

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager - Approve revised License Agreement for parking utilization at the City-owned lot located between 1511 and 1529 Cravens Avenue.

RECOMMENDATION

Recommendation of the City Manager that City Council approve a revised License Agreement by and between the City of Torrance ("City") and Gary Zimmerman (DBA Frankie, Johnnie, & Luigi's Pizza Parlor), for use of 6 parking spaces located in the City-owned lot located between 1511 and 1529 Cravens Avenue (APN 7355-022-902).

Funding

No funding is required for this action. License will generate \$1,800 annual income.

BACKGROUND AND ANALYSIS

The License for parking was before Your Honorable Body on September 20, 2011 for use by a new business in the Downtown to be known as Frankie, Johnnie, & Luigi's Pizza Parlor. The location is 1437 Marcelina Avenue. The License brought forward at that meeting was for seven parking spaces.

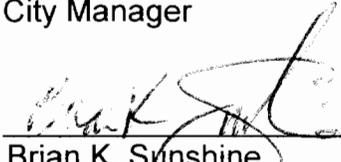
The use went before the Planning Commission on September 21, 2011 with a parking requirement to be set upon determination of final square footage of the restaurant. The final layout of the restaurant requires six spaces instead of the anticipated need for seven. The License before you this evening replaces the License that was approved but not executed on September 20, 2011.

The revised License allows for the use of six spaces at \$25.00 per space per month on a non-exclusive basis in the Cravens lot located between 1511 and 1529 Cravens Avenue.

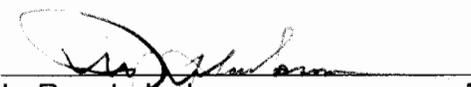
The revised License is for a five-year term and can be reviewed prior to the end date for extensions. The date entered into for the License is immediate however the term and rent would commence on the date the business opens.

Respectfully submitted,

LeROY J. JACKSON
City Manager


by Brian K. Sunshine
Assistant to the City Manager

CONCUR:


LeRoy J. Jackson
City Manager

Attachments:

- A) License Agreement
- B) Council Item dated September 20, 2011

LICENSE AGREEMENT

This License Agreement (“License”) is made and entered into as of October 18, 2011, by and between the CITY OF TORRANCE, a Municipal Corporation (“CITY”) and Gary Zimmerman, dba Frankie, Johnnie, & Luigi’s Pizza Parlor (“LICENSEE”).

RECITALS:

- A. LICENSEE operates a business located at 1437 Marcelina Avenue, Torrance, California.
- B. LICENSEE desires to use six parking spaces within a City-owned lot located on Cravens between 1511 and 1529 (APN 7355-022-902), Torrance, California for employee and customer parking.

AGREEMENT:

1. PREMISES

- A. CITY grants LICENSEE a license to occupy and use for parking, subject to all terms and conditions stated, non exclusive use of six parking spaces in the City-owned lot located on Cravens between 1511 and 1529 (APN 7355-022-902) (the “Premises”) as shown in EXHIBIT A.
- B. As a Condition Precedent, Licensee must first be granted a Conditional Use Permit (CUP) for a restaurant use at 1437 Marcelina Avenue

2. USE

The Premises may be occupied and used by LICENSEE only for the purpose of employee and customer parking.

3. TERM

The term of this License will be for five years commencing on the date business begins operation.

4. TERMINATION BY CITY FOR CONVENIENCE

CITY may, upon sixty days notice, terminate this LICENSE for CITY’s convenience and without cause.

5. COMPENSATION

- A. LICENSEE agrees to pay CITY in advance, on the first day of each month the sum of \$150.00 (“Minimum Monthly Fee”). If this License does not commence on the first day of a calendar month or end on the last day of a calendar month, LICENSEE will pay prorated rent for the first and last month, as the case may be, in the amount of 1/30th of the Minimum Monthly Fee times the number of days for which the fee is being prorated.

B. All rent payable to the CITY will be paid, without abatement, deduction or offset, to the Finance Department of the City of Torrance located at 3031 Torrance Blvd., Torrance, California, 90503.

6. COMPLIANCE WITH LAW

LICENSEE agrees to comply with the Redevelopment Plan for the Downtown Redevelopment Project Area and all ordinances, rules, laws or regulations of the City of Torrance and of any other governmental agency that are applicable to the Premises.

7. SECURITY AND MAINTENANCE

Security and maintenance of the Premises will be the responsibility of the LICENSEE. LICENSEE agrees to maintain the Premises in a neat and sanitary condition.

