of-way or other public or private property adjacent to the License Area is dedicated, abandoned or otherwise acquired or disposed of by Licensors, such property shall not accrue to this Agreement but shall be Licensors only. In addition, and severable from the preceding sentence, upon any such event, Licensee shall quit-claim to Licensors such right-of-way or other property. Such quit claim deed shall not detract from such rights as Licensee may have as respects access to and from the public street system and the Grill Parcel. This Agreement does not grant to Licensors any interest in the Grill Parcel.

1.10 Variation in Area. In the event the License Area consist of more or less than the stated area, this Agreement shall nevertheless continue and Licensee's obligations hereunder shall not be increased or diminished.

1.11 No Real Property Interest. Notwithstanding any provision hereof to the contrary, and notwithstanding any negotiation, correspondence, course of performance or dealing, or other statements or acts by or between the parties, Licensee's rights are limited to the License Area and Licensee's rights in the License Area are limited to the specific limited license rights created by this Agreement, which creates only a revocable license in the License Area. Licensors and Licensee do not by this instrument intend to create a lease, easement or other real property interest. Licensee shall have no real property interest in the License Area.

II. TERM OF LICENSE

2. Term of License. Licensors hereby licenses the License Area to Licensee subject to and conditioned upon Licensee's full, timely, complete and faithful performance of all performances and

things to be performed or done hereunder by Licensee, and Licensee hereby accepts the License Area and this Agreement.

2.1 Term. The term of this Agreement shall be for a period of five (5) years commencing on the date of this Agreement unless sooner terminated as set forth in this Agreement.

2.2 Extensions. In the event of Licensee's complete and timely performance of this Agreement throughout the initial term set forth above and any extension, this Agreement may be extended at Licensee's election for two (2) additional five (5) year periods. In order to exercise its election(s) to extend, Licensee must give to Licensor written notice of Licensee's intent to extend no earlier than three (3) months and no later than one (1) month prior to expiration of the initial term (or, in the case of the second extension, the prior extension).

2.3 Automatic Termination. This Agreement shall automatically terminate in the event, after the Resurfacing Work is completed, Licensee for any reason ceases for a period of ninety (90) days to operate and use the License Area for the Permitted Uses under the same management that manages the full service restaurant on the Grill Parcel, or upon six months prior written notice if Licensor is reconfiguring the Alley and the continued existence of the outdoor patio area will in Licensor's reasonable discretion interfere with the proposed reconfiguration project work or improvements.

2.4 Holding Over. In any circumstance whereby Licensee would hold over and remain in possession of the License Area after the expiration of this Agreement, such holding over shall not be deemed to operate as a renewal or extension of this Agreement, but shall only create a license from month to month which may be terminated at any time by Licensor upon thirty (30) days prior notice to Licensee, or by Licensee upon thirty (30) days prior notice to Licensor.

2.5 Licensee's and Licensor's Termination Right. Licensor and Licensee shall each have an irrevocable and unconditional right to unilaterally terminate this Agreement upon sixty (60) days' notice.

III. LICENSE PAYMENTS

3. License Payments. Licensee shall pay to Licensor all of the following payments together with all other payments required by this Agreement (all payments by Licensee to Licensor required by this Agreement for any reason are collectively the "Use Fee"):

3.1 Use Fee Payment Date. All Use Fees shall be payable in advance, twice annually, on January 1 and July 1 of each year the Agreement is in effect. The first payment (prorated based on the date the Resurfacing Work is completed) shall be paid within seven (7) days after the Resurfacing Work is completed.

3.2 Base Use Fee. The amount (the "Base Use Fee") Licensee shall pay to Licensor on each January 1 and July 1 during this Agreement (subject to proration as stated above for the first payment) shall be Five Hundred Six Dollars (\$506.00).

3.3 Base Use Fee Adjustment. The Base Use Fee shall be automatically adjusted upward on each annual anniversary of this Agreement on the basis of changes in the United States

Consumer Price Index for all Urban Consumers (CPI-U), U.S. City average published by the United States Bureau of Labor Statistics (the "Cost of Living Index"). The amount of each adjusted monthly rent installment of Base Use Fee (represented by the letter "R" in the formula set forth below) shall be equal to the then current Cost of Living Index number (represented by the letter "C" in the formula set forth below) divided by the Cost of Living Index number for the month during which the date of this Agreement occurs (represented by the letter "M" in the formula set forth below), and multiplied by the original monthly Base Use Fee amount (represented by the "\$" symbol in the formula set forth below). This computation is expressed by the following formula:

$$R = \frac{C}{M} \times \$$$

provided, that in no event shall any Use Fee be adjusted downward from any previous period. If such Cost of Living Index shall no longer be published at the adjustment date, then another similar index published by any federal agency shall be substituted by Licensor in Licensor's reasonable discretion. In the event of a holdover, all Use Fee shall be increased by an additional fifty percent (50%) over the amount of Use Fee that would otherwise be payable under this Agreement.

3.4. Security Deposit. Upon execution of this Agreement, Licensee shall provide to Licensor, and maintain with Licensor at all times during the term of this Agreement, a cash security deposit in the amount of One Thousand Dollars (\$1,000), all guaranteeing the faithful performance of this Agreement. Any funds or property of Licensee held by or available to Licensor under or related to this Agreement shall also stand as a security deposit guaranteeing Licensee's faithful performance of this Agreement. Any portion of any security deposit to which Licensee may then be entitled, net of any setoff or other obligation of Licensee or Licensor, shall be paid to Licensee by the then owner of the fee title to the License Area within sixty (60) days after termination of this Agreement.

3.5. Late Fees. Should any installment of Use Fee not be paid on or before the date due, a ten percent (10%) late fee shall be added to the amount due, or found to be due. Furthermore, any Use Fee that is not timely paid shall accrue interest at the rate of one percent (1%) per month from the date the amount first came due until paid. Licensee expressly agrees that the foregoing represent reasonable estimates of Licensor's costs in the event of a delay in payment of Use Fee.

3.6. Use Fee Amounts Cumulative. All amounts payable by Licensee hereunder or under any tax, assessment or other existing or future ordinance or other law of the City of Scottsdale or the State of Arizona shall be cumulative and payable in addition to each other payment required hereunder, and such amounts shall not be credited toward, substituted for, or setoff against each other in any manner.

3.7. No Setoffs. All Use Fees shall be paid in full directly to Licensor without setoff or deduction of any description. Licensee expressly waives any right of setoff.

IV. USE RESTRICTIONS

4. Use Restrictions. This Article does not restrict Licensee's use of the Grill Parcel. Licensee's use and occupation of the License Area shall in all respects conform to all and each of the following cumulative provisions:

4.1 Permitted Uses. Licensee shall use the License Area solely for the Permitted Uses. No other activity shall be conducted at or from the License Area. The Permitted Uses are further restricted in that Licensee shall use the License Area solely for the preparation and serving to Licensee's invitees and guests of fully prepared food and beverages (including alcoholic beverages if permitted by law) for immediate consumption upon the License Area or upon the Grill Parcel. Outdoor cooking is not allowed. Licensee may elect to serve at the License Area food prepared at other locations outside the License Area.

4.2 Animals. No animals are allowed on the License Area other than Seeing Eye dogs and similar animals providing health assistance to disabled persons. Customers' dogs on leashes are also permitted, if allowed by applicable laws and regulations from time to time.

4.3 Nonexclusive Uses. Licensee understands and agrees that Licensor, Licensor's other tenants, and other persons within and without the Alley and the surrounding vicinity will conduct from time to time business activities in direct competition with Licensee. Licensee has no exclusive rights to conduct any activity anywhere at the Alley.

4.4 Governmental Relations. Licensee shall conduct its activities at the License Area in coordination with Licensor as necessary to maintain good relations with all governmental entities having jurisdiction over the License Area and shall immediately give to Licensor notice of any actual or threatened dispute, violation or other disagreement relating to the License Area. Licensee is not an agent for Licensor.

4.5 Fixtures and Personal Property. No later than ninety (90) days after the Resurfacing Work is completed, Licensee shall provide to and maintain at the License Area all equipment and other items necessary for the License Area to be conveniently used for the Permitted Uses. Licensee shall not place or allow to remain upon the License Area any item that is not conveniently removable. The preceding sentence applies to dining tables, fencing and every other thing that may exist upon the License Premises from time to time related to this Agreement to the end that the License Area may continue to be available for immediate fire and other emergency vehicles and other access. Any attachments to the ground must comply with the foregoing and be approved in writing in advance by Licensor. Perimeter fencing complying with the foregoing is not prohibited but must be of safe design, must have no sharp edges or other hazards to persons who may contact the fence, and must be laid out in a manner that does not create right angles or other configurations that could impede safe and fluid pedestrian traffic flow around the License Area.

4.6 Liquor License. Licensee's possession of any liquor license at the License Area shall be related only to the License Area and the Grill Parcel. This Agreement does not create in Licensee any rights with respect to liquor service at the balance of the Alley. Upon termination of this Agreement for any reason, Licensee shall cause the License Area to be removed from the scope of its liquor license.

4.7 Licensee's Agent. Licensee shall at all times during normal business hours or when the License Area are otherwise occupied retain on call available to Licensor upon the License Area or the Grill Parcel an active, qualified, competent and experienced manager to supervise all activities upon and operation of the License Area and who shall be authorized to represent and act for Licensee in matters pertaining to all emergencies and the day-to-day operation of the License Area and all activities under this Agreement. Licensee shall also provide notice to Licensor of the name, address, and regular and after hours telephone numbers of a person to handle Licensee's affairs and emergencies at the License Area.

4.8 Staff Qualifications and Requirements. Licensee shall provide to the License Area at least the following level of staffing and expertise.

4.8.1 Licensee shall not hire any employee to work upon the License Area or in the vicinity of the License Area (including without limitation adjacent property) if Licensee knows that such person has been convicted of a felony crime.

4.8.2 If Licensor reasonably determines the same to be desirable, Licensee shall hire one or more security guards for the License Area with such qualifications as Licensor may reasonably request. Licensee shall allow any security guards to respond to emergencies in the vicinity of the License Area.

4.8.3 Licensee shall make its employees available to Licensor from time to time for safety training.

4.8.4 In addition, Licensee must comply with (and train its personnel to comply with) the minimum security standards and emergency action plan attached hereto as Exhibit "D".

4.9 Security Requirements. Licensee shall participate in any program promulgated from time to time by the City of Scottsdale Police Department or other law enforcement agency selected by Licensor from time to time. Licensee shall reasonably cooperate with Licensor and the City of Scottsdale Police regarding concerns and countermeasures affecting security and related risks of business and other operations and activities at and near the License Area.

4.10 Standards of Service. In entering into this Agreement, Licensor and Licensee have foremost in mind providing the public food and beverage services and facilities of the highest quality. Without limitation, Licensee shall operate the License Area in a first-class manner; shall furnish prompt, clean and courteous service; and shall keep the License Area attractively maintained, orderly, clean, sanitary and in an inviting condition at all times, all to the satisfaction of Licensor. Licensee shall not employ any person or persons in or about the License Area who shall fail to be clean, courteous, efficient and neat in appearance or who shall use improper, obnoxious or rude language or act in a loud or boisterous or otherwise improper manner. No nudity, partial nudity, adult entertainment or lewd conduct of any sort is permitted.

