

LICENSE AGREEMENT LOS ALTOS GRILL

This Parking License Agreement ("License") is entered into as of this 31st day of May, 2004 ("Effective Date"), by and between the CITY OF LOS ALTOS, a municipal corporation, One North San Antonio Road, Los Altos California, ("City") and HOUSTON'S RESTAURANTS, INC., a Delaware corporation, dba the LOS ALTOS GRILL, hereinafter referred to as "Licensee," occupies the property located at 233 Third Street, Los Altos California ("Owner"). City and Licensee may be referred to individually as a "Party" or collectively as the "Parties."

Recitals

A. City is the owner of that certain real property, commonly referred to as parking plaza number 3, located in the City of Los Altos, County of Santa Clara, State of California, (the "Property"). The Property as depicted in the map attached hereto as Exhibit "A" and incorporated by this reference.

B. The Property contains a parking lot or parking area, consisting of approximately 211 surface parking stalls, which are situated on the Property (the "Parking Area"). Such Parking Area services the City and is available for parking by the general public.

C. Licensee leases that certain real property, together with an approximately 6,722 square foot restaurant building situated thereon, which is leased to Houston's Restaurants, Incorporated, doing business as the Los Altos Grill ("Los Altos Grill") located at 233 Third Street, in the City of Los Altos, County of Santa Clara, State of California, APN 167-38-5 (the "Los Altos Grill Property"). The Los Altos Grill Property is more particularly described in Exhibit "B" attached hereto and incorporated by this reference.

D. Licensee currently operates the Los Altos Grill pursuant to the terms and conditions of Condition Use Permit 95-UP-1 ("CUP 95-UP-1"). Licensee has a pre-existing written parking agreement referred to here as the Memorandum of Understanding ("MOU") dated October 1996. Said MOU governs the off-site parking requirements for CUP 95-UP-1, which authorizes Licensee to operate the Los Altos Grill during evening hours every day from 5:00 p.m. to 11:00 p.m. (Los Altos Grill not opening before 4:00 p.m.). The MOU is attached hereto as Exhibit "C" and incorporated by this reference.

E. Licensee desires to operate the Los Altos Grill pursuant to the terms and conditions of Conditional Use Permit 03-UP-10 ("CUP 03-UP-10"). This License is necessary for Licensee to meet its off-site parking requirements for CUP 03-UP-10, specifically for the 11:00 a.m. to 4:00 p.m. use by the Los Altos Grill.

F. To satisfy the off-site parking conditions in CUP 95-UP-1 and CUP 03-UP-10, Licensee desires the right to use thirty-five (35) parking stalls located within the Parking Area referred to above (the "Licensed Parking Stalls"). The Parties intend that such Licensed Parking Stalls be available for use by Licensee and its guests and invitees who occupy or use the Los Altos Grill referred to above during the License Term referred to below.

G. City is willing to grant to Licensee a terminable, non-exclusive license to use such Licensed Parking Stalls on the terms and conditions set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements described below, and for other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. License Supplements Existing MOU. This License is in addition to the MOU and shall govern the off-site parking requirements for CUP 95-UP-1 and CUP 03-UP-10 as set forth below. This License shall supplement the existing MOU governing the off-site parking requirements and authorizing the operation of the restaurant after 4:00 p.m. weekdays and all day on weekends, pursuant to CUP 95-UP-1.

2. License. City hereby grants to Licensee the terminable, non-exclusive right to use the Licensed Parking Stalls prior to 4:00 p.m. during the weekdays for the purpose of allowing Licensee and its guests and invitees who occupy or use the Los Altos Grill to park motor vehicles in said Licensed Parking Stalls. City grants to Licensee the right of ingress and egress over the Property to the extent necessary to gain access to and from such Licensed Parking Stalls and the Parking Area and the public street(s) adjacent to the Parking Area, which right of ingress and egress shall be in effect at all times during the term of this License. Nothing in this License shall be construed to grant or confer to Licensee any property interest or vested right in the Property.

3. Modifications to Parking Area. City shall have the right to make modifications to the Parking Area without notice to, and without obtaining the consent of, Licensee so long as such modifications do not materially interfere with Licensee's non-exclusive right to park in the Licensed Parking Stalls. City may also close the Parking Area, or portions thereof, for the purpose of maintaining, repairing or replacing the same or to prevent prescriptive easements or rights from being created.