8. SURRENDER

At the expiration of the term of this License, LICENSEE must surrender the Premises to the CITY in the same condition as received, reasonable wear and tear excepted.

10. INDEMNIFICATION

LICENSEE will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, members of boards and commissions, its officers, agents, employees and volunteers from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of LICENSEE, its officers, employees, agents, subcontractors or vendors. It is further agreed, LICENSEE's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between LICENSEE and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, LICENSEE will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. LICENSEE will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

11. INSURANCE

LICENSEE shall furnish the CITY a certificate of liability insurance for the premises in the amount of \$1,000,000 combined single limit and naming the CITY, the City of Torrance, the City Council, each member thereof and each officer and employee of the CITY as an additional insured on the policy. The certificate of insurance will be filed with this LICENSE in the office of the City Clerk.

12. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

LICENSEE Gary Zimmerman dba Frankie,
Johnnie, & Luigi's Pizza Parlor
1422 Marcelina Avenue
Torrance, CA 90501

CITY: City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

13. DEFAULT

The occurrence of any one or more of the following events will constitute a default and breach of this License by LICENSEE:

- A. The failure to pay the Minimum Monthly Fee within three days of its due date; or
- B. The failure to perform any of LICENSEE's obligations under this License, other than the obligation to pay the Minimum Monthly Fee, more than five days after written notice from the CITY.

14. PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING

LICENSEE may not at any time during the term of this License assign, sublease or transfer this License.

15. INTEGRATION; AMENDMENT

This License represents the entire understanding of CITY and LICENSEE as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this License. The License may not be modified or altered except in writing signed by both parties.

16. INTERPRETATION

The terms of this License should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this License or any other rule of construction that might otherwise apply.

17. SEVERABILITY

If any part of this License is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the License will remain in full force and effect.

18. GOVERNING LAW; JURISDICTION

This License will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the License will be in Los Angeles County, California.

19. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this License.

20. ATTORNEY'S FEES

Except as provided for in Paragraph 10, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this License (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this License, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

21. EXHIBITS

All exhibits identified in this License are incorporated into the License by this reference.

22. LICENSEE'S AUTHORITY TO EXECUTE

The person(s) executing this License on behalf of the LICENSEE warrant that (i) the LICENSEE is duly organized and existing; (ii) they are duly authorized to execute this License on behalf of the LICENSEE; (iii) by so executing this License, the LICENSEE is formally bound to the provisions of this License; and (iv) the entering into this License does not violate any provision of any other License to which the LICENSEE is bound.