4.11 Conduct at License Area. In entering into this Agreement, Licensor and Licensee have foremost in mind providing the public with an orderly atmosphere devoid of any act by any person contrary to the highest standards of community sensitivity, and avoiding any substance or appearance of any noisy, unruly, inebriated, disruptive, disorderly, lewd, nude, partially nude, adult oriented, unwholesome or sexually oriented behavior, business, entertainment, or other activity of

any description or to any degree at the License Area. Any such behavior, business or activity at the License Area by Licensee, any customer of Licensee or anyone else using the License Area pursuant to this Agreement is strictly prohibited. The requirements of this paragraph are specifically acknowledged to be a requirement of this Agreement independent of and in addition to any zoning or other governmental regulation affecting the License Area. Any violation of this paragraph by any person using any part of the Alley pursuant to or under this Agreement shall be an "Unruly Behavior Occurrence" by Licensee under this Agreement. Further, during the entire term of this Agreement, this entire paragraph and all of its subparagraphs also applies to the acts of any persons upon the Grill Parcel or any other adjacent land used in connection with the License Area and to the acts of such persons upon the Alley while leaving the License Area. To that end and without limitation, all of the following shall apply:

4.11.1 No materials shall be displayed, viewed or produced upon the License Area depicting specified anatomical areas or specified sexual activities. Also, no person upon the License Area shall make visible his or her specified anatomical areas. "Specified anatomical areas" shall mean less than completely and opaquely covered human genitals, pubic region, buttock and female breast below a point immediately above the top of the areola; and human male genitals in a discernible turgid state, even if completely and opaquely covered, or any simulation or portrayal of any of the foregoing. All specified sexual activities are prohibited without exception. Specified sexual activities shall mean human genitals in a state of sexual stimulation or arousal; acts of masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast, or any simulation or portrayal of any of the foregoing.

4.11.2 Patron dancing outdoors and any direct or indirect physical contact involving customers, employees, performers and other persons outdoors is prohibited.

4.11.3 Licensee shall immediately cause to be removed from the License Area any person (and from the Alley any person related to Licensee or this Agreement (including without limitation Licensee's customers)) who:

- 4.11.3.1 Is obviously intoxicated or under the influence of any narcotic or chemical.
- 4.11.3.2 Commits any act of violence.
- 4.11.3.3 Acts in a loud or unusually boisterous manner.
- 4.11.3.4 Harms or threatens harm to any person or thing.
- 4.11.3.5 Uses profanity, which can be heard by users of the Alley or the public.
- 4.11.3.6 Violates any law or any regulation applicable to the Alley.
- 4.11.3.7 Causes, directs or encourages any person to commit an Unruly Behavior Occurrence.

4.11.4 The address used in any police report of an Unruly Behavior Occurrence shall not be conclusive proof of the location of the matters reported for the purposes of this Agreement; rather, Unruly Behavior Offenses reported in police reports to have occurred at the address of the License Area shall be chargeable to Licensee under this Agreement only to the extent provided by this Agreement.

4.11.5 The requirements of this paragraph only are for the benefit of Licensor and for the benefit of all real property located within three hundred feet (300') of the Alley. The owners and occupants of such real property and their successors and assigns are third party beneficiaries of this paragraph throughout the term of this Agreement. Such third party beneficiaries' sole remedy is injunctive relief against Licensee and other occupants of the License Area to enforce the requirements of this paragraph.

4.12 Common Areas. Subject to current and future regulations and policies governing the use of, and access to, the Alley, Licensee, its officers, employees, agents, patrons and invitees, and its suppliers of services and furnishers of materials shall have the right of ingress to and egress from the License Area through such portions of the Alley as are open to the public for that purpose from time to time. Such right is strictly limited to ingress and egress. All deliveries to the License Area shall be made through the outside door to the existing restaurant located adjacent to the west side of the License Area. There shall be absolutely no delivery of supplies, food preparation activity or storage, however temporary, at the License Area. Licensee shall immediately clean up any spills or debris caused by Licensee or its suppliers or customers. Licensee shall daily inspect the waste disposal area serving the Grill Building and report to Licensor any violations of the preceding sentence by third parties.

4.13 Parking Provided by Licensor. Licensee shall provide parking in compliance with applicable current and future laws and regulations. Licensor is not required to provide any parking.

4.14 Alley Operations. Licensee acknowledges that Licensee's use of the License Area shall be subject and subordinate to use of the Alley for outdoor concerts, festivals, catered events, public and private occasions and all other lawful purposes of every description, which will necessarily directly and indirectly affect Licensee and the License Area. Licensee's use of the License Area shall not be permitted by Licensee to in any way adversely affect Licensor's use or operation of the Alley.

4.15 Signs. Licensee shall have the right to install and operate exterior signs at the License Area to identify Licensee's operations at the License Area provided that all of the following conditions are met:

4.15.1 The location, size, content and style of each such sign shall be subject to the provisions of the applicable sign ordinance.

4.15.2 All signs shall be designed, made and installed in a professional manner.

4.15.3 No sign shall be erected, installed or displayed until Licensee has submitted written request, together with descriptions and drawings showing the intended locations, size, style and colors of such signs, to Licensor, and has received prior written approval from Licensor.

4.15.4 Licensee shall bear all costs pertaining to the erection, installation, operation, maintenance and removal of all signs including, but not limited to, the application for and obtaining of any required building or other permits.

4.15.5 Licensor shall have the absolute right to reject or impose any conditions upon any proposed sign upon the License Area or to require removal of any sign upon the premises, all at Licensor's sole and absolute discretion.

4.15.6 The requirements of this paragraph apply to all signs and banners and all other manner of signage.

4.16 Hazardous Materials. Licensee shall not produce, dispose, transport, treat, use or store any hazardous waste or materials or toxic substance upon or about the License Area or any substance now or hereafter subject to regulation under the Arizona Hazardous Waste Management Act, A.R.S. Sec. 49-901, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq., or the Toxic Substances Control Act, 15 U.S.C. 2601, et seq., or any other federal, state, county, or local law pertaining to hazardous waste or toxic substances (collectively "Toxic Substances"). The preceding sentence does not prohibit use of ordinary janitorial supplies used to clean and maintain the License Area. Licensee shall pay, indemnify, defend and hold Licensor harmless against any loss or liability incurred by reason of any Toxic Substance on or affecting the License Area occurring after the date of this Agreement, and shall immediately notify Licensor of any Toxic Substance at any time discovered or existing upon the License Area. Licensee understands the hazards presented to persons, property and the environment by dealing with Toxic Substances. Licensee shall cause any on-site or off-site storage, treatment, transportation, disposal or other handling of Toxic Substance by Licensee in connection with the License Area to be performed by persons, equipment, facilities and other resources who are at all times properly and lawfully trained, authorized, licensed and otherwise permitted to perform such services.

4.17 Prohibited Names. Licensee shall not use in connection with its operations at the License Area any name that directly or indirectly refers to or contains any part of Licensor's name or the Alley's name or otherwise suggests a connection between Licensor and Licensee or Licensee's activities except that Licensee may use its own name as stated at the beginning of this Agreement. Licensee shall also not use in connection with its operations at the License Area any name associated with products or purveyors of any sort of alcohol, tobacco, adult entertainment or gambling related products or services.

V. IMPROVEMENTS GENERALLY

5. Improvements. Licensee shall have all responsibilities for improvements to the License Area during the term of this Agreement.

5.1 Improvements by Licensor. Licensor has not promised to and is not obligated in any manner to make any improvements to the License Area or the Alley.

5.2 General Provisions for Licensee's Improvements. The following provisions shall govern all improvements, repairs, installation, removal, demolition and other construction work of

any description by Licensee whether or not specifically described herein (collectively "Licensee's Improvements") upon or related to the License Area:

5.2.1 As of the date of this Agreement, Licensor has not approved or promised to approve any plans for Licensee's Improvements. As of the date of this Agreement, Licensee is not obligated to construct any Licensee's Improvements.

5.2.2 All Licensee's Improvements shall be designed and made at Licensee's sole cost and expense.

5.2.3 All Licensee's Improvements shall be contained entirely within the License Area and without any encroachment or dependence upon any other property.

5.2.4 Any and all construction work performed on the License Area by Licensee shall be performed in a workman-like manner as reasonably determined by Licensor and shall be diligently pursued to completion and in conformance with all building codes and similar rules. All Licensee's Improvements shall be and become part of the realty and the real property of Licensor "brick by brick" as constructed. Licensee's construction work must not interfere with normal operation of the Alley. In any event, the License Area must be left in as good or better condition as it may be on the date of this Agreement, or such better condition as the License Area may hereafter be placed.

5.2.5 All work shall be done strictly at Licensee's expense and paid for by Licensee. In no event, including without limitation termination of this Agreement for any reason, shall Licensor be obligated to compensate Licensee in any manner for any of Licensee's Improvements or other work provided by Licensee during or related to this Agreement.

5.2.6 Licensee's Improvements shall include all leasehold improvements, furnishings, furniture, equipment, fixtures, paint, decorations and other construction work of any description as described in all plans delivered by Licensee to Licensor. All such plans and construction are subject to inspection and final approval by Licensor as to colors, fabrics, materials, site plan, etc., as well as design, function and appearance.

5.2.7 Licensee shall diligently and expeditiously pursue the installation of all approved Licensee's Improvements and shall complete installation of all of Licensee's Improvements no later than the earlier of i) six (6) months after the date of plans approval or ii) any earlier date required by this Agreement or by Licensor's approval of the plans. The timelines set forth in the preceding sentence do not require Licensee to construct any Licensee Improvements until after the Resurfacing Work is completed.

5.2.8 Licensee shall make no alterations, modifications or additions to the License Area without having first received the written consent of Licensor which Licensor may withhold in Licensor's sole and absolute discretion. Any approved alterations, modifications or additions shall be accomplished by Licensee at its sole cost and expense. Any changes to utility facilities shall be strictly limited to the License Area and shall be undertaken by Licensee at its sole cost and expense, and only with the written permission of Licensor.

5.3 Design Requirements. All Licensee Improvements shall comply with the following design requirements:

5.3.1 All Licensee Improvements shall be designed so as to present uniformity of design, function, appearance and quality throughout and consistency with other buildings and improvements located at the Alley, taking into consideration the design of the Grill Building.

5.3.2 All of Licensee's Improvements shall be of high quality, safe, modern in design, and attractive in appearance, all as approved by Licensor.

5.4 Plans Required. Licensee's design of all Licensee's Improvements shall occur in three stages culminating in final working construction documents for the Licensee's Improvements (the "Final Plans"). The three stages are, in order of submission and in increasing order of detail, as follows:

5.4.1 Conceptual plans showing the general layout, locations, configuration, and capacities of all significant improvements, topographical features, pedestrian and vehicular ways, buildings, utilities, water systems, and other features significantly affecting the appearance, design, function and efficient operation of each of element of the Licensee's Improvements.

5.4.2 Preliminary plans showing all floor plan, general internal and external building design and decoration schemes, mechanical, electrical and plumbing systems, landscaping and all other elements necessary prior to preparation of final working construction documents and showing compliance with all requirements of this Agreement. The preliminary plans shall show all detail necessary prior to preparation of final plans.

5.4.3 Final working construction documents for the Licensee's Improvements (collectively the "Final Plans").

5.5 Approval Process. The following procedure shall govern Licensee's submission to Licensor of all plans hereunder, including any proposed changes by Licensee of previously approved plans:

5.5.1 All plans must comply with all requirements of law, all Site Documents and this Agreement. No plans shall be deemed approved until stamped "APPROVED PER LICENSE" and dated by Licensor's project manager. Licensee acknowledges that Licensor's project manager's authority with respect to the Project is limited to the administration of the requirements of this Agreement. Licensee shall be responsible to secure all zoning approvals, design revisions, or other governmental approvals and satisfy all governmental requirements pertaining to the Project and shall not rely on Licensor or Licensor's project manager for any of the same. Licensor's project manager (who shall not be exclusively assigned to this Project) shall be reasonably available to coordinate and assist Licensee in working through issues that may arise in connection with such approvals and requirements.

5.5.2 Licensee acknowledges that Licensor has a substantial interest in the design construction and operation of the Licensee's Improvements. No construction, reconstruction, alteration or other individually or cumulatively significant work shall occur upon the License Area except in compliance with plans approved by Licensor in compliance with this Agreement. Licensor's issuance of building permits or other governmental review or action shall not constitute approval of any plans for purposes of this Agreement.

5.5.3 All plans must comply with all requirements of law, all agreements related to the License Area and this Agreement.

5.5.4 Licensor has the right to require Licensee to submit any Licensee Improvements to the City of Scottsdale Design Review Board or any similar body for approval.