4. Term. City grants this License for a term of three (3) years from the Effective Date, or June 30, 2007, whichever is earlier. Upon the expiration or termination of this License, or the revocation of CUP 03-UP-10, the terms of the MOU shall govern the off-site parking requirements for CUP 95-UP-1, which authorizes Licensee to operate the Los Altos Grill during evening hours every day from 4:00 p.m. to 11:00 p.m. (Los Altos Grill not opening before 4:00 p.m.).

5. Beneficiaries of License. This License is hereby granted in favor of Licensee for the benefit, use and enjoyment of Licensee and its guests and invitees who occupy or use the Los Altos Grill referred to above. At no time during the term of this License, shall Licensee's employees be eligible for City of Los Altos parking permits. Licensee's employees shall use the existing seventeen (17) parking stalls that currently serve the Los Altos Grill Property.

6. License Fee. In consideration of the granting of this License, Licensee shall pay to City, \$750.00 per parking stall for the thirty-five (35) Licensed Parking Stalls, or \$26,250.00 per year ("the "License Fee"). Said License Fee shall be deposited into a City of Los Altos parking fund, and Licensee shall be credited for said payments at the time a City of Los Altos parking in-lieu fee is established. A pro-rated amount of \$7,325.71 received by City for off-site parking pursuant to the MOU for February 2004 to January 2005 shall be credited to the 2004 License Fee.

7. Insurance. Licensee shall name City as an additional insured on Licensee's commercial general liability insurance policy covering the Los Altos Grill Property. Such policy shall provide protection against claims for personal injury, death or property damage occurring in, on or about the Parking Area or the Los Altos Grill Property due to the negligent act(s) of Licensee or any of its agents, employees, assignees, subtenants, guests or invitees. Upon reasonable request made by City to Licensee, Licensee shall furnish City with a copy of its liability insurance policy (or a certificate of such liability insurance policy) evidencing the insurance coverage required to be maintained by Licensee as described above.

8. Indemnification. Licensee agrees to indemnify and hold City harmless, its officers and employees from and against any liability, damages, costs, losses, claims and expenses, including reasonable attorneys' fees, arising out of the negligent acts, errors, or omissions of Licensee or Licensee's assistants, employees or agents, in the performance of this License.

9. Attorney's Fees. In the event any Party hereto shall bring an action, suit or legal proceeding to enforce, protect or interpret the terms of this License, the prevailing party shall be entitled to recover, as a part of such action, suit or legal proceeding, reasonable attorney's fees and court costs, including, attorney's fees and costs for appeal, as may be fixed by the trier of fact.

10. Rights of Parties The provisions of this License shall be non-exclusive and the access rights granted in this License are personal and limited solely to Licensee for the stated purpose set forth in this License. Licensee agrees not to commit waste or to construct, allow or maintain any use, construction or operate any equipment which constitutes a nuisance on the Property or which may in any way interfere with the use, enjoyment or possession of the Property by City. The Property shall not be used by any person or entity, including the Licensee or its employees, for any purpose other than stated in this License. Neither this License, nor the rights granted to Licensee within it, shall be assignable or otherwise transferable without the prior written consent of City. Unless specifically stated to the contrary in any written consent to an assignment, no assignment or other transfer will release or discharge the Licensee from any duty, responsibility or liability under this License. City reserves the right to use Parking Area in any manner, provided that such use does not materially interfere with the rights granted to the Licensee in this License.

11. Termination. This License may be terminated with or without cause by Licensee upon providing thirty (30) days' written notice of said termination to City, or its representative. Licensee will pay a pro-rata share of annual payments in the event that the License is terminated during a year. The City may terminate this License upon providing thirty (30) day's notice to Licensee if Licensee is in violation of CUP 95-UP-1 and/or CUP 03-UP-10, or that Licensee is in violation of any state or federal law, or any local City of Los Altos ordinances.