CITY OF TORRANCE,
A Municipal Corporation

Gary Zimmerman
dba Frankie, Johnnie, & Luigi's
Pizza Parlor
A sole proprietor

Frank Scotto
Mayor

Gary Zimmerman

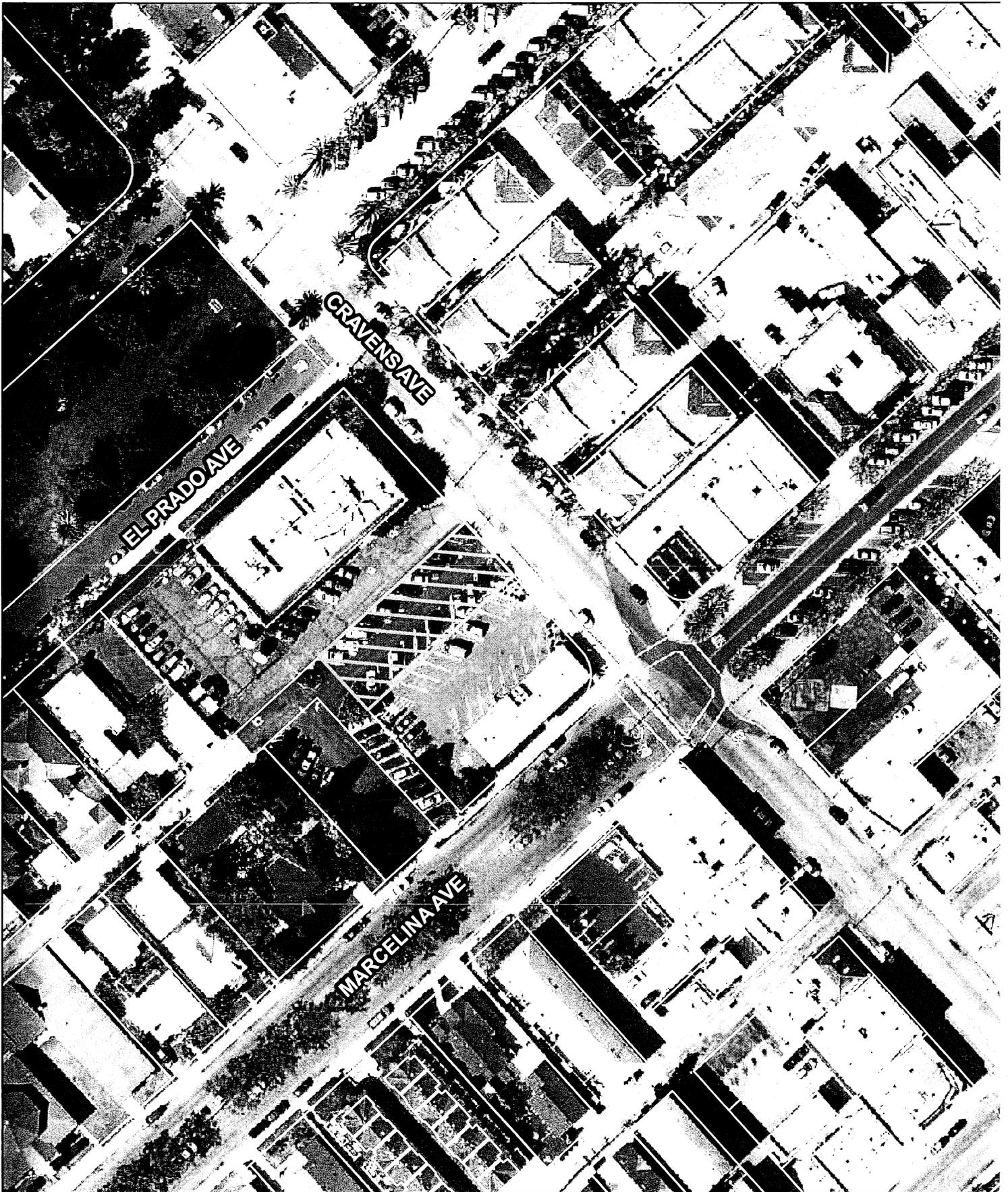
ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By:_____



T:\Misc\PDF\2011\Aerials\8by11P\Exhibit A for APN 7355022092

Lines and photos are approximate, not to be used for establishing absolute or relative positions



City-owned Lot APN 7355-022-092



Council Meeting of
September 20, 2011

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: City Manager - Approve License Agreement for parking utilization at the City-owned lot located between 1511 and 1529 Cravens Avenue.

RECOMMENDATION

Recommendation of the City Manager that City Council approve a License Agreement by and between the City of Torrance ("City") and Gary Zimmerman (DBA Frankie, Johnnie, & Luigi's Pizza Parlor), for use of 7 parking spaces located in the City-owned lot located between 1511 and 1529 Cravens Avenue (APN 7355-022-902).

Funding

No funding is required for this action. License will generate \$2,100 annual income.

BACKGROUND AND ANALYSIS

The proposed Licensee currently operates Old Torrance Coffee & Tea at 1413 Marcelina Avenue and the World War II Store at 1422 Marcelina Avenue in Downtown Torrance. The operator, Gary Zimmerman, is seeking an opportunity to open a third business in the Downtown, a Pizza Parlor to be known as Frankie, Johnnie, & Luigi's Pizza Parlor. The proposed location is 1437 Marcelina Avenue.

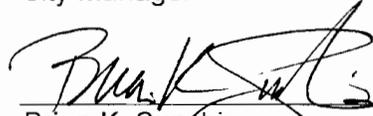
The proposed use is set to go before the Planning Commission on September 21, 2011 with a requirement for seven parking spaces. These spaces are not available at the 1437 Marcelina Avenue site so the proposed Licensee has requested the use of City-owned spaces in order to open his business. The proposed Licensee is seeking an approval for the parking requirement prior to the Planning Commission hearing so that he can meet that condition of the CUP. The License before you this evening contains a condition precedent requiring a Conditional Use Permit (CUP) prior to the License becoming effective.

The License allows for the use of seven spaces at \$25.00 per space per month on a non-exclusive basis in the Cravens lot. The approval of the License does not grant approval of the CUP nor does it give tacit approval of the CUP if it is appealed to the City Council. Approval of the License ensures that there will be parking available per the requirements of the proposed use if it gains approval through the discretionary land use approval process.