5.5.5 Licensee shall coordinate with Licensor as necessary on significant design issues prior to preparing plans to be submitted hereunder.

5.5.6 No later than each submission date, Licensee shall hand deliver to Licensor five (5) complete copies of all plans. Submission dates shall be such dates as are necessary for Licensee to timely obtain the approvals required by this Agreement.

5.5.7 Within thirty (30) days after Licensor's receipt of plans from Licensee, Licensor shall hand deliver to Licensee one (1) copy of the plans submitted stamped "APPROVED PER LICENSE" and dated by Licensor, or marked to indicate the changes that would be necessary in order for Licensor to approve the plans.

5.5.8 If changes are required, Licensee shall revise the plans incorporating the changes requested by Licensor and shall within thirty (30) days after Licensor returns the marked up plans to Licensee submit to Licensor the revised plans. Within twenty (20) days after Licensee's receipt of such plans, Licensor shall hand deliver to Licensee one (1) copy of such revised plans stamped "APPROVED PER LICENSE" and dated.

5.5.9 The parties shall endeavor to resolve any design and construction issues to their mutual satisfaction but, in the event of an impasse for any reason or however arising, in light of Licensor's investment in the Alley and Licensor's reversion in the License Area, and as a condition of Licensor's entering into this Agreement, final decision authority regarding all design and construction issues shall rest with Licensor.

5.5.10 Licensee shall provide copies of any and all designs or plans for improvements upon the License Area to Licensor for Licensor's unrestricted use at the License Area or elsewhere.

VI. MAINTENANCE

6. Improvements and Maintenance. Licensee shall have all responsibilities for maintenance and repair of the License Area during the term of this Agreement.

6.1 Maintenance by Licensor. Except for existing underground utilities, Licensor has no maintenance responsibilities regarding the License Area.

6.2 Utilities. Licensee shall contract for and pay all charges, fees, deposits and other amounts for all utilities at the rates applicable thereto. Utility circuits must not be connected to Licensor's systems.

6.3 Maintenance by Licensee. Licensee shall at all times repair, maintain and replace the License Area and all facilities thereat at Licensee's sole expense in a first-class, sound, clean

and attractive manner, as determined in Licensor's reasonable discretion. Without limitation, Licensee shall be responsible for the following:

6.3.1 Adequate and sanitary handling and disposal, away from the License Area and the Alley, of all trash, garbage and other refuse related to Licensee's use of the License Area. Without limitation, Licensee shall provide and use suitable covered receptacles for all trash and other refuse related to Licensee's use of the License Area. Piling of boxes, cartons, barrels, debris or other items outside the License Area or in a manner visible from outside the License Area or in a manner visible to areas open to the public is prohibited. The area in which trash containers are stored shall be kept clean and free of all trash and debris and shall be shielded from public view.

6.3.2 Trash pickup for the License Area and for all real property that lies within ten (10) feet of the License Area.

6.3.3 Repairing erosion or other water or wind damage or changes to the surface or any other part of the License Area.

6.3.4 All irrigation, landscape, building and other maintenance required to operate the License Area in a first class manner with appearance, landscaping, upkeep, repair and refurbishing, cleanliness and healthy vegetation meeting or exceeding the manner of maintenance at the nicest similar facilities in Maricopa County, Arizona.

6.3.5 Janitor and all other cleaning service in the License Area.

6.3.6 Maintenance as described on Exhibit "E" attached hereto.

6.3.7 All other repairs and maintenance of the License Area not specifically required hereunder to be performed by Licensor.

6.3.8 Daily trash pickup and biweekly washing down of the License Area and the additional area, which is designated on the Site Plan as the "Cleaning Area."

VII. BREACH BY LICENSEE

7. Breach by Licensee. Licensee shall comply with, perform and do each performance and thing required of Licensee herein and Licensee's failure to do so shall be a breach by Licensee of this Agreement.

7.1 Events of Default. This entire Agreement is made upon the condition that each and every one of the following events shall be deemed an "Event of Default" and a material breach by Licensee of Licensee's material obligations under this Agreement:

7.1.1 If Licensee shall be in arrears in the payment of Use Fee and shall not cure such arrearage within ten (10) days after Licensor has notified Licensee in writing of such arrearage.

7.1.2 If Licensee shall abandon the License Area.

7.1.3 If any environmental, health or similar inspector issues any notice of investigation or violation of health, environmental or similar regulations in connection with Licensee's use of the License Area or determines during any two or more consecutive inspections that the same violation has been repeated or that the overall operation falls materially below standards for first rate well operated similar facilities in Maricopa County.

7.1.4 If any assignment of any of Licensee's property shall be made for the benefit of creditors.

7.1.5 If any representation or warranty made by Licensee in connection with this Agreement or the negotiations leading to this Agreement shall prove to have been false in any material respect when made.

7.1.6 If the issuer of any guaranty, letter of credit, bond or similar instrument shall fail for any reason to timely and fully honor any request by Licensor for funds or other performance under the instrument.

7.1.7 If Licensee shall fail to timely pay any taxes or other amounts herein required to be paid by Licensee to any third person.

7.1.8 If Licensee shall fail to obtain or maintain any licenses, permits, or other governmental approvals from Licensor or any other governmental body or timely pay any taxes with respect to this Agreement, the License Area or Licensee's use of the License Area.

7.1.9 If there shall occur an Unruly Behavior Offense and such Unruly Behavior Offense shall not be cured immediately upon notice by Licensor. Licensor may give notice related to Unruly Behavior Offenses orally in person, or by telephone, or by the notice provisions of this Agreement, or in any manner that gives Licensee or Licensee's on site manager actual notice of Licensor's objection to any Unruly Behavior Offense.

7.1.10 If there shall occur ten (10) Unruly Behavior Offenses within any six (6) month period, regardless of any notice given or not given by Licensor regarding the same.

7.1.11 If Licensee shall fail to or neglect to do or perform or observe any other provisions contained herein on its part to be kept or performed and such failure or neglect to do or perform or observe any of such other provisions shall continue for a period of thirty (30) days after Licensor has notified Licensee in writing of Licensee's default hereunder.

7.1.12 If Licensee shall persist in a pattern of repeated failure (or neglect) to do or perform or observe any provision contained herein.

7.2 Licensor's Remedies. Upon the occurrence of any Event of Default or at any time thereafter, Licensor may, at its option and from time to time, exercise any or all or any combination of the following remedies in any order and repetitively at Licensor's option:

7.2.1 Licensor's right to terminate this Agreement for nonpayment of Use Fee or for any other Event of Default is hereby specifically provided for and agreed to. Termination of this Agreement due to Licensee's breach or for any other reason does not terminate Licensee's

obligations arising prior to or simultaneous with, or attributable to, the termination or in any way terminate any of Licensee's liability related to any breach of this Agreement.

7.2.2 Without demand or notice, enter into and upon the License Area or any part thereof, and repossess the same of its former estate, and expel Licensee and those claiming by, through or under it, and remove their effects, if any, forcibly if necessary, without being deemed guilty of trespass and without prejudice to any other remedy.

7.2.3 Enforce a lien (which is hereby granted to Licensor) upon Licensee's property now or at any time hereafter at the License Area securing all of Licensee's obligations hereunder.

7.2.4 Cause a receiver to be appointed for the License Area and for the continuing operation of Licensee's business thereon.

7.2.5 Pay or perform, for Licensee's account and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee.

7.2.6 Abate at Licensee's expense any violation of this Agreement.

7.2.7 Pursue at Licensee's expense any and all other remedies, legal or equitable, to which Licensor may be entitled.

7.2.8 Refuse without any liability to Licensee therefor to perform any obligation imposed on Licensor by this Agreement.

7.2.9 Be excused from further performance under this Agreement.

7.2.10 Insist upon Licensee's full and faithful performance under this Agreement and upon Licensee's full and timely payment of all Use Fees during the entire remaining term of this Agreement.

7.2.11 Assert or exercise any other right or remedy permitted by law.

7.3 Power of Attorney. For the purpose of exercising any of Licensor's rights or remedies as hereunder relate to the License Area, Licensee hereby irrevocably appoints Licensor as Licensee's true and lawful attorney in fact, and such power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked for any reason, to pay or perform, for Licensee's account and at Licensee's expense, any or all payments or performances required hereunder to be paid or performed by Licensee, to terminate of record this License, to enter into and upon the License Area or any part thereof, and to perform any act upon the License Area or otherwise deemed necessary by Licensor to exercise its rights under this Agreement.

7.4 Notice of Breach. Licensee shall promptly give notice to Licensor of any event or circumstance, which is (or which with the passing of time or the giving of notice or both will become) an Event of Default under this Agreement.

7.5 Non-waiver. Licensee acknowledges Licensee's unconditional obligation to comply with this Agreement. No failure by Licensor to demand any performance required of Licensee

under this Agreement, and no acceptance by Licensor of any imperfect or partial performance under this Agreement, shall excuse such performance or impair in any way Licensor's ability to insist, prospectively and retroactively, upon full compliance with this Agreement. No acceptance by Licensor of Use Fee or other performances hereunder shall be deemed a compromise or settlement of any claim Licensor may have for additional or further payments or performances. Any waiver by Licensor of any breach of condition or covenant herein contained to be kept and performed by Licensee shall not be deemed or considered as a continuing waiver and shall not operate to bar or otherwise prevent Licensor from declaring a default for any breach or succeeding breach either of the same condition or covenant or otherwise. No statement, bill or notice by Licensor concerning payments or other performances due hereunder shall excuse Licensee from compliance with this Agreement nor estop Licensor (or otherwise impair Licensor's ability) to at any time correct such notice and/or insist prospectively and retroactively upon full compliance with this Agreement. No waiver of any description (including any waiver of this sentence or paragraph) shall be effective against Licensor unless made in writing by a duly authorized representative of Licensor specifically identifying the particular provision being waived and specifically stating the scope of the waiver. LICENSEE EXPRESSLY DISCLAIMS AND SHALL NOT HAVE THE RIGHT TO RELY ON ANY SUPPOSED WAIVER OR OTHER CHANGE OR MODIFICATION, WHETHER BY WORD OR CONDUCT OR OTHERWISE, NOT CONFORMING TO THIS PARAGRAPH.

7.6 Reimbursement of Licensor's Expenses. Licensee shall pay to Licensor upon demand any and all amounts expended or incurred by Licensor in performing Licensee's obligations.

7.7 Inspection. Licensor shall have access to the License Area at all times upon reasonable prior notice (except, in the event of an emergency without notice) for the purpose of examining, inspecting, evaluating, planning, repairing, designing, maintaining or showing the License Area or exercising Licensor's other rights hereunder. Licensee shall promptly undertake appropriate action to rectify any deficiency (identified by Licensor during such inspections or otherwise) in Licensee's compliance with this Agreement. This paragraph does not limit Licensor's other rights of access to the License Area elsewhere in this Agreement or otherwise.

7.8 Default by Licensor. Notwithstanding anything in this Agreement to the contrary, in the event Licensor at any time is required to pay to Licensee any amount or render any performance, such amount or performance is not due until thirty (30) days after notice by Licensee to Licensor that the amount has become payable or that the performance is due. In the event a cure cannot be effected during that period, Licensor shall not be in default so long as Licensor commences cure during the period and diligently prosecutes the cure to completion provided such cure must be completed within sixty (60) days after it is due.

VIII. TERMINATION

8. Rights at Termination.

8.1 Delivery of Possession. Licensee shall, at the expiration of the term hereof or upon any sooner termination thereof, without demand, peaceably and quietly quit and deliver up the License Area to Licensor thoroughly cleaned, in good repair, maintained and repaired and in as good order and condition, reasonable use and wear excepted, as the same now are or in such better condition as the License Area may hereafter be placed by Licensee or Licensor.