12. Notices. If any notice given pursuant to the License is not personally delivered to Licensee, said notice shall be deemed to be delivered five (5) days after deposit of said notice in a sealed envelope, postage fully prepaid, in a mailing facility regularly maintained by the United States Post Office Department, addressed as follows:

To Licensee:

Houston's Restaurants, Inc.
Attention: General Counsel

2425 Camelback Road, Suite 200
Phoenix, AZ 85016
Facsimile at 602-553-2170

With a copy to: Attention: Manager
Los Altos Grill
233 Third Street
Los Altos, California 94022

To City at:

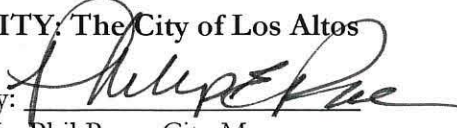
City of Los Altos - Attention: Phil Rose, City Manager
One North San Antonio Road
Los Altos, CA 94022
Facsimile at (650) 947-2731

13. Authority To Grant License. City warrants that it is the owner of the Property and that it has the full rights and authority to grant the rights to the Licensee which are contained in this License.

14. Counterparts. This License may be executed in counterparts, each of which shall be deemed an original and which together shall constitute one instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this License as of the date and year written above.


CITY: The City of Los Altos

By: 
Mr. Phil Rose, City Manager

Approved as to form:

By: 
Jolie Houston, City Attorney

Attest:

By: 
Susan Kitchens, City Clerk

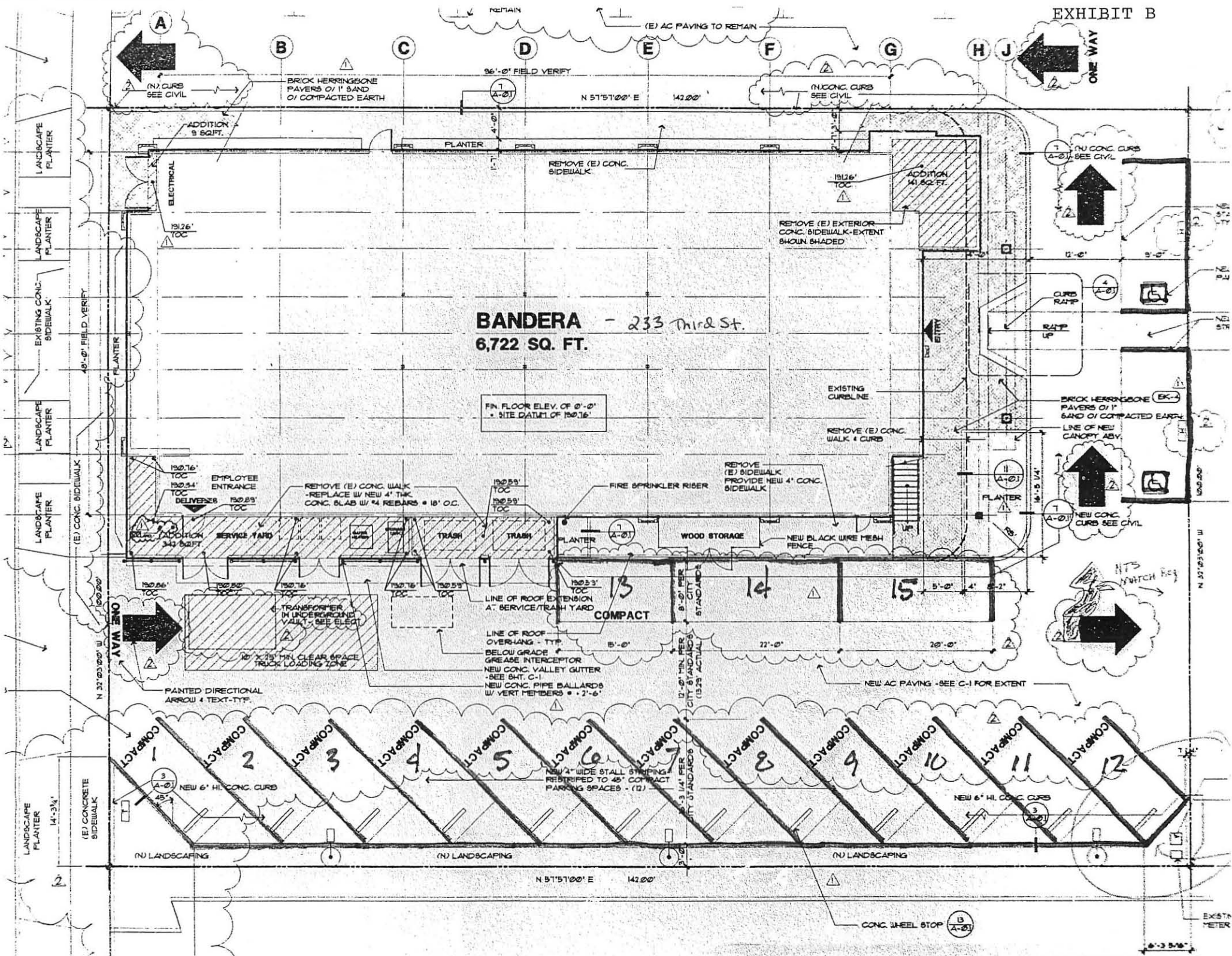
LICENSEE: Houston's Restaurants, Inc.