The proposed License is for a five-year term and can be reviewed prior to the end date for extensions. The date entered into for the License is immediate however the term and rent would commence on the date the business opens.

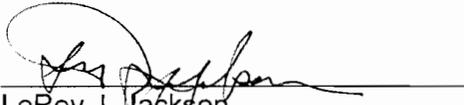
Respectfully submitted,

LeROY J. JACKSON
City Manager



by Brian K. Sunshine
Assistant to the City Manager

CONCUR:


LeRoy J. Jackson
City Manager

Attachment:

- A) License Agreement

LICENSE AGREEMENT

This License Agreement ("License") is made and entered into as of September 20, 2011, by and between the CITY OF TORRANCE, a Municipal Corporation ("CITY") and Gary Zimmerman, dba Frankie, Johnnie, & Luigi's Pizza Parlor ("LICENSEE").

RECITALS:

- A. LICENSEE operates a business located at 1437 Marcelina Avenue, Torrance, California.
- B. LICENSEE desires to use seven parking spaces within a City-owned lot located on Cravens between 1511 and 1529 (APN 7355-022-902), Torrance, California for employee and customer parking.

AGREEMENT:1. PREMISES

- A. CITY grants LICENSEE a license to occupy and use for parking, subject to all terms and conditions stated, non exclusive use of seven parking spaces in the City-owned lot located on Cravens between 1511 and 1529 (APN 7355-022-902) (the "Premises") as shown in EXHIBIT A.
- B. As a Condition Precedent, Licensee must first be granted a Conditional Use Permit (CUP) for a restaurant use at 1437 Marcelina Avenue

2. USE

The Premises may be occupied and used by LICENSEE only for the purpose of employee and customer parking.

3. TERM

The term of this License will be for five years commencing on the date business begins operation.

4. TERMINATION BY CITY FOR CONVENIENCE

CITY may, upon sixty days notice, terminate this LICENSE for CITY's convenience and without cause.

5. COMPENSATION

- A. LICENSEE agrees to pay CITY in advance, on the first day of each month the sum of \$175.00 ("Minimum Monthly Fee"). If this License does not commence on the first day of a calendar month or end on the last day of a calendar month, LICENSEE will pay prorated rent for the first and last month, as the case may be, in the amount of 1/30th of the Minimum Monthly Fee times the number of days for which the fee is being prorated.

B. All rent payable to the CITY will be paid, without abatement, deduction or offset, to the Finance Department of the City of Torrance located at 3031 Torrance Blvd., Torrance, California, 90503.

6. COMPLIANCE WITH LAW

LICENSEE agrees to comply with the Redevelopment Plan for the Downtown Redevelopment Project Area and all ordinances, rules, laws or regulations of the City of Torrance and of any other governmental agency that are applicable to the Premises.

7. SECURITY AND MAINTENANCE

Security and maintenance of the Premises will be the responsibility of the LICENSEE. LICENSEE agrees to maintain the Premises in a neat and sanitary condition.

8. SURRENDER

At the expiration of the term of this License, LICENSEE must surrender the Premises to the CITY in the same condition as received, reasonable wear and tear excepted.

10. INDEMNIFICATION

LICENSEE will indemnify, defend, and hold harmless CITY, the City Council, each member thereof, present and future, members of boards and commissions, its officers, agents, employees and volunteers from and against any and all liability, expenses, including defense costs and legal fees, and claims for damages whatsoever, including, but not limited to, those arising from breach of contract, bodily injury, death, personal injury, property damage, loss of use, or property loss however the same may be caused and regardless of the responsibility for negligence. The obligation to indemnify, defend and hold harmless includes, but is not limited to, any liability or expense, including defense costs and legal fees, arising from the negligent acts or omissions, or willful misconduct of LICENSEE, its officers, employees, agents, subcontractors or vendors. It is further agreed, LICENSEE's obligations to indemnify, defend and hold harmless will apply even in the event of concurrent negligence on the part of CITY, the City Council, each member thereof, present and future, or its officers, agents and employees, except for liability resulting solely from the negligence or willful misconduct of CITY, its officers, employees or agents. Payment by CITY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between LICENSEE and CITY, as to whether liability arises from the sole negligence of the CITY or its officers, employees, agents, subcontractors or vendors, LICENSEE will be obligated to pay for CITY's defense until such time as a final judgment has been entered adjudicating the CITY as solely negligent. LICENSEE will not be entitled in the event of such a determination to any reimbursement of defense costs including but not limited to attorney's fees, expert fees and costs of litigation.

