

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

Members of the Council:

**SUBJECT: City Manager - Approval of First Amendment to License
for parking utilization at 1312 Cabrillo Avenue**

RECOMMENDATION

Recommendation of the City Manager that City Council approve a First Amendment to License for a License Agreement entered into July 1, 2009 by and between the City of Torrance ("City") and Plaza Del Prado, Inc., for use of 10 parking spaces located at 1312 Cabrillo Avenue.

Funding

No funding is required for this action.

BACKGROUND AND ANALYSIS

On March 8, 2011 the Redevelopment Agency of the City of Torrance transferred this property and the subject License Agreement to the City. Additionally the City and Redevelopment Agency entered into a Cooperative Agreement for the City to honor all Agreements of the Agency. Because of that action, it is requested that Your Honorable Body act on the proposed First Amendment to License.

A License Agreement (License) was entered into as of July 1, 2009. The Agreement term is for ten (10) years and allows the use of ten parking spaces in the lot located at 1312 Cabrillo Avenue. The requirement for additional parking was required by the Conditional Use Permit for the restaurant operating as Niwattori located at 1231 Cabrillo Avenue, #107.

The License gives the use of ten spaces at \$50.00 per space per month. The Licensee has struggled making the payments since its opening and has requested relief from the current fee structure. A payment plan has also been requested to cover the amount they are in arrears. The current amount owed on this License is \$8,250.00.

Staff has worked with the restaurant to develop a program that will allow them to stay in business and make payments against their debt. The First Amendment to License reduces their ongoing rent to \$25.00 per space per month (\$250.00) and sets an additional amount of \$250.00 per month to retire the previous debt for a total amount of \$500.00 per month. Once the debt is retired, the monthly fee for parking will be \$250.00 per month.

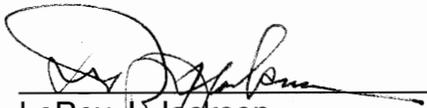
Respectfully submitted,

LeROY J. JACKSON
City Manager



by Brian K. Sunshine
Assistant to the City Manager

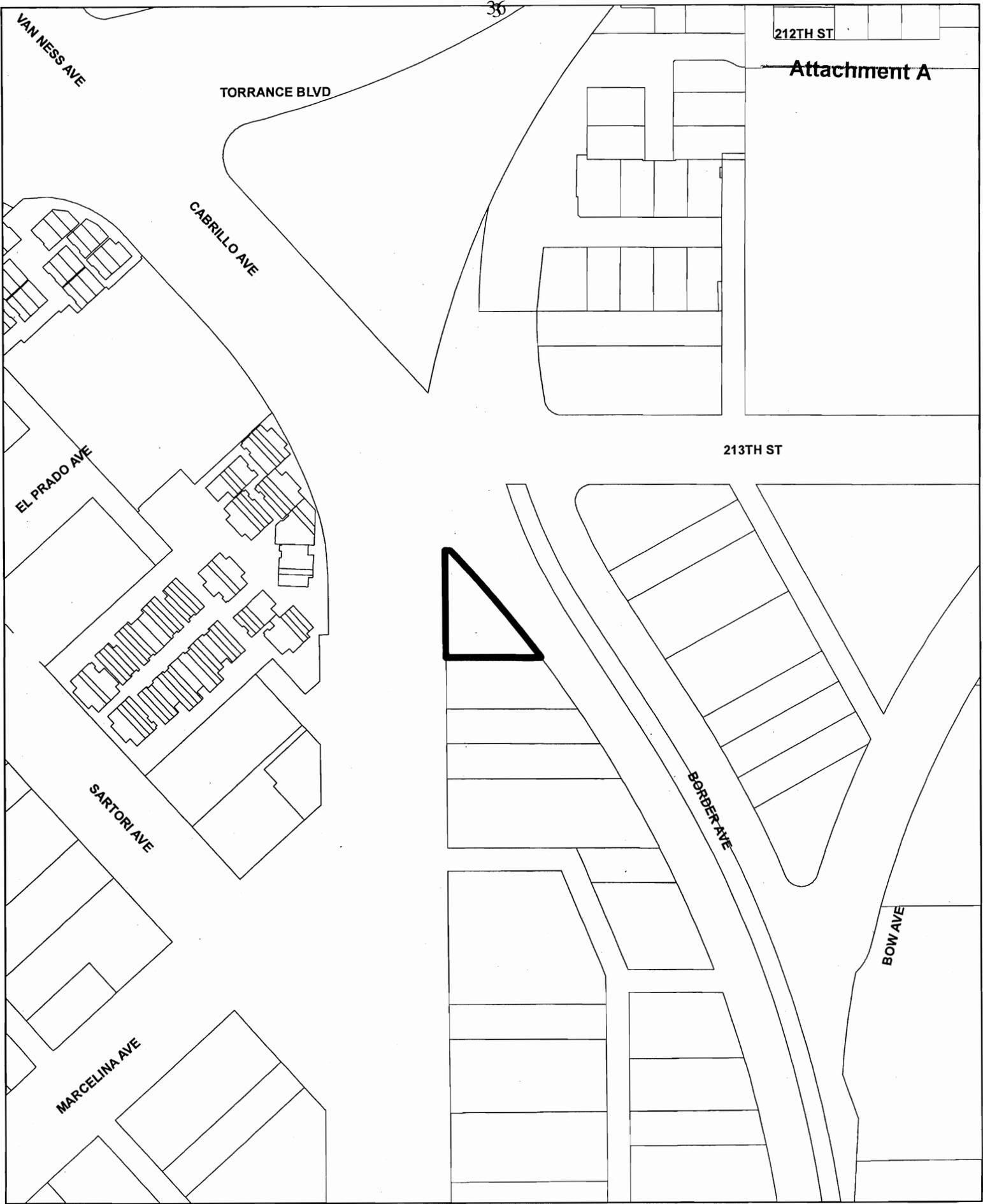
CONCUR:



LeRoy J. Jackson
City Manager

Attachments:

- A) Site Map
- B) First Amendment to License
- C) License Agreement



212TH ST

Attachment A

213TH ST

BORDER AVE

BOW AVE

T:\Map\GIS\2011\Inventory of Redevelopment Properties.mxd

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



7355-029-900

1312 CABRILLO AVENUE



First Amendment to License Agreement

This First Amendment to License Agreement ("Amendment") is made and entered into as of May 1, 2011, by and between the CITY OF TORRANCE, a Municipal Corporation ("CITY") and K's Kitchen, Inc., a California Corporation, dba Yuzu Restaurant ("Licensee").

RECITALS:

- A. CITY's predecessor in interest, the Redevelopment Agency of the City of Torrance ("AGENCY"), and LICENSEE entered into a License Agreement on December 1, 2004, which granted LICENSEE the use of ten AGENCY-owned spaces located at 1940-1960 Torrance Boulevard in conjunction with a restaurant located at 1231 Cabrillo Avenue #101, Torrance, California.
- B. On March 8, 2011, the AGENCY transferred its interest in the License Agreement and its interest in the property located at 1312 Cabrillo to CITY.
- C. LICENSEE desires to continue to use the parking spaces in conjunction with their restaurant use.
- D. LICENSEE has requested modifications to the terms of the License with respect to ongoing fees and previous delinquent payments.

AGREEMENT:

- 1. SECTION 5 entitled COMPENSATION of the License is amended to read in its entirety as follows:
 - "5. COMPENSATION
 - A. LICENSEE agrees to pay CITY in advance, on the first day of each month the sum of \$250.00 per month ("Minimum Monthly Fee") commencing May 1, 2011.
 - B. LICENSEE further agrees and acknowledges that it owes CITY \$10,750.00 in past fees as calculated through April 30, 2011 and agrees to pay CITY in addition to the fees as outlined in SECTION 5.A. above, the sum of \$250.00 per month ("Additional Monthly Fee") until such time that the past fees amount is equal to zero."
- 2. The persons executing this Agreement on behalf of the LICENSEE warrant that (i) the LICENSEE is duly organized and existing; (ii) they are duly authorized to execute this Agreement on behalf of the LICENSEE; (iii) by so executing this Agreement, the LICENSEE is formally bound to the provisions of this Agreement; and (iv) the entering into this Agreement

does not violate any provision of any other Agreement to which the LICENSEE is bound.