8.2 Confirmation of Termination. Upon expiration or termination of this Agreement for any reason, Licensee shall provide to Licensor upon demand quit claim deeds covering the License Area executed by Licensee and by all persons claiming through this Agreement or Licensee any interest in or right to use the License Area. Such quit claim deeds shall not detract from such rights as Licensee may have upon termination of this Agreement as respects access to and from the public street system and the Grill Parcel. Termination of this Agreement for any reason does not terminate Licensee's obligations arising prior to or simultaneous with, or attributable to, the termination.

8.3 Fixtures and Improvements. Upon termination of this Agreement through expiration, default or otherwise, if the same has not occurred earlier, title to any and all fixtures and structural or permanent improvements placed upon the License Area by Licensee TOGETHER WITH ALL IRRIGATION EQUIPMENT, WALKWAYS, SOCKETS, RAILINGS, AND ALL OTHER EQUIPMENT AND PERSONAL PROPERTY OF EVERY DESCRIPTION ATTACHED OR AFFIXED TO THE PREMISES shall automatically vest in Licensor without any payment by Licensor or any compensation to Licensee and without requirement of any deed, conveyance, or bill of sale. The preceding sentence does not apply to other personal property that is not physically attached in any way to the License Area. However, if Licensor shall request any documents in confirmation thereof, Licensee shall promptly execute, acknowledge and deliver the same. Licensee shall provide and assign to Licensor all operating manuals, warranties and similar materials pertaining to all personal property transferred to Licensor. Further, upon termination of this Agreement Licensee shall at its own expense, but only to the extent requested by Licensor in writing, remove and dispose of any said property and any fixtures and structural or permanent improvements placed upon the License Area by Licensee.

IX. INSURANCE

9. Insurance. Licensee shall insure the License Area as follows:

9.1 Insurance Required. Prior to entering, occupying or using the License Area in any way (and in any event, commencing not later than five (5) days after the date of this Agreement) and at all times thereafter, Licensee shall obtain and cause to be in force and effect the following insurance:

9.1.1 Commercial General Liability: Licensee shall maintain "occurrence" form Commercial General Liability insurance with a limit of not less than \$1,000,000 for each occurrence, \$2,000,000 Products and Completed Operations Annual Aggregate, and a \$2,000,000 General Aggregate Limit. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury. Coverage under the policy will be at least as broad as Insurance Services Office, Inc. policy form CG 00 01 07 98 or equivalent thereof, including but not limited to, separation of insureds clause. If any Excess insurance is utilized to fulfill the requirements of this paragraph, such Excess insurance shall be "follow form" equal or broader in coverage scope than underlying insurance.

9.1.2 Liquor Liability: Licensee shall maintain liquor liability in an amount not less than \$1,000,000 each Common Cause and \$1,000,000 Policy Aggregate.

9.1.3 Workers Compensation Insurance: Licensee shall maintain Workers Compensation insurance to cover obligations imposed by federal and state statutes having jurisdiction of Contractor's employees engaged in the performance of work or services under this License, and shall also maintain Employers' Liability Insurance of not less than \$100,000 for each accident, \$100,000 disease for each employee and \$500,000 disease policy limit.

9.1.4 Other Insurance: Any other insurance Licensors may reasonably determine from time to time to be necessary to protect Licensors, the License Area, or the activities on the License Area. Such insurance shall be limited to insurance a reasonable person owning, leasing, occupying, or operating similar facilities could purchase.

9.2 Form of Insurance. All insurance policies shall meet the following requirements:

9.2.1 All policies except workers' compensation must name Licensors and the other Additional Insureds as additional insureds. Licensee shall cause coverage for Additional Insureds to be incorporated into each insurance policy via endorsement equivalent to Insurance Services Office, Inc. Commercial General Liability Additional Insured, Form B CG 20 10 11 85. Licensors may give Licensee notice of Licensors' election from time to time that any or all the Additional Insureds not be named as Additional Insureds with respect to specific insurance coverages.

9.2.2 All policies must provide Licensors with thirty (30) days prior notice of any cancellation, reduction or other change in coverage.

9.2.3 All policies shall require that notices be given to Licensors as specified for notices to Licensors under this Agreement.

9.2.4 Any "claims made" coverage shall have an extended reporting period for a minimum of two (2) years after the insurer's notice to Licensors that the policy has expired.

9.2.5 Policies must also cover and insure Licensee's activities relating to the business activities conducted from the License Area.

9.2.6 The insurer's duty to notify Licensors of changes in coverage shall not include phrases such as "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

9.2.7 All policies shall contain provisions that neither Licensee's breach of a policy requirement or warranty, nor failure to follow claims reporting procedures, shall affect coverage provided to Licensors.

9.2.8 All policies must clearly show by formal endorsement or otherwise that all coverage required by this Agreement is provided.

9.2.9 Each policy must specifically state that the policy is issued pursuant to this article of this Agreement.

9.2.10 All insurance policies shall contain a waiver of any transfer rights of recovery (subrogation) against Licensors and all other Additional Insureds.

9.2.11 No deductible shall be applicable to coverage provided to Licensor.

9.3 Insurance Certificates. Licensee shall evidence all insurance by furnishing to Licensor certificates of insurance. Certificates must be provided within thirty (30) days after the date of this Agreement and indicate that the insurer will notify Licensor at least thirty (30) days prior to any change in insurance coverage. Certificates must evidence that the policy referenced by the certificate satisfies each requirement of this Agreement applicable to the policy. For example, certificates must indicate that Licensor and its agents, officials and employees are additional insureds. Certificates must be in a form acceptable to Licensor. All certificates are in addition to the actual policies and endorsements required.

9.4 Combined Insurance. Licensee may elect to provide insurance policies, which include not only the License Area, but also any adjacent real property Licensee may own, or lease.

9.5 Licensor's Election to Provide Insurance. With respect to any insurance required hereunder, Licensor may elect to acquire all or any part of such insurance covering the License Area and Licensee shall pay to Licensor the costs of such insurance as reasonably determined by Licensor. Licensee shall provide all insurance not so provided by Licensor.

9.6 Insurance Proceeds. All insurance proceeds (whether actually paid before or after termination of this Agreement) shall be paid directly to Licensor for Licensor's use in compensating Licensor for the loss of the License Area, protecting Licensor, the License Area and Licensor's property from every other loss or exposure suffered by Licensor, rebuilding the License Area, and satisfying and securing Licensee's obligations hereunder. Any remaining proceeds shall be allocated between Licensor and Licensee as their interests may appear.

9.7 Acceptable Insurers. All insurance policies shall be issued by insurers acceptable to Licensor. At a minimum, all insurers shall be duly licensed (or qualified unlicensed) by the State of Arizona, Department of Insurance. At a minimum, all insurers shall have and maintain an A.M. Best, Inc. rating of B++ 6.

9.8 Primary Insurance. Licensee's insurance shall be primary insurance. Any insurance or self insurance maintained by Licensor shall not contribute to Licensee's insurance.

9.9 Indemnity. In addition to all other obligations hereunder, to the fullest extent permitted by law, throughout the term of this Agreement and until all obligations and performances under or related to this Agreement are satisfied and all matters described in this paragraph are completely resolved, Licensee (and all other persons using, acting, working or claiming through or for Licensee or this Agreement (if they participated in causing the claim in questions)) shall jointly and severally pay, indemnify, defend and hold harmless Licensor and all other Additional Insureds for, from and against any and all claims or harm related to the License Area or this Agreement (the "Indemnity"). Without limitation, the Indemnity shall include and apply to any and all allegations, demands, judgments, assessments, taxes, impositions, expenses, proceedings, liabilities, obligations, suits, actions, claims (including without limitation claims of personal injury, bodily injury, sickness, disease, death, property damage, destruction, loss of use or other impairment), damages, losses, expenses, penalties, fines or other matters (together with all attorney fees, court costs, and the cost of appellate proceedings) which may arise in any manner out of any use of the License Area or Licensor's property related to this Agreement or any actions, acts, errors, mistakes

or omissions relating to work or services in the performance of or related to this Agreement, including any injury or damages or cause of action claimed or caused by any employees, contractors, subcontractors, tenants, subtenants, agents or other persons upon or using the License Area or surrounding areas related to this Agreement, including without limitation, claims, liability, harm or damages caused in part by Licensor or any other Additional Insured or anyone for whose mistakes, errors, omissions or negligence Licensee or Licensor may be liable. Notwithstanding the foregoing, the Indemnity does not apply to:

9.9.1 Claims arising only from sole gross negligence of Licensor.

9.9.2 Claims, which the law prohibits from being imposed upon Licensee.

9.10 Consultant Indemnity. Licensee shall require all architects, engineers, and other consultants, (collectively "Consultants") at any time contracted to provide professional services in the design construction, operation or other work regarding the License Area to provide to Licensor the following indemnity and professional liability insurance.

9.10.1 To the fullest extent permitted by law, the Consultant shall defend, indemnify and hold harmless Licensee, Licensor and their respective agents, representatives, officers, directors, officials and employees from and against all claims, damages, losses and expenses (including but not limited to attorney fees, court costs, and the cost of appellate proceedings), relating to, arising out of or resulting from the Consultant's acts, errors, mistakes or omissions relating to professional services relating to the Project. Consultant's said duty to defend, hold harmless and indemnify shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death; or injury to, impairment, or destruction of property including loss of use resulting therefrom, caused by any acts, errors, mistakes or omissions related to professional services relating to the Project including any person for whose acts, errors, mistakes or omissions the Consultant may be legally liable. The amount and type of insurance coverage required by this Agreement will in no way be construed as limiting the scope of the indemnity in this paragraph.

9.10.2 The Consultant retained to provide the services or work relating to the Project will maintain Professional Liability insurance covering acts, errors, mistakes and omissions arising out of the services or work performed by the Consultant or any person employed by him, with a limit of not less than \$1,000,000 for each claim.

9.11 Risk of Loss. Licensor is not required to carry any insurance covering or affecting the License Area or Licensor's property. Licensee assumes the risk of any and all loss, damage or claims to the License Area or related to Licensee's use of the License Area or Licensor's property throughout the term hereof. Licensee's obligations to indemnify do not diminish in any way Licensee's obligations to insure; and Licensee's obligations to insure do not diminish in any way Licensee's obligations to indemnify. Licensee's obligations to indemnify and provide insurance are in addition to, and do not limit, any and all other liabilities or obligations of Licensee under or connected with this Agreement.

9.12 Sublessees. Any sublessees must also provide the insurance required by this Agreement.

X. CONDEMNATION

10. Condemnation.

10.1 Future Condemnation. If any part of the License Area shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, and in the event that such taking or condemnation shall render the License Area unsuitable for the Permitted Uses, then the term of this Agreement shall cease and terminate as of the date of the condemnor taking possession in such proceeding and Licensee shall have no claim for the value of any unexpired term of this Agreement. Notwithstanding the preceding sentence, Licensee shall be entitled to a portion of the condemnation proceeds not exceeding the lesser of i) the actual amount paid by Licensee to third parties to construct any Licensee's Improvements taken, reduced by twenty percent (20%) for each year or portion of a year which has passed from the date such Licensee's Improvements were completed to the date of the condemnor taking possession, or ii) the total condemnation proceeds. In the event of a partial taking or condemnation which is not extensive enough to render the License Area unsuitable for the Permitted Uses, Licensee shall restore the License Area to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking and this Agreement shall continue in full force and effect, with condemnation proceeds being used to restore the License Area and any excess being retained by Licensor. Licensee acknowledges that Licensor from time to time may have or acquire, and may use, the power to condemn the License Area or any interests therein or rights thereto. Licensee on behalf of all persons claiming under this Agreement unconditionally and irrevocably waives any right to contest Licensor's power to take or the proper exercise of such power.

XI. DAMAGE TO OR DESTRUCTION OF PREMISES

11. Damage to or Destruction of License Area. If the License Area are damaged by fire, explosion, the elements, the public enemy, or other casualty, then Licensee shall restore the License Area. Such work shall be performed with due diligence and at Licensee's sole cost and expense, except that Licensor shall reimburse Licensee for restoration work to the extent of such net insurance proceeds as provided by this Agreement.