11. INSURANCE

LICENSEE shall furnish the CITY a certificate of liability insurance for the premises in the amount of \$1,000,000 combined single limit and naming the CITY, the City of Torrance, the City Council, each member thereof and each officer and employee of the CITY as an additional insured on the policy. The certificate of insurance will be filed with this LICENSE in the office of the City Clerk.

12. NOTICE

- A. All notices, requests, demands, or other communications under this Agreement will be in writing. Notice will be sufficiently given for all purposes as follows:
1. Personal delivery. When personally delivered to the recipient: notice is effective on delivery.
 2. First Class mail. When mailed first class to the last address of the recipient known to the party giving notice: notice is effective three mail delivery days after deposit in an United States Postal Service office or mailbox.
 3. Certified mail. When mailed certified mail, return receipt requested: notice is effective on receipt, if delivery is confirmed by a return receipt.
 4. Overnight delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account: notice is effective on delivery, if delivery is confirmed by the delivery service.
 5. Facsimile transmission. When sent by fax to the last fax number of the recipient known to the party giving notice: notice is effective on receipt. Any notice given by fax will be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

6. Addresses for purpose of giving notice are as follows:

LICENSEE Gary Zimmerman dba Frankie,
Johnnie, & Luigi's Pizza Parlor
1422 Marcelina Avenue
Torrance, CA 90501

CITY: City Clerk
City of Torrance
3031 Torrance Boulevard
Torrance, CA 90509-2970
Fax: (310) 618-2931

- B. Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified, will be deemed effective as of the first date the notice was refused, unclaimed or deemed undeliverable by the postal authorities, messenger or overnight delivery service.
- C. Either party may change its address or fax number by giving the other party notice of the change in any manner permitted by this Agreement.

13. DEFAULT

The occurrence of any one or more of the following events will constitute a default and breach of this License by LICENSEE:

- A. The failure to pay the Minimum Monthly Fee within three days of its due date; or
- B. The failure to perform any of LICENSEE's obligations under this License, other than the obligation to pay the Minimum Monthly Fee, more than five days after written notice from the CITY.

14. PROHIBITION AGAINST ASSIGNMENT AND SUBLETTING

LICENSEE may not at any time during the term of this License assign, sublease or transfer this License.

15. INTEGRATION; AMENDMENT

This License represents the entire understanding of CITY and LICENSEE as to those matters contained in it. No prior oral or written understanding will be of any force or effect with respect to the terms of this License. The License may not be modified or altered except in writing signed by both parties.

16. INTERPRETATION

The terms of this License should be construed in accordance with the meaning of the language used and should not be construed for or against either party by reason of the authorship of this License or any other rule of construction that might otherwise apply.

17. SEVERABILITY

If any part of this License is found to be in conflict with applicable laws, that part will be inoperative, null and void insofar as it is in conflict with any applicable laws, but the remainder of the License will remain in full force and effect.

18. GOVERNING LAW; JURISDICTION

This License will be administered and interpreted under the laws of the State of California. Jurisdiction of any litigation arising from the License will be in Los Angeles County, California.

19. WAIVER OF BREACH

No delay or omission in the exercise of any right or remedy by a nondefaulting party on any default will impair the right or remedy or be construed as a waiver. A party's consent or approval of any act by the other party requiring the party's consent or approval will not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and will not be a waiver of any other default concerning the same or any other provision of this License.

20. ATTORNEY'S FEES

Except as provided for in Paragraph 10, in any dispute, litigation, arbitration, or other proceeding by which one party either seeks to enforce its rights under this License (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this License, the prevailing party will be awarded reasonable attorney's fees, together with any costs and expenses, to resolve the dispute and to enforce any judgment.

21. EXHIBITS

All exhibits identified in this License are incorporated into the License by this reference.

22. LICENSEE'S AUTHORITY TO EXECUTE

The person(s) executing this License on behalf of the LICENSEE warrant that (i) the LICENSEE is duly organized and existing; (ii) they are duly authorized to execute this License on behalf of the LICENSEE; (iii) by so executing this License, the LICENSEE is formally bound to the provisions of this License; and (iv) the entering into this License does not violate any provision of any other License to which the LICENSEE is bound.