By: 

**W. GLENN VIERS
VICE PRESIDENT/GENERAL COUNSEL
ASST. SECRETARY**



**City of Los Altos
Downtown Parking Plazas**

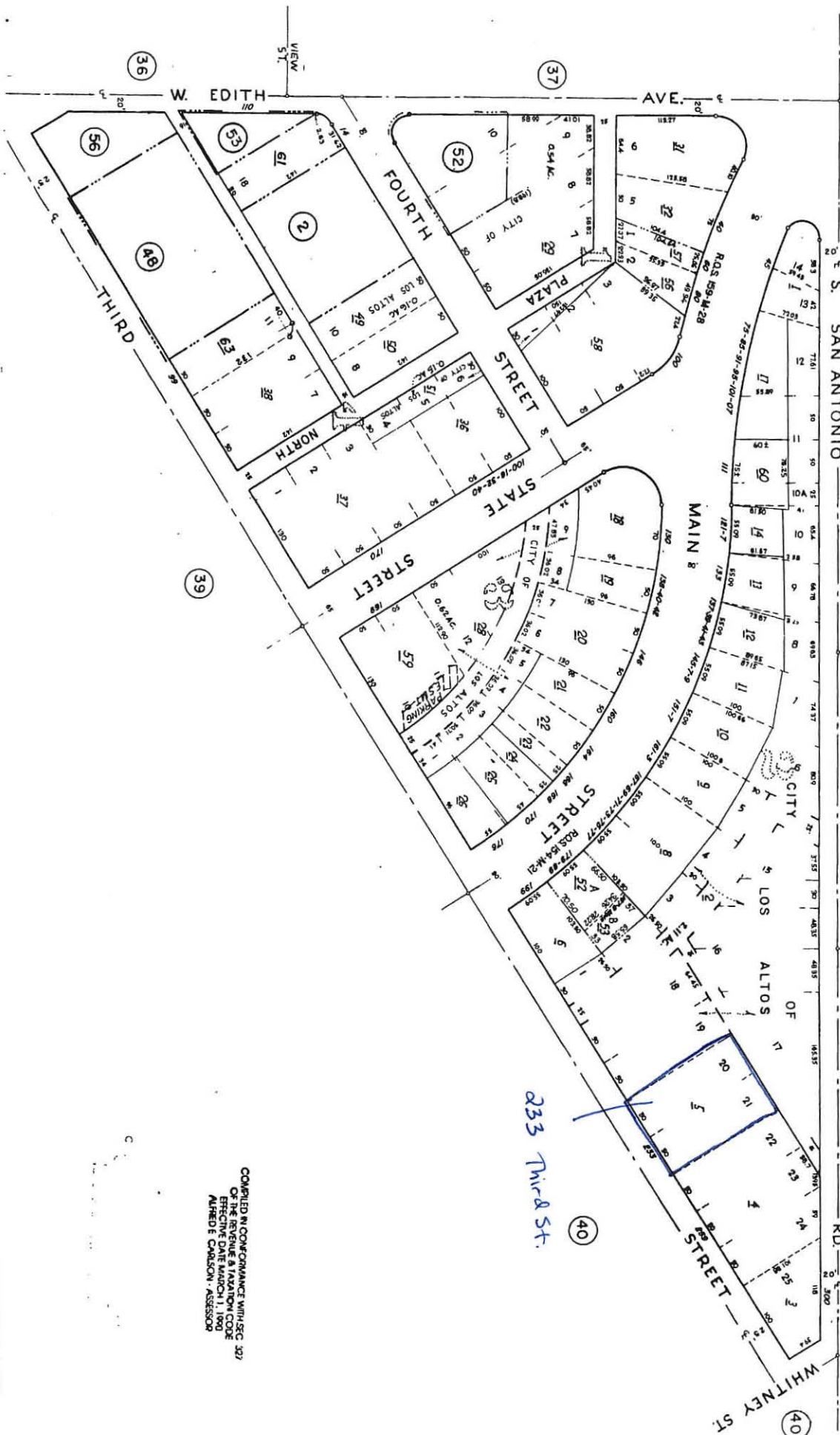


MAP #1 TOWN OF LOS ALTOS

HAWTHORNE AVE

1" = 100'