XII. LICENSEE'S RECORDS

12. Licensee's Records. Licensee shall maintain in a secure and fixed place at the License Area or elsewhere within Maricopa County, Arizona proper and accurate records relating in any manner to this Agreement and to all of Licensee's obligations hereunder. So long as the same shall be pertinent to this Agreement or any transactions contemplated herein and, in any event, for a period extending at least seven (7) years after termination of this Agreement, Licensee will at its expense permit and assist Licensor and its representatives at all reasonable times to inspect, audit and copy any or all of such information.

12.1 Standards for Records. Licensee will maintain a standard, modern system of accounting and shall keep and maintain all books and records in accordance with generally accepted accounting principles applied on a consistent basis.

12.2 Supplemental Information. Licensee will also furnish, from time to time, such additional financial and other information as Licensor may reasonably request pertaining to

Licensee's and Licensor's respective rights and obligations with respect to this Agreement as reasonably determined by Licensor.

12.3 Records Included. The records of Licensee subject to this Agreement include, but are not limited to, any and all information, materials and data of every kind and character, including without limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, computerized records, invoices, cash register tapes and similar records, contracts, commitments, arrangements, notes, daily diaries, ledgers, correspondence, reports, drawings, receipts, vouchers and memoranda, and any and all other agreements, sources and repositories of information and matters that may in Licensor's reasonable judgment bear on any matters, rights, duties or obligations under or covered by this Agreement or any performance hereunder. This article does not obligate Licensee to provide Licensor access to records that are unrelated to Licensee's and Licensor's rights and obligations under this Agreement.

XIII. COMPLIANCE WITH LAW

13. Compliance with Law. Licensee shall conduct only lawful operations at the License Area and at the Alley in accordance with all federal, state, county and city laws, ordinances, regulations or other rules as are now in effect or as may hereafter be adopted or amended. Licensee acknowledges that this Agreement does not constitute, and Licensor has not promised or offered, any type of waiver of, or agreement to waive (or show any type of forbearance or favoritism to Licensee with regard to), any law, ordinance, power, regulation, tax, assessment or other legal requirement now or hereafter imposed by the City of Scottsdale or any other governmental body upon or affecting Licensee, the License Area, the Alley or Licensee's use of the License Area. Licensee acknowledges that all of Licensee's obligations hereunder are in addition to, and cumulative upon (and not to any extent in substitution or satisfaction of), all existing or future laws and regulations applicable to Licensee. In the case of an ordinance or other law of the City of Scottsdale authorizing a credit, reduction in tax or amount assessed, or any other benefit as a result of performances rendered under this Agreement, Licensee expressly repudiates all such benefits with respect to performances rendered under this Agreement. Licensee further agrees that this Agreement is not intended to diminish any performances to the City of Scottsdale that would be required of Licensee by law if this Agreement had been made between Licensee and a private citizen. Licensor has not relinquished any right of condemnation or eminent domain over the License Area. This Agreement is not intended in any way to impair the City of Scottsdale's power to enact, apply or enforce any laws or regulations, or exercise any governmental powers, affecting in any way Licensee or the License Area. Licensee promises to comply with all applicable laws. Licensor's rights and remedies hereunder for breach of such promise supplement and are in addition to and do not replace all otherwise existing powers of the City of Scottsdale or any other governmental body. Without limiting in any way the generality of the foregoing, Licensee shall comply with all and each of the following:

13.1 Government Property Lease Excise Tax. Licensee shall be responsible for any and all property taxes and all government property lease excise taxes described in A.R.S. § 42-1901 *et seq.* or similar laws in force from time to time. Pursuant to A.R.S. § 42-1931, failure by Licensee to pay the tax(es) after notice and an opportunity to cure is an event of default that could result in divesting the Licensee of any interest in or right of occupancy of the License Area.

13.2 Taxes, Liens and Assessments. In addition to all other Use Fee herein provided, Licensee shall pay, when due and as the same become due and payable all taxes and general and special fees, charges and assessments of every description which during the term of this Agreement may be levied upon or assessed against the License Area, the operations conducted therein, any Use Fees paid or other performances under this Agreement by either party, and all possessory interest in the License Area and improvements and other property thereon, whether belonging to the Licensor or Licensee; and Licensee agrees to indemnify, defend and hold harmless Licensor and the License Area and such property and all interest therein and improvements thereon from any and all such taxes and assessments, including any interest, penalties and other expenses which may be imposed, and from any lien therefor or sale or other proceedings to enforce payment thereof. Licensee shall have the right to contest, but not the right to refuse to timely pay, any taxes and assessments. Licensor shall have the right from time to time to require that all of the foregoing payments be made by Licensee through Licensor. Licensee shall pay all sales, transaction privilege, and similar taxes.

13.3 Food Laws. Licensee shall at all times comply with Federal Pure Food and Drug Laws and all other applicable health rules, regulations, standards, laws and ordinances of the United States of America, State of Arizona, County of Maricopa, City of Scottsdale, and any other authority lawfully exercising authority over food and beverage services. Licensee shall at its own expense obtain and maintain all necessary licenses and permits permitting the sale of food and beverages on the License Area.

13.4 Building permits. Licensee shall obtain at its own expense all building or other permits in connection with all construction performed by Licensee and shall comply with all zoning, building safety, fire and similar laws and procedures of every description.

XIV. ASSIGNABILITY

14. Assignability. This Agreement is not assignable by Licensee except in strict compliance with the following:

14.1 Assignments and Subleases Prohibited. References in this Agreement to assignments or subleases by Licensee shall be deemed to apply to all of the following transactions, circumstances and conditions:

14.1.1 Any voluntary or involuntary assignment, transfer, pledge, lien or sublease of the License Area or any interest therein.

14.1.2 The use, occupation, management, control or operation of the License Area or any part thereof by others.

14.1.3 Any transfer of corporate stock or any other direct or indirect transfer of any substantial part of the ownership, management or control of Licensee or the License Area.

14.1.4 Any assignment for the benefit of creditors, voluntary or involuntary.

14.1.5 Any bankruptcy or reorganization.

14.1.6 The occurrence of any of the foregoing by operation of law.

14.2 Assignment Remedies. In the event of any prohibited assignment, Licensor may, in its sole discretion and in addition to all other remedies available to Licensor under this Agreement or otherwise and in any combination, collect Use Fee from the assignee, sublessee or occupant and apply the net amount collected to the Use Fee required to be paid thereunder and/or void the assignment, all without prejudicing any other right or remedy of Licensor under this Agreement. No cure or grace periods shall apply to assignments prohibited by this Agreement or to enforcement of this Agreement against an assignee who did not receive Licensor's consent.

14.3 No Waiver. No consent or collection or other action or inaction by Licensor shall be deemed a waiver of the prohibition on assignments or any other provision of this Agreement, or the acceptance of the assignee, sublessee or occupant as Licensee, or a release of Licensee from the further performance by Licensee of the provisions of this Agreement. The consent by Licensor to an assignment or subletting shall not relieve Licensee from obtaining the consent in writing of Licensor to any further assignment or sublease. Upon assigning, transferring or subletting the License Area, Licensee shall not be released of any liability hereunder but shall remain fully and personally obligated under this Agreement.

14.4 Enforceability after Assignment. This Agreement shall be enforceable personally and in total against Licensee and each successor, partial or total, and regardless of the method of succession, to Licensee's interest hereunder. Each successor having actual or constructive notice of this Agreement shall be deemed to have agreed to the preceding sentence.

14.5 Grounds for Refusal. No assignments of this Agreement are contemplated or bargained for. Licensor has the absolute right for any reason or for no reason in its sole discretion to give or withhold consent to any assignment or to impose any conditions upon any assignment, except that Licensor shall not unreasonably refuse to consent to an assignment of this Agreement to any purchaser of the Grill Parcel. Licensee shall pay to Licensor the sum of Five Hundred Dollars (\$500) for legal and administrative expenses related to any request for consent.

14.6 Sale of Grill Parcel. In addition to all of Licensor's other termination rights, Licensor shall have the right to unilaterally terminate this Agreement if this Agreement is not assigned to any purchaser of the Grill Parcel, even if the assignment is prevented by Licensor's failure to consent to such assignment. Licensee shall give Licensor thirty (30) days advance notice of any transfer of the Grill Parcel.

XV. MISCELLANEOUS

15. Miscellaneous.

15.1 Notices. Notices hereunder shall be given in writing personally served upon the other party or mailed by registered or certified mail, return receipt requested, postage prepaid addressed to:

If to Licensor:

Asset Management Coordinator
One Civic, 2nd Floor, Suite 205
7447 E. Indian School Rd.
Scottsdale, AZ 85251

Copies to: City of Scottsdale
3939 Civic Center Blvd.
Scottsdale, AZ 85251
Attn: City Attorney

If to Licensee: John Eby
3007 N. 73rd Street, Suite C
Scottsdale, AZ 85251
Telephone: (480) 990-7676
Facsimile: (480) 990-8222

or to such other street address within Maricopa County, Arizona as may be designated by the respective parties in writing from time to time. Notices to Licensee may also be hand delivered to the License Area. In the event of any service by mail, as aforesaid, service of any notice shall be deemed to be complete forty-eight (48) hours after the notice is deposited in the United States mail.

15.2 Time of Essence. Time is of the essence of each and every provision of this Agreement.

15.3 Invalid Provisions. In the event any term, condition, covenant, stipulation, agreement or provision herein contained is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement or provision shall in no way affect any other term, condition, covenant, stipulation, agreement or provision herein contained.

15.4 Paragraph Headings. The paragraph headings contained herein are for convenience in reference only and not intended to define or limit the scope of any provision of this Agreement.

15.5 Attorneys' Fees. In the event any action or suit or proceeding is brought by either party to enforce compliance with this Agreement or for failure to observe any of the covenants of this Agreement or to vindicate or exercise any rights or remedies hereunder, the party which does not prevail shall pay all costs of such action or suit and all expenses of such action or suit together with such sum as the court may adjudge reasonable as attorneys' fees to be allowed in said suit, action or proceeding.

15.6 No Third Party Beneficiaries. Except as expressly stated with respect to Unruly Behavior Offenses, no person or entity shall be a third party beneficiary to this Agreement.

15.7 Exhibits. All Exhibits specifically stated to be attached hereto are incorporated into this Agreement by this reference.

15.8 Integration. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the License Area.

15.9 Further Assurances. Licensee agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as Licensor may reasonably require to consummate, evidence, confirm or carry out the agreement contained herein.

15.10 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement shall be construed according to its plain meaning and neither for nor against any party hereto. Licensee acknowledges that the Use Fee payable hereunder was negotiated in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, which might otherwise favor Licensee.

15.11 Survival of Liability. All obligations of Licensee hereunder and all warranties and indemnities of Licensee hereunder shall survive termination of this Agreement for any reason.

15.12 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona. Proper venue for any action regarding this Agreement shall be Maricopa County.

15.13 Approvals and Inspections. All approvals, reviews and inspections by Licensors under this Agreement or otherwise are for Licensors's sole benefit and not for Licensee's benefit.

15.14 Recording. Within ten (10) days after the date of this Agreement, Licensee shall cause this Agreement to be recorded in the office of the Maricopa County Recorder.

15.15 Statutory Cancellation Right. In addition to its other rights hereunder, Licensors shall have the rights specified in A.R.S. §. 38-511.

15.16 Budgeting. In the event funds necessary for this Agreement are not appropriated by the Scottsdale City Council, either party may terminate this Agreement, by giving a written notice of termination to the other. Any notice of termination under this section shall be given by Licensors to Licensee at least thirty (30) days prior to the end of Licensors's then current fiscal year (July 1 to June 30).

EXECUTED as of the date first given above.