CITY OF TORRANCE,
A Municipal Corporation

Gary Zimmerman
dba Frankie, Johnnie, & Luigi's
Pizza Parlor
A sole proprietor

Frank Scotto
Mayor

Gary Zimmerman

ATTEST:

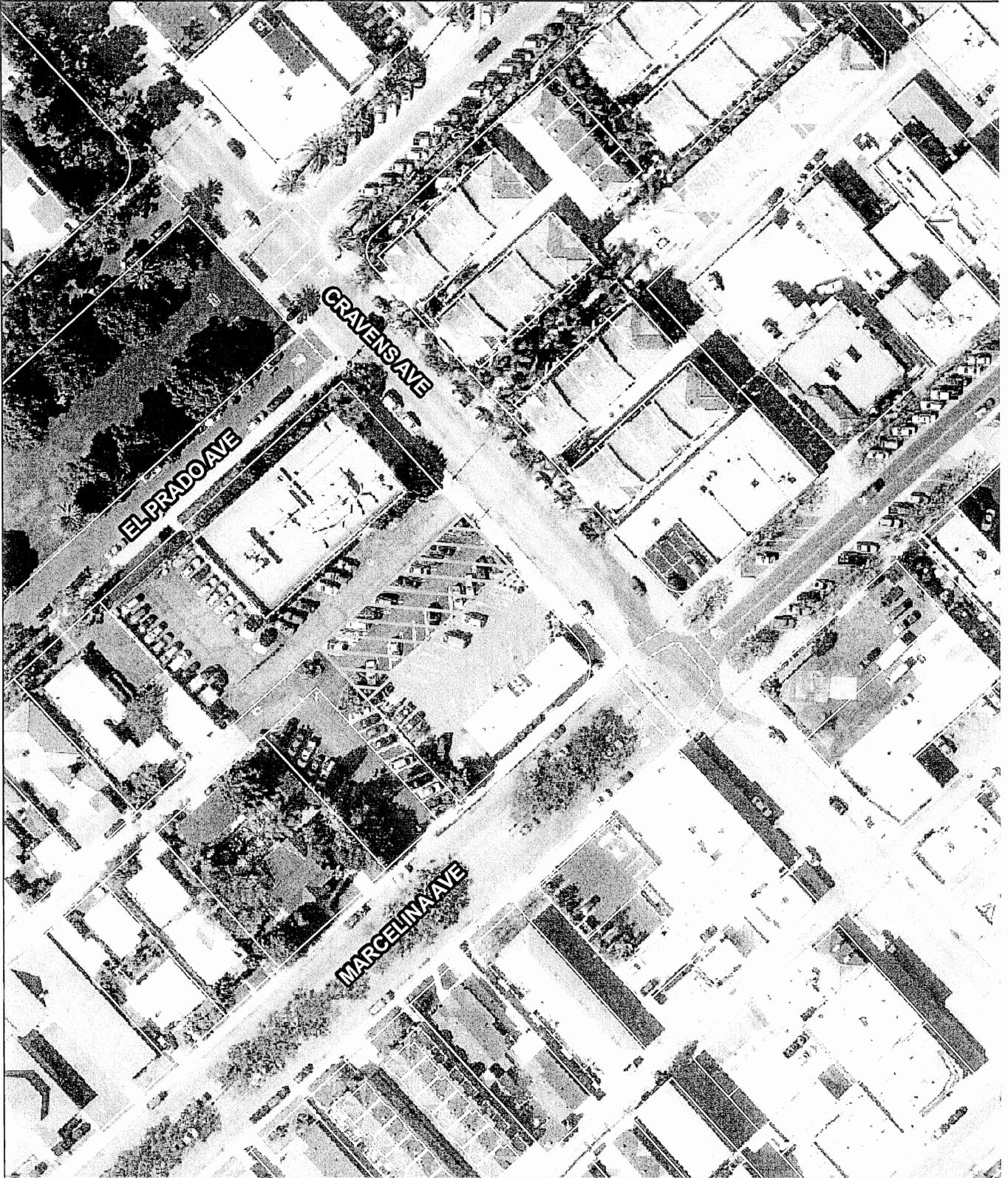
Sue Herbers, City Clerk

APPROVED AS TO FORM:

JOHN L. FELLOWS III
City Attorney

By: _____

Exhibit A



T:\Allan\POP\2011\GenGIS\11P Exhibit A for APN 7355022092

Lines and photos are approximate, not to be used for establishing absolute or relative positions



City-owned Lot APN 7355-022-092