BOOK 167 PAGE 38



COMPILED IN CONFORMANCE WITH SEC. 307
OF THE REVENUE & TAXATION CODE
EFFECTIVE DATE MARCH 1, 1990
ALFONSO CRONSON - ASSESSOR

MEMORANDUM OF UNDERSTANDING

This "Memorandum of Understanding" (hereinafter referred to as M.O.U.) is in reference to a shared parking arrangement between Houston's Restaurants, Inc. (hereinafter referred to as "BANDERA"), the owner of the Bandera restaurant located on the property at 233 Third Street, APN 167-38-5, the City of Los Altos (hereinafter referred to as "CITY"), and Russel Stanley (hereinafter referred to as "OWNER"), owner of the real property involved.

It is mutually agreed as follows:

1. CITY agrees to allow BANDERA to use a maximum total of 39 parking stalls, from 5:00 p.m. to 11:00 p.m. each day, in the South Parking Plaza ("Plaza") immediately adjacent to the 233 Third Street premises to satisfy the "off site" parking requirements of Use Permit 95-UP-1. Said stalls shall not be specific in location within the Plaza and said stalls shall not be marked or signed specifically for the exclusive use of the restaurant, it being understood that the entire Plaza is available for use by the general public.

2. OWNER and BANDERA agree to allow CITY to use, for general public use, a maximum total of 11 parking stalls, from 11:00 a.m. to 2:00 p.m. each day, on the private property premises at 233 Third St. Signs, subject to satisfaction of the City's Traffic Engineer, shall be provided by OWNER and BANDERA that clearly state that the subject stalls are available for general public use from 11:00 a.m. to 2:00 p.m.

3. BANDERA agrees to compensate CITY \$342 per year per stall for use of the South Parking Plaza from 5:00 p.m. to 11:00 p.m. for a total annual amount of \$13,338 for the 39 subject stalls. CITY agrees to apply a credit to the annual amount due at the rate of \$698 per year per stall for the permitted public use of the private parking stalls on the 233 Third Street premises from 11:00 a.m. to 2:00 p.m. for a total annual credit of \$7,678 for the subject 11 stalls. The total net compensation fee payable to CITY is \$5,660 which represents the difference between the total amount due of \$13,338 and the applied credit of \$7,678.

4. BANDERA agrees that the restaurant will not open to the public before 4:00 p.m. on week days.

5. The annual total net compensation of \$5,660 shall apply to the first year of the restaurant's operation, beginning on the first day of the restaurant's operation, and shall be payable in advance of the restaurant's opening to the public.

The annual total net compensation fee shall be adjusted annually based on the Consumer Price Index (Bay Area All Urban Consumers) and shall be payable in advance of the anniversary date of the beginning of the restaurant's operation. The CPI adjustment will be made using published data for the most recent 12 month period that is available at the time the CPI adjustment is calculated.

In the event the Bandera Restaurant permanently ceases operation, the CITY shall refund a proportionate share of the net compensation paid by BANDERA, less a \$500 fee for City administrative expenses, for the unused period of time for that year.

6. This agreement will terminate upon either of the following, whichever occurs first:

a. Violation of any of the provisions of this M.O.U. by OWNER or BANDERA

b. Cessation of the operation of the Bandera Restaurant on the 233 Third Street premises. In the event a subsequent restaurant or another use is proposed for the subject property, the City will review the appropriateness of a shared parking agreement similar to this agreement at that time, based on the parking impacts related to such new use and the needs of the City.