LICENSEE: J.E. SOUTHWEST GROUP REAL ESTATE L.L.C.,
an Arizona limited liability company

By: 


LICENSOR: CITY OF SCOTTSDALE,
an Arizona municipal corporation

By: 

Mary Manross, Mayor


Carolyn Jagger, City Clerk


Joseph R. Bertoldo, City Attorney



Robin Rodgers, Contract Administrator

Suzanne M. Kuklok for
Myron Kuklok, Risk Management Director

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 7th day of January 2004, John Eby, President of J.E. Southwest Group Real Estate L.L.C. an Arizona limited liability company.

Rhonda Thomas
Notary Public

 **RHONDA THOMAS**
Notary Public - Arizona
Maricopa County
My Comm. Expires Nov 3, 2004

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 24 day of January, 2004, by Mary Manross, Mayor of the City of Scottsdale, an Arizona municipal corporation.


Notary Public

My Commission Expires:



TABLE OF EXHIBITS

<u>Exhibit</u>	<u>Paragraph</u>	<u>Description</u>
A	B	Legal description for City owned land covered by this license.
B	D	Formal legal description for Grill Parcel.
C	2.1	Drawing of premises to be used by Licensee indicating "outdoor seating addition" and general configuration of proposed improvements.
D	5.10.4	Minimum security standards and emergency action plan.
E	7.3.6	Janitorial and maintenance program.

NOTE: All exhibits must be labeled and leave at least one half inch clear space along all margins.

This list is not part of the document.



CONSULTING LAND SURVEYORS

37617 North Cave Creek Road
Cave Creek, Arizona 85331

Phone (480) 990-0545
Fax (480) 994-9097

Job No. 000901

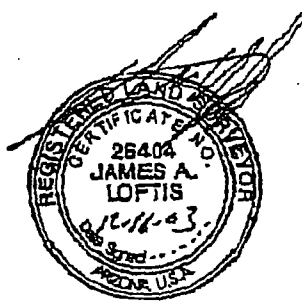
LEGAL DESCRIPTION

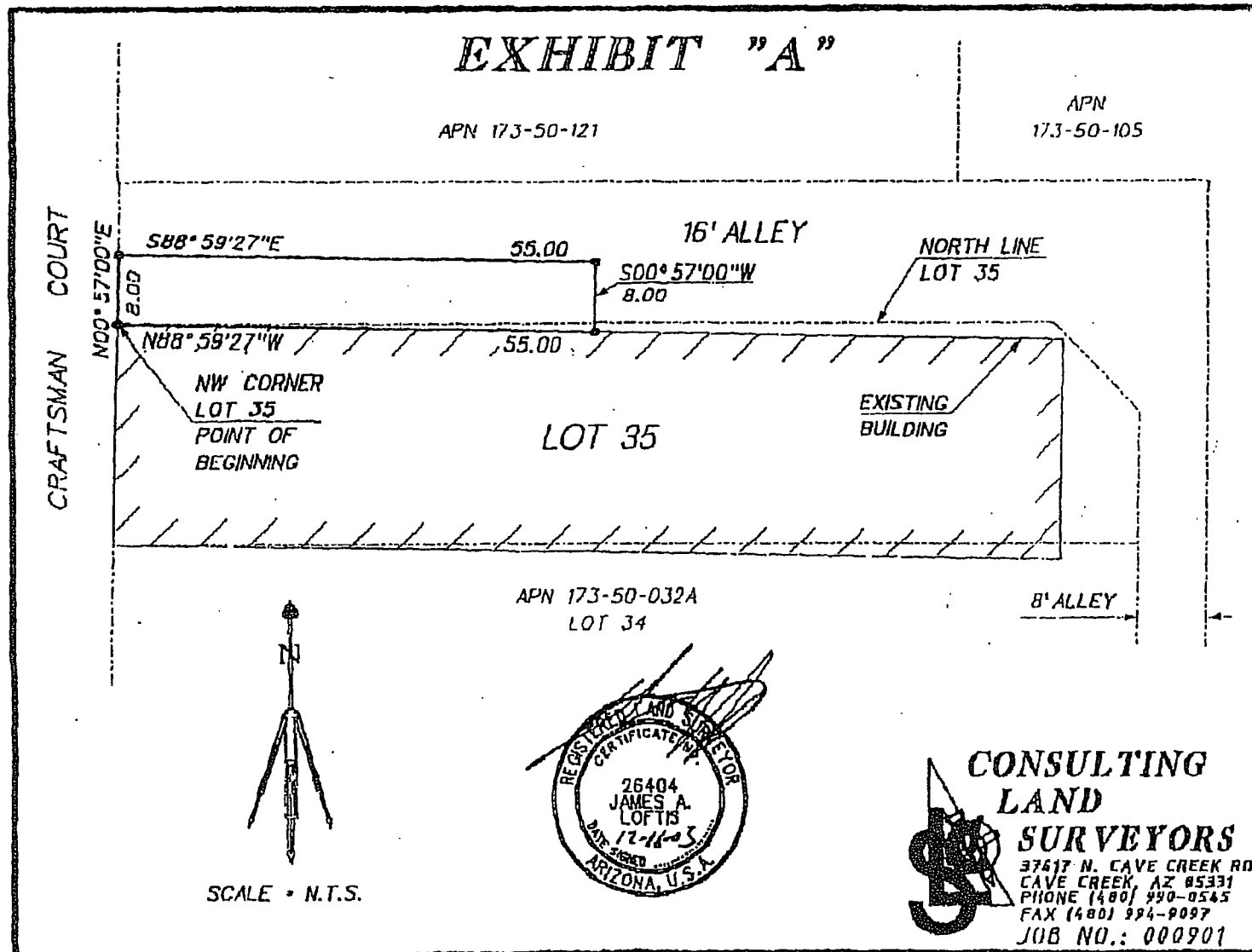
That portion of the 16 foot Alley and Lot 35 shown on the recorded plat of CRAFTSMAN COURT, according to the Plat of Record in the Office of the County Recorder of Maricopa County, Arizona, recorded in Book 62 of Maps, Page 23, more particularly described as follows:

Beginning at the Northwest corner of said Lot 35; thence N. 00° 57' 00" E. along the West line of said 16 foot Alley, a distance of 8.00 feet; thence S. 88° 59' 27" E. a distance of 55.00 feet; thence S. 00° 57' 00" W. a distance of 8.00; thence N. 88° 59' 27" W. a distance of 55.00 feet to the TRUE POINT OF BEGINNING.

Containing 440 square feet, more or less.

See Exhibit "A"





A.L.T.A. - A.C.S.M. LAND TITLE SURVEY

OF
A PORTION OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 2 NORTH,
RANGE 4 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN,
MARICOPA COUNTY, ARIZONA

VICINITY MAP

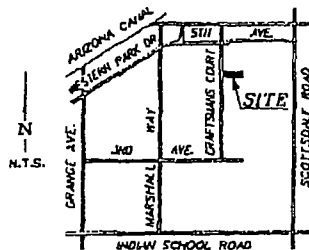


Exhibit B

LEGEND

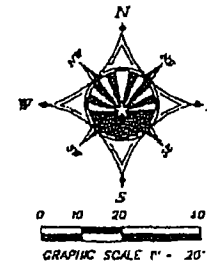
- FOUND MONUMENT (TYPE SHOWN)
- PROPERTY LINE
- SET MONUMENT
1 1/2" REBAR W/ CAP 284043
- CONCRETE SURFACE
- W WATER METER
- G GAS METER
- X LIGHT POST
- POWER POLE
- SIGN
- MANHOLE
- == VERTICAL CURB & GUTTER
- PAVED SURFACE

AREA

2901 SQ FT

LEGAL DESCRIPTION

LOT THIRTY-FIVE (35) CRAFTSMAN COURT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 62 OF MAPS, PAGE 23.



SURVEYOR'S CERTIFICATION

TO : J.E. SOUTHWEST GROUP REAL ESTATE, L.L.C., AND STEWART TITLE COMPANY

THIS IS TO CERTIFY THAT THIS MAP OR PLAT AND THE SURVEY ON WHICH IT IS BASED WERE MADE (1) IN ACCORDANCE WITH "MINIMUM STANDARD DETAIL REQUIREMENTS FOR ALTA/ACSM LAND TITLE SURVEYS," JOINTLY ESTABLISHED AND ADOPTED BY ALTA, ACSM AND NSPS IN 1999, AND INCLUDES ITEMS 1, 2, 3, 6, 8, 10, 11, 14, 15, & 16 OF TABLE A THEREOF, AND (2) PURSUANT TO THE ACCURACY STANDARDS AS ADOPTED BY ALTA, NSPS AND ACSM AND IN EFFECT ON THE DATE OF THIS CERTIFICATION, UNDERSIGNED FURTHER CERTIFIES THAT PROPER FIELD PROCEDURES, INSTRUMENTATION, AND ADEQUATE SURVEY PERSONNEL WERE EMPLOYED IN ORDER TO ACHIEVE RESULTS COMPARABLE TO THOSE OUTLINED IN THE "MINIMUM ANGLE, DISTANCE, AND CLOSURE REQUIREMENTS FOR SURVEY MEASUREMENTS WHICH CONTROL LAND BOUNDARIES FOR ALTA/ACSM LAND TITLE SURVEYS."

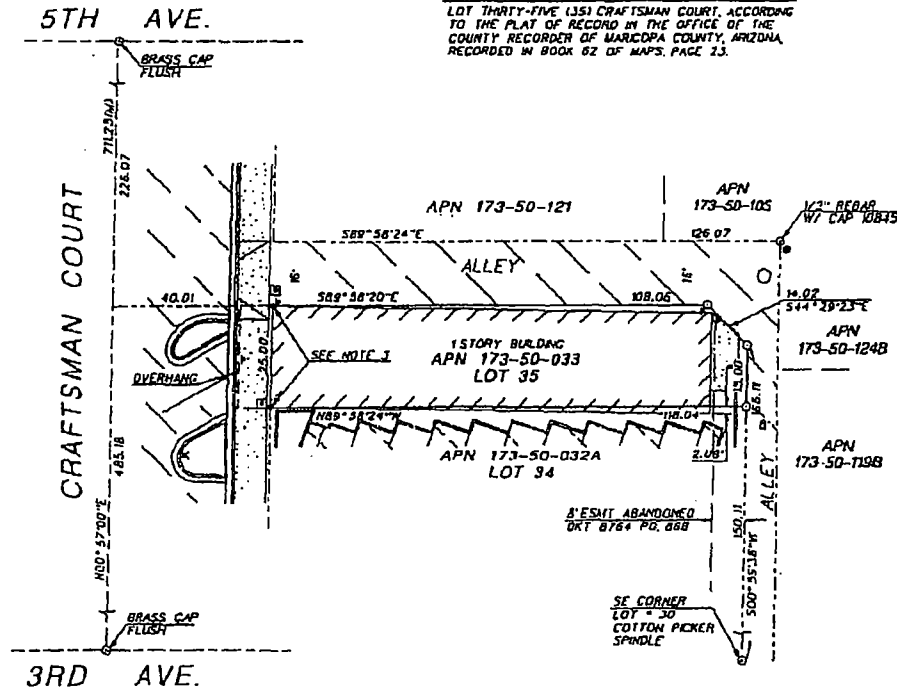


ADOPTED BY THE AMERICAN LAND TITLE ASSOCIATION ON OCTOBER 6, 1999.
ADOPTED BY THE BOARD OF DIRECTORS, AMERICAN CONGRESS ON SURVEYING AND MAPPING ON OCTOBER 28, 1999.
ADOPTED BY THE BOARD OF DIRECTORS, NATIONAL SOCIETY OF PROFESSIONAL SURVEYORS ON OCTOBER 19, 1999.