3. In all other respects, the Agreement entered into as of December 1, 2004, between the CITY and LICENSEE is ratified and reaffirmed and is in full force and effect.

CITY OF TORRANCE,
A Municipal Corporation

K's Kitchen Inc.,
a California Corporation, dba Yuzu
Restaurant

By: _____
Frank Scotto, Mayor

Habib "Harry" Naeim, Vice President

ATTEST:

Sue Herbers, City Clerk

APPROVED AS TO FORM:
JOHN L. FELLOWS III
City Attorney

By: _____
Patrick Q. Sullivan
Assistant City Attorney

LICENSE AGREEMENT

This License Agreement ("License") is made and entered into as of July 1, 2009, by and between the REDEVELOPMENT AGENCY OF THE CITY OF TORRANCE, a body, public and politic, of the State of California ("AGENCY") and Plaza Del Prado, Inc., a California corporation ("LICENSEE").

RECITALS:

- A. AGENCY is the owner of fee title to property located at 1312 Cabrillo Avenue, Torrance, California, which includes a parking lot.
- B. LICENSEE operates a business located at 1231 Cabrillo Avenue #107, Torrance, California.
- C. LICENSEE desires to use ten parking spaces owned by the AGENCY for employee and customer parking.

AGREEMENT:

1. PREMISES
AGENCY grants LICENSEE a license to occupy and use for parking, subject to all terms and conditions stated, ten parking spaces in the AGENCY-owned parking lot located at 1312 Cabrillo Avenue (the "Premises"). Premises are defined as ten parking spaces only and does not include the adjacent walls and structures.
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 ten years commencing on the Effective Date written above.
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 AGENCY in advance, on the first day of each month the sum of \$500 ("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.

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ORIGINAL COPY

- B. All rent payable to the AGENCY 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. ALTERATIONS
 LICENSEE must submit a restriping plan to the Community Development Department for approval. The parking lot will be slurry sealed and restriped to the satisfaction of the Redevelopment Agency.
9. SURRENDER
 At the expiration of the term of this License, LICENSEE must surrender the Premises to the AGENCY in the same condition as received, reasonable wear and tear excepted.
10. INDEMNIFICATION
 LICENSEE will indemnify, defend, and hold harmless AGENCY, the City of Torrance, 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 AGENCY, 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 AGENCY, its officers, employees or agents. Payment by AGENCY is not a condition precedent to enforcement of this indemnity. In the event of any dispute between LICENSEE and AGENCY, as to whether liability arises from the sole negligence of the AGENCY or its officers,

employees, agents, subcontractors or vendors, LICENSEE will be obligated to pay for AGENCY's defense until such time as a final judgment has been entered adjudicating the AGENCY 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 AGENCY a certificate of liability insurance for the premises in the amount of \$1,000,000 combined single limit and naming the AGENCY, the City Council, each member thereof and each officer and employee of the AGENCY 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	Habib "Harry" Naeim Plaza Del Prado, Inc. 1261 Cabrillo Ave. #210B Torrance, CA 90501
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AGENCY:	Clerk of the Redevelopment Agency City of Torrance 3031 Torrance Boulevard Torrance, CA 90509-2970 Fax: (310) 618-2931
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- 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 AGENCY.

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 AGENCY 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 9, 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.

REDEVELOPMENT AGENCY OF
THE CITY OF TORRANCE,
A body, public and politic of the
State of California



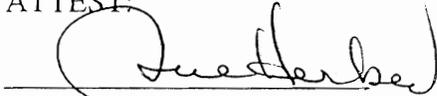
Frank Scotto
Chairman

Plaza Del Prado Inc.,
a California Corporation,



Habib "Harry" Naeim, Vice President

ATTEST:



Sue Herbers, Clerk of the
Redevelopment Agency of the
City of Torrance

APPROVED AS TO FORM:

JOHN L. FELLOWS III
Agency Counsel

By: 