7. The attached Exhibit A (RATIONALE FOR DETERMINING RENTAL VALUE OF PUBLIC PARKING STALLS IN LOS ALTOS PARKING PLAZAS) and Exhibit B (OPTIONS FOR GIVING CREDIT FOR PUBLIC USE OF PRIVATE (ON-SITE) PARKING STALLS OF BANDERA RESTAURANT) are included as a part of this M.O.U. as background information on the initial calculation of the fees and credits.

REVIEWED AND APPROVED AS TO CONTENT:

By: Bruce Bane
BRUCE BANE, PUBLIC WORKS DIRECTOR

10-7-96
Date

REVIEWED AS TO FORM:

By: Robert K. Booth
ROBERT K. BOOTH, CITY ATTORNEY

10-16-96
Date

John Kelly
CITY OF LOS ALTOS, CITY MANAGER

W. GLENN VIERA
VICE PRESIDENT/GENERAL COUNSEL
ASST. SECRETARY

10/16/96
Date

William
HOUSTON'S RESTAURANTS, INC. dba BANDERA RESTAURANT

10.17.96
Date

Russel Stanley
PROPERTY OWNER. RUSSEL STANLEY

10-4-96
Date

Exhibit A

Alternative A: Value of parking stall varies depending on time of use
and % of total parking use

RATIONALE FOR DETERMINING RENTAL VALUE OF PUBLIC PARKING STALLS IN LOS ALTOS PARKING PLAZAS

ASSUMPTIONS/CALCULATIONS:

1. Value of typical public parking stall = \$30,000 (includes current land value of stall and proportionate aisle space, all construction costs, and all incidental costs).
2. Fair rate of return on investment, for annual rental(long term) =7.5%.
3. Annual rental rate per stall = \$2,250.
4. Proportion value based on time of use and % of total parking use:

<u>Time Period</u>	<u>Estimated Average % Occupancy</u>	<u>% of Total Parking Use</u>
2 - 5:00 a.m.	0	0
5 - 8:00 a.m.	15	5
8 - 11:00 a.m.	65	22
11 - 2:00 p.m.	90	31
2 - 5:00 p.m.	75	26
5 - 8:00 p.m.	25	9
8 - 11:00 p.m.	15	5
11 - 2:00 a.m.	5	2

5. Value of use from 5:00 - 11:00 p.m is proportionate to % of total use
= 9% + 5% = 14%
6. Annual rental rate per stall, from 5:00 p.m. to 11:00 p.m.
= .14 x \$2,250 = \$315
7. Daily rental rate per stall, from 5:00 p.m. to 11:00 p.m.
= \$315/365 = \$0.86 (not incl. City misc. operating costs)
8. Include 10% for City administration/monitoring/liability and round to \$0.95 per stall per day, for use between 5:00 p.m. and 11:00 p.m.
9. For a total of 39 stalls, from 5:00 p.m. - 11:00 p.m.,

Daily rate	= \$37.05
Monthly rate	= \$1,111.50
Annual rate	= \$13,338

EXHIBIT B

OPTIONS FOR GIVING CREDIT FOR PUBLIC USE OF PRIVATE (ON-SITE)
PARKING STALLS OF BANDERA RESTAURANT

ASSUMPTIONS:

1. The value of a private (on-site) parking stall is the same as a public parking stall (annual rental rate per stall = \$2,250).
2. The hours of public use of the private stalls will be from 11:00 a.m. to 2:00 p.m.
3. Eleven (11) of the 17 private stalls will be available for limited public use.
4. The designated 11 private stalls will be properly signed for the permitted hours of public use (i.e. Public Parking Permitted from 11:00 a.m. to 2:00 p.m.).

Using Alternative A for determining stall value.

Value of use from 11:00 a.m. to 2:00 p.m. = 31% of total use.
(see table in Alternative A analysis)

Annual rental rate per stall, from 11:00 a.m. to 2:00 p.m., = $.31 \times \$2,250 = \698

For 11 private stalls, total credit = $11 \times \$698 = \$7,678$

SUMMARY OF ALTERNATIVES FOR DETERMINING STALL VALUE
AND OPTIONS FOR GIVING CREDIT FOR PUBLIC USE OF PRIVATE STALLS

Method of determining stall value	Annual value of 39 public stalls from 5:00 p.m to 11:00 p.m.	Annual value of 11 private stalls used for public use from 11:00 a.m. to 2:00 p.m	Annual net difference
Alternative A (value based on time of use & % of total parking use)	\$13,338	\$7,678	\$5,660