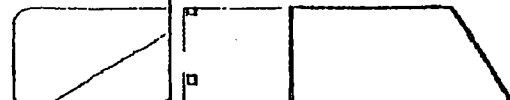
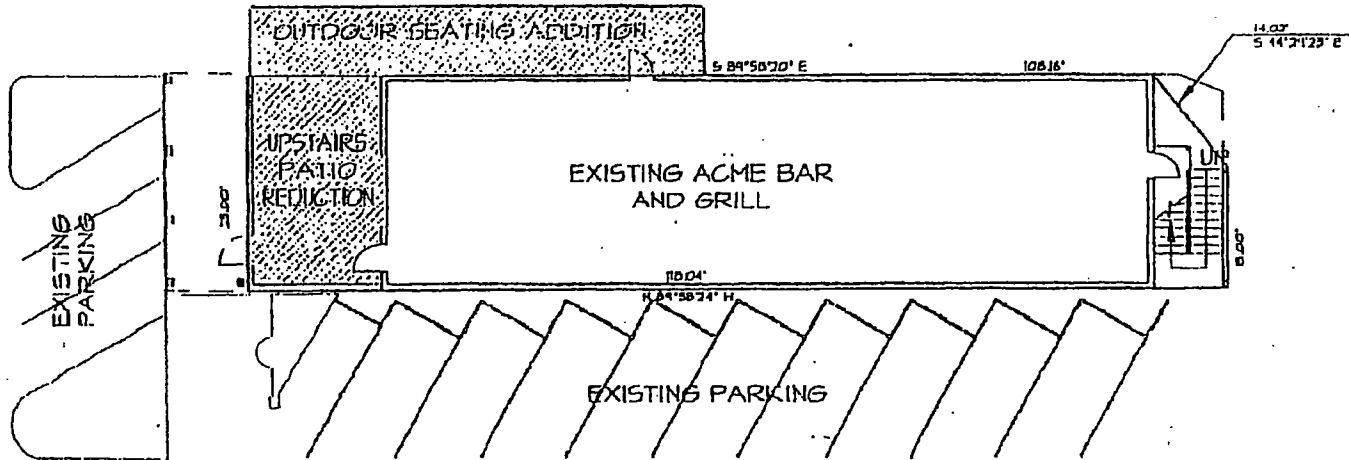
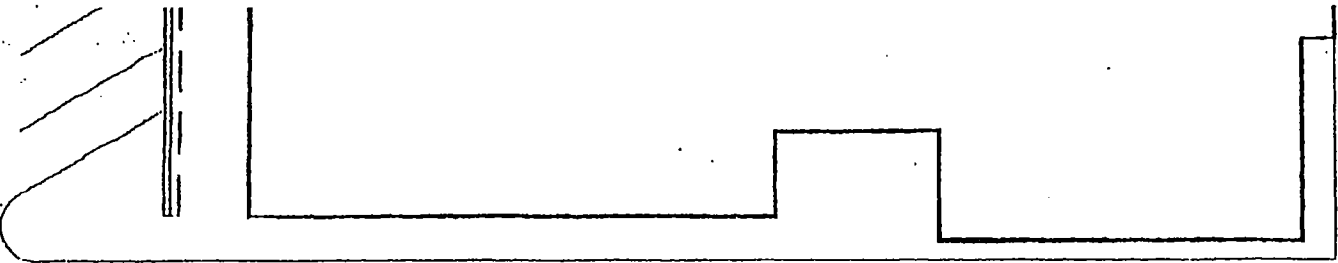
NOTES

1. ALL TITLE INFORMATION BASED ON TITLE REPORT OBTAINED BY STEWART TITLE. ORDER NUMBER: D0111770 EFFECTIVE DATE: JUNE 30, 2000
2. BASIS OF BEARING IS THE MONUMENT LINE OF CRAFTSMAN COURT WHICH BEARS N00°57'00"E PER CRAFTSMAN COURT RECORDED PLAT.
3. THE CORNER OF THE EXISTING ONE STORY BUILDING COINCIDES WITH THE CORNER OF LOT 35.
4. THIS SURVEY IS NOT INTENDED FOR ENGINEERING DESIGN OR LAYOUT.
5. SURVEY IS VALID ONLY IF PRINT HAS ORIGINAL SEAL AND SIGNATURE OF SURVEYOR



20040080054

EXHIBIT C



1

SITE PLAN

SCALE: 1" = 20'-0"

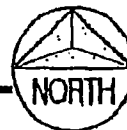


EXHIBIT "D"

SECURITY AND EMERGENCY PLAN

1. Licensee's outdoor security efforts will equal security efforts inside the main restaurant.
2. Licensee will immediately contact the Scottsdale Police Department, the applicable fire department, and/or paramedics when any situation arises outside the capacity and training of Licensee's on-site employees.
3. Licensee will not allow unruly behavior by patrons or employees. Licensee will take immediate action to stop any unruly behavior that may occur.
4. Licensee will hire security officers as described in the License.
5. Licensee will adhere to all other security and emergency requirements as described in the License.

EXHIBIT "E"

JANITORIAL AND MAINTENANCE PROGRAM

1. Licensee will hose down the outdoor dining area daily.
2. Licensee will clean the outdoor dining area daily.
3. During business hours, Licensee will monitor the cleanliness of the outdoor dining area as well as the area within ten (10) feet of the outdoor dining area, and will take necessary actions to immediately maintain cleanliness of both.
4. Licensee will advise co-users of the trash pick-up area of the importance of insuring that garbage is deposited in the trash container and that lids are kept closed.

RESOLUTION NO. 6433

A RESOLUTION OF THE COUNCIL OF THE CITY OF SCOTTSDALE, MARICOPA COUNTY, ARIZONA, AUTHORIZING LICENSE AGREEMENT NO. 2004-010-COS BETWEEN THE CITY OF SCOTTSDALE AND J.E. SOUTHWEST GROUP REAL ESTATE, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY DOING BUSINESS AS ACME BAR AND GRILL, FOR OUTDOOR DINING AT 4245 NORTH CRAFTSMAN COURT IN SCOTTSDALE, ARIZONA.

WHEREAS, the City of Scottsdale is the owner of a public alley and related public real property being generally the public parcels within the area bounded by Third Avenue, Craftsman Court, Scottsdale Road, and Fifth Avenue, all within the City of Scottsdale; and

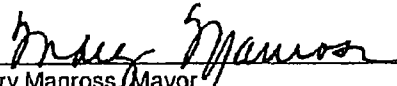
WHEREAS, J.E. Southwest Group Real Estate L.L.C., is the owner of an existing bar and grill building located at 4245 North Craftsman Court; and

WHEREAS, the City of Scottsdale desires to license a portion of the public alley adjoining the bar and grill building for outdoor food and beverage service as shown on Exhibit "A" attached hereto.

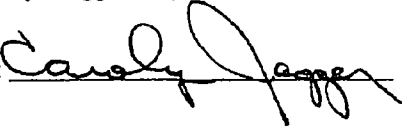
NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Scottsdale, Arizona as follows:

That the Mayor is authorized to execute License Agreement No. 2004-010-COS between City of Scottsdale and J.E. Southwest Group Real Estate L.L.C., an Arizona limited liability company, for outdoor dining.

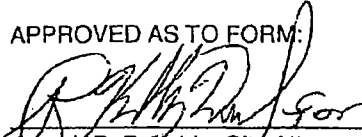
PASSED AND ADOPTED by the Council of the City of Scottsdale this 20th day of January 2004.


Mary Manross, Mayor

ATTEST:
Carolyn Jagger, City Clerk

By: 

APPROVED AS TO FORM:


Joseph R. Bertoldo, City Attorney



12651-3-1-1--
Leonardil

WHEN RECORDED, RETURN TO:

Lila Madden (480-312-7073)
ONE STOP SHOP RECORDS
CITY OF SCOTTSDALE
7447 East Indian School Road, Suite 100
Scottsdale, AZ 85251

**CITY OF SCOTTSDALE
COVERED WALKWAY AND FACADE IMPROVEMENT PROGRAM
COVENANT**

PROJECT Acme Bldg.
QS 17-44

Parcel APN 173-50-033

JE Southwest Group Real Estate, LLC

(collectively "Grantor"), for valuable consideration, does hereby grant to the CITY OF SCOTTSDALE, an Arizona municipal corporation, its successors and assigns, a restrictive covenant running with the land burdening Grantor and its successors and assigns, and the land described on Exhibit "A" attached hereto, in favor of the City of Scottsdale. The covenant concerns a covered walkway and/or facade (the "Improved Feature") located on the West side of said parcel along CRAFTSMAN COURT Street. The Improved Feature was constructed, restored or repaired pursuant to the City of Scottsdale's Covered Walkway and Facade Improvement Program. The covenant is that, until the date ten years after the date this document is recorded (and except as City of Scottsdale may expressly approve in a writing that specifically refers to this document):

1. Grantor shall maintain and not remove or alter the Improved Feature.
2. If the Improved Feature is a walkway, then Grantor shall keep the walkway open to the public.

Grantor hereby covenants that it is lawfully seized and possessed of this aforementioned tract or parcel of land; that it has a good and lawful right to sell and convey it; and that Grantor will warrant the title and quiet possession thereto against the lawful claim of all

persons. Grantor further warrants and represents that all lenders and tenants of the property have executed and acknowledged this covenant below.

DATED this 13 day of April, 20 04.

GRANTOR: [Signature]

TENANT: [Signature]

LENDER: _____

State of Arizona)
)ss
County of Maricopa)

This instrument was acknowledged before me this 13th day of
APRIL, 20 04, by
JOHN EBY

In witness whereof I hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC

My Commission Expires OCTOBER 15, 2005

State of Arizona)
)ss
County of Maricopa)

This instrument was acknowledged before me this 13th day of
APRIL, 20 04, by
JOHN EBY

In witness whereof I hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC

My Commission Expires OCTOBER 15, 2005

State of Arizona)
)ss
County of Maricopa)

This instrument was acknowledged before me this _____ day of
_____, 20____, by

_____.

In witness whereof I hereunto set my hand and official seal.

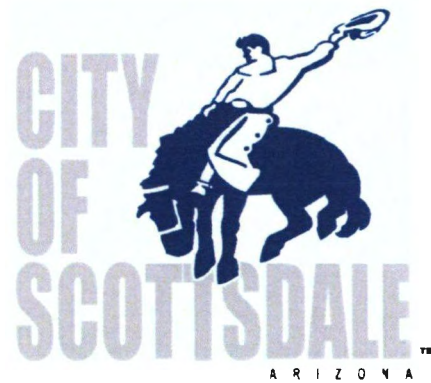
NOTARY PUBLIC

My Commission Expires _____

Rockbar

Outdoor Dining License Agreement

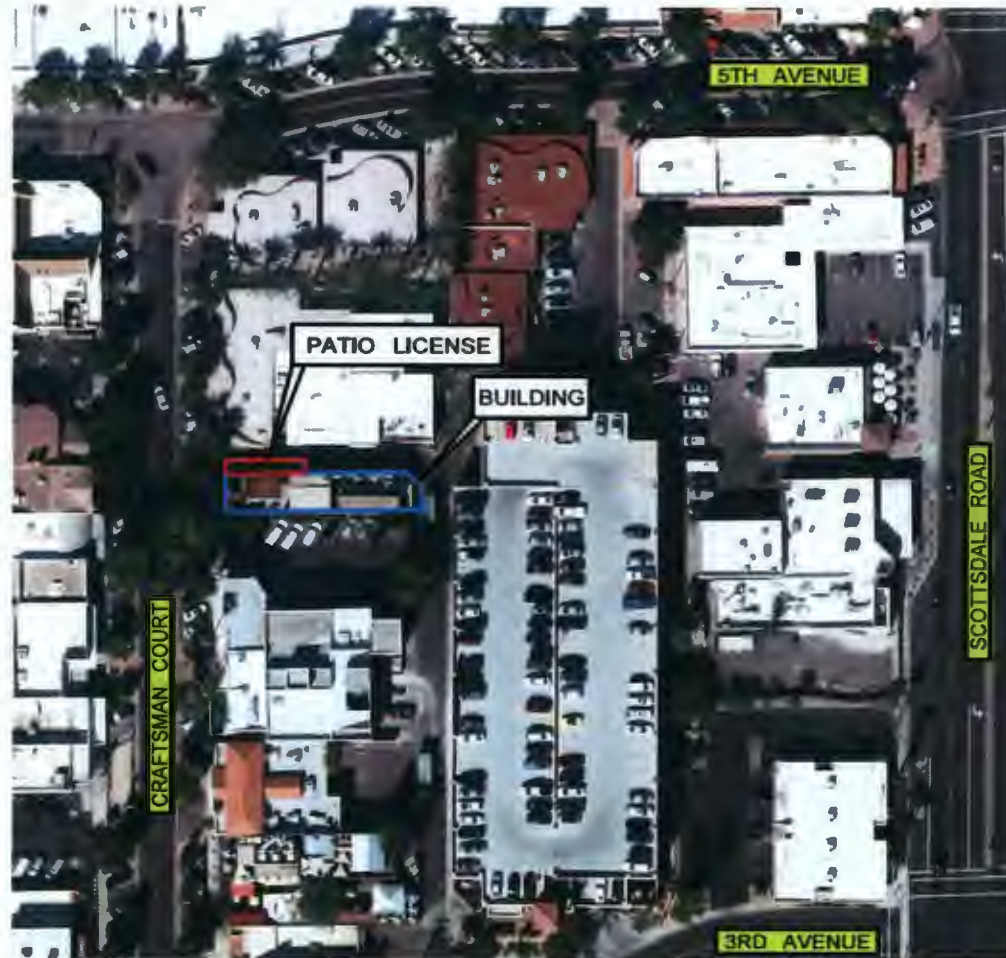
2004-010-COS



City Council – August 25, 2015

Rockbar

Outdoor Dining License Agreement 2004-010-COS



Questions?



Item 32

Rockbar

Outdoor Dining License Agreement

2004-010-COS



City Council – August 25, 2015

Rockbar

Outdoor Dining License Agreement 2004-010-COS



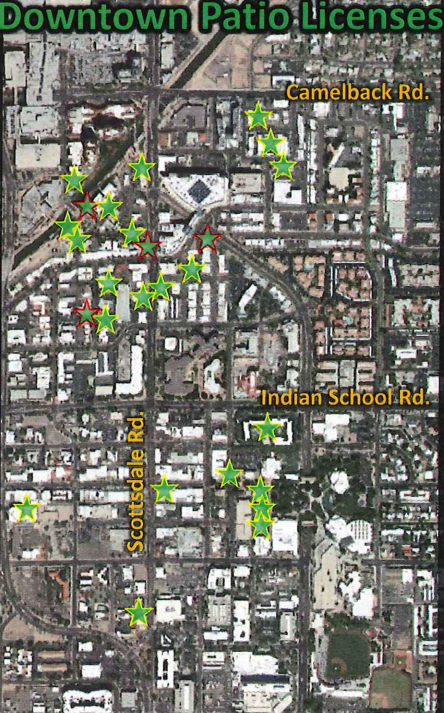
Options

- Allow ODLA to remain in place
- Modify ODLA
- Terminate ODLA

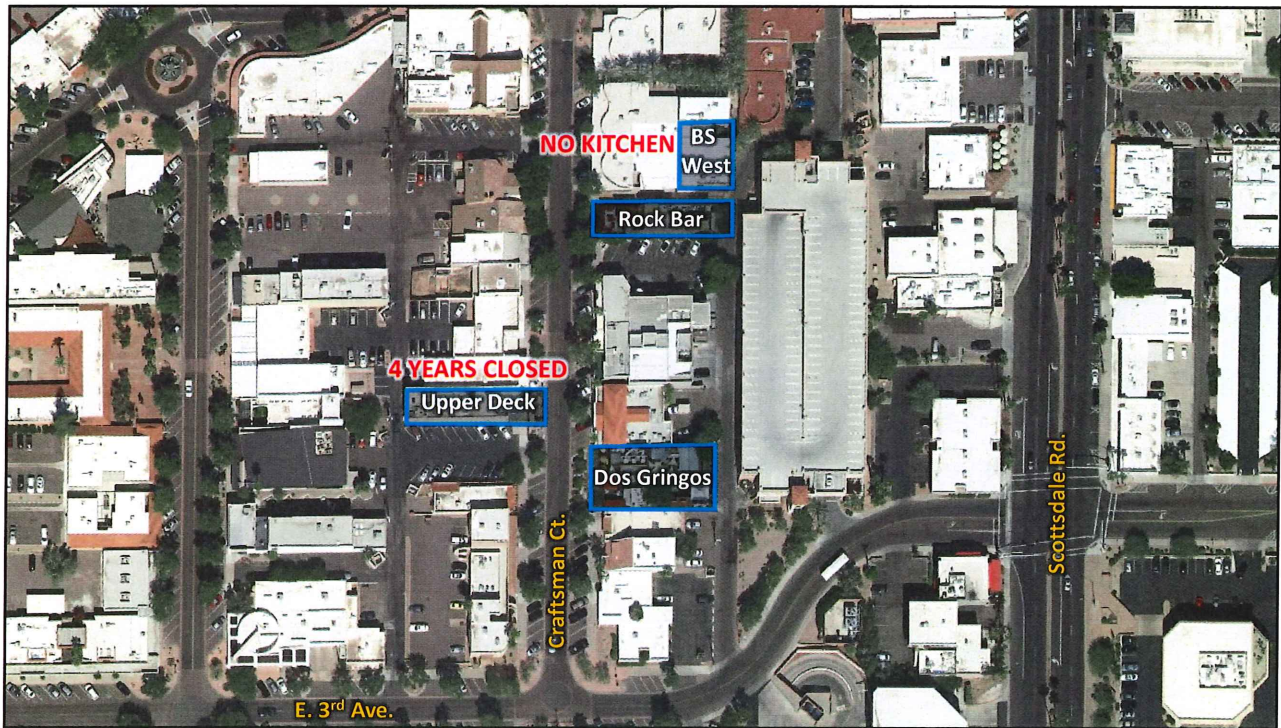
Questions?

1. This is arbitrary;
2. The City has never cancelled a license;
3. Rockbar is not violating its license;
4. The license does not require a kitchen (others do but this one does not);
5. Rockbar is building a kitchen right now.

Downtown Patio Licenses



1. Olive & Ivy	14. Dos Gringos
2. Stax	15. Upper Deck (closed)
3. The Estate House (closed)	16. Livewire
4. Herb Box	17. Maya Day and Nightclub
5. Tapas Papa Frita	18. Ricky's Tacos & Beer
6. Barrio Queen	19. The Saguaro
7. Geisha A Go Go	20. Old Town Tavern
8. Stingray Sushi (closed)	21. The Clayton on the Park
9. Firehouse (closed)	22. AZ 88
10. Giligin's	23. Blue Moose
11. Samurai Cowboy (Morning Squeeze)	24. Italian Grotto
12. Cold Beer & Cheeseburgers	25. Union Barrelhouse
13. BS West	26. Su Vino Winery



To: Carolyn Jagger, City Clerk

25 August 2015

Re: Mr. Steve Johnson 4242 N. Craftsman Court, Scottsdale AZ

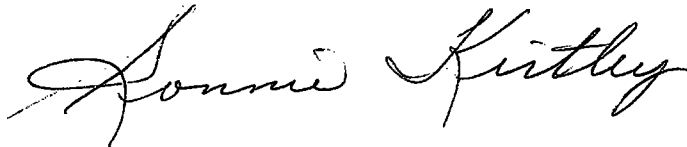
Atlier Plumbing on Craftsman's Court

Mr. Johnson had to leave the state on business Sunday afternoon, but he had prepared the attached to read to the City Council at the Regular Meeting tonight for agenda item # 32 RockBar Licensed Area Lease Termination.

Please provide the council with copies for their review.

Thank you,

Sonnie Kirtley 602 717 3886

A handwritten signature in black ink that reads "Sonnie Kirtley". The signature is written in a cursive, flowing style.

Rock Bar Alley Lease Issues

19 August 2015

1. The building and business owners on Craftsman Court, were sold a 'bill of goods' that this alley and the two other patios on Craftsman Court were to make the street have a 'European café feel'. The results from the beginning have been a failure and have not lived up to that promise. All 3 area's remain underutilized during the day, do not have a 'pedestrian friendly feel' and look abandoned since they are not maintained, see the photos attached.
2. There has been no follow through with the city as far as enforcing any of the lease violations that have been continually occurring since 2011. This should have been noted when the Rock Bar took over the space and went through the permit process to do a substantial remodel to remove the kitchen, which is a very defined and substantial part of the alley lease agreement.
3. The City Council Report dated 25 August 2015 does not include any proof that the lease agreement was transferred to Rock Bar from Acme Bar and Grill, nor does it include any agreements / extensions that were issued after the 5 year lease dated 26 January 2004 ended as outlined in Section 2.1 of the lease.
4. City property, especially an alley that is designated for full public use and would also be used for emergency services, should not be utilized for the sole purpose of enhancing a private business at the expense of the public.
5. If the alley is to be abandoned, it should be totally removed and landscaped as a pedestrian walk way, with landscaping up to the City of Scottsdale standards, not a patch job / band aid, as it is currently used.
6. Section E of the lease specifically states the use of the leased alley space is for 'food and beverage service for immediate consumption of food prepared inside the Grill Building (the permitted uses)'. There is no longer a kitchen at the facility, it is impossible to prepare and serve food.
7. Section 2.3 of the lease calls for 'Automatic Termination' of the lease, if the Licensee for any reason ceases for a period of 90 days to operate the License Area for the permitted Uses...'. This was done when Acme closed and the kitchen removed during a remodel back in 2011.
8. Section 4.1 Permitted Uses. Specifically states 'Outdoor Cooking is not allowed', this is constantly violated as proof in many of the Rock Bar Special Event Permits submitted to the city where they specifically call out Food Vendors preparing / providing food and the noted location of the food cart in the alley space.
9. Section 4.10 Standards of Service. Again, this section references food service but also calls out in the attached photos.
10. Section 4.11 Conduct at License Area. Clearly this entire paragraph is violated as the space is only used for the expansion of an existing bar / concert venue, not as a 'dining experience' as outlined in other areas of the lease.
11. 4.14 Alley Operations. This paragraph totally conflicts with itself. You cannot completely close off all entrances to the alley for a special event, which RockBar has dozens of special events each year, and NOT have it adversely affect the use or operation of the alley.

12. Section 5.3.2 This paragraph is totally violated as shown in the photos where the fencing is not maintained, there are broken / missing cables, rusted connections, duct tape holding things together, etc.
13. Section 5.5.1 The plans should be attached to the city report, we do not know if what was built is what was actually designed / intended, nor do we know if there were any changes or addendums submitted.
14. Section 6.3 thru 6.3.8 Maintenance by Licensee. Again, refer to the photos attached, this entire section is violated.
15. Section 7.4 Notice of Breach. The city has overlooked dozens of violations since 2011 and has failed to provide Notice of Breach.
16. Section 14.1 Assignments and Sublease Prohibited. Any documents relating to the transfer of this lease should be included in the City Council Report dated 25 August 2015. There is absolutely no reference to RockBar legally operating under this existing J.E. Southwest Group Real Estate LLC lease.
17. Exhibit "D" Security and Emergency Plan. I am the victim of criminal damage by a RockBar employee and have a copy of the police report where it states Brian Mrochinski (owner of RockBar) stated a past employee of RockBar was 'hot headed' and claimed he was too aggressive when dealing with disorderly patrons'. This clearly shows Section 4.11 is totally violated.
18. Since the hours of Rockbar are mainly late afternoon / early evening until 2am, this leaves the leased area basically closed all day and looking abandoned, this does not help with the 'pedestrian friendly atmosphere' the premise of the intended 'café feel' was supposed to achieve by closing off the alley.

As a building owner and business owner on Craftsman Court, I recommend that the city council terminate the lease upon the 60 days written notice.

Thank you,

Steve Johnson

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- Weeds + debris
- Bench wood poor condition
- dos Gringos



- unused patio
- Vacant business
- former Upper Deck