



AGENDA ITEM REQUEST FORM

Town Manager's Office

Bud Bentley

Assistant Town Manager

REGULAR
COMMISSION MTG
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

ROUNDTABLE
MEETING
Meeting Dates - 7:00 PM

DEADLINE TO
Town Clerk

- Feb 22, 2011
- Mar 22, 2011

- Feb 11 (5:00 pm)
- Mar 11 (5:00 pm)

- Feb 8, 2011**
- Mar 8, 2011

- Jan 28 (5:00 pm)
- Feb 25 (5:00 pm)

SUBJECT TITLE: Benihana License Agreement

EXPLANATION: In September 2006, the Town granted a five (5) year Revocable License to Benihana National of Florida for the use of two Town owned parcels on Tradewinds Avenue West for ingress and egress to their property. The two license areas total about 4,500 square feet as shown on the attached aerial views (**Exhibit 1**).

The attached License (**Exhibit 2**) terminates on September 13, 2011. The attached July 14, 2006 letter (**Exhibit 3**) shows that the \$20,987.50 annual fee was calculated based on the 2006 meter rates for 23 meters. There has not been any change in parking meter rates in this area since the 2006 license.

A representative of Benihana's has contacted us and advised that Benihana would like to renew the license agreement. They have requested that the termination clause, which currently provides for forty-eight (48) hours written notice, be increased. One of their reasons they want to increase the termination notice period is their inability to restore the property to its pre-license condition within the current termination notice period.

The Town departments have advised they do not have a need for the two properties at this time other than for parking or streetscape. Because of the size of the properties and their configuration, we do not know of a stand-alone use that could utilize the properties, thus we do not see a Request For Proposals (RFP) as a viable process for these properties. The Town Attorney has advised that neither the Charter nor the Code prescribe a process for approving a license for the use of Town property.

RECOMMENDATION: Direction is requested as to the Commission's desires to continue to license this property to Benihana. If the Commission is interested in licensing the property, we will negotiate a new Revocable License in the near future for the Commission's consideration.

- EXHIBITS:**
- Exhibit 1: Aerial views from the Broward County Property Appraiser's web site.**
 - Exhibit 2: September 14, 2006 License Agreement**
 - Exhibit 3: July 14, 2006 letter calculating the license fee**

FISCAL IMPACT AND APPROPRIATION OF FUNDS: Revenue of \$20,987.50 per year

Reviewed by Town Attorney
 Yes No

Town Manager Initials CB

Exhibit 1

Benihana Restaurant and West Trade Winds Avenue

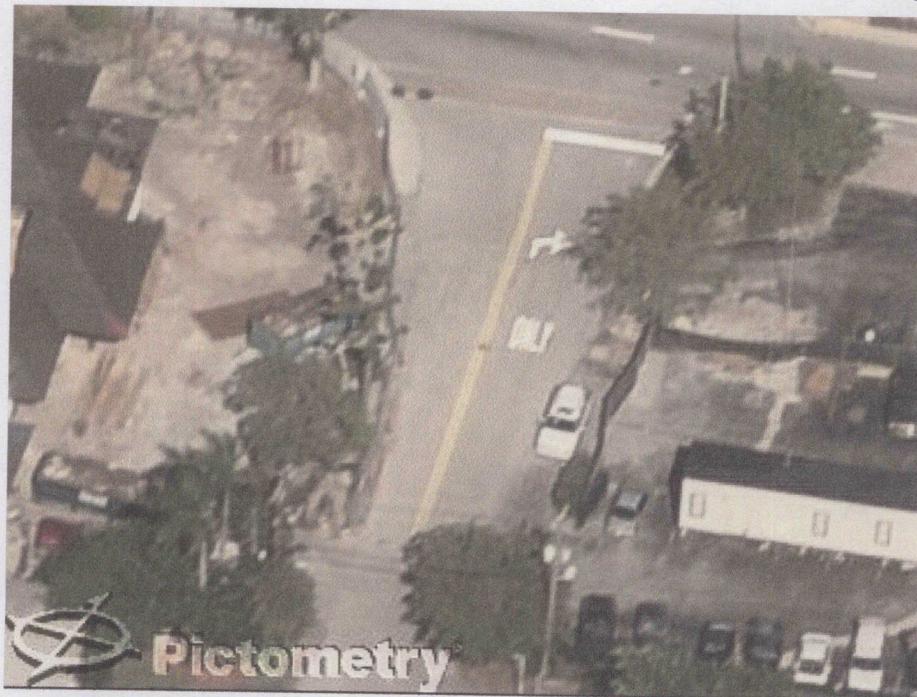
Benihana

Town Parcel 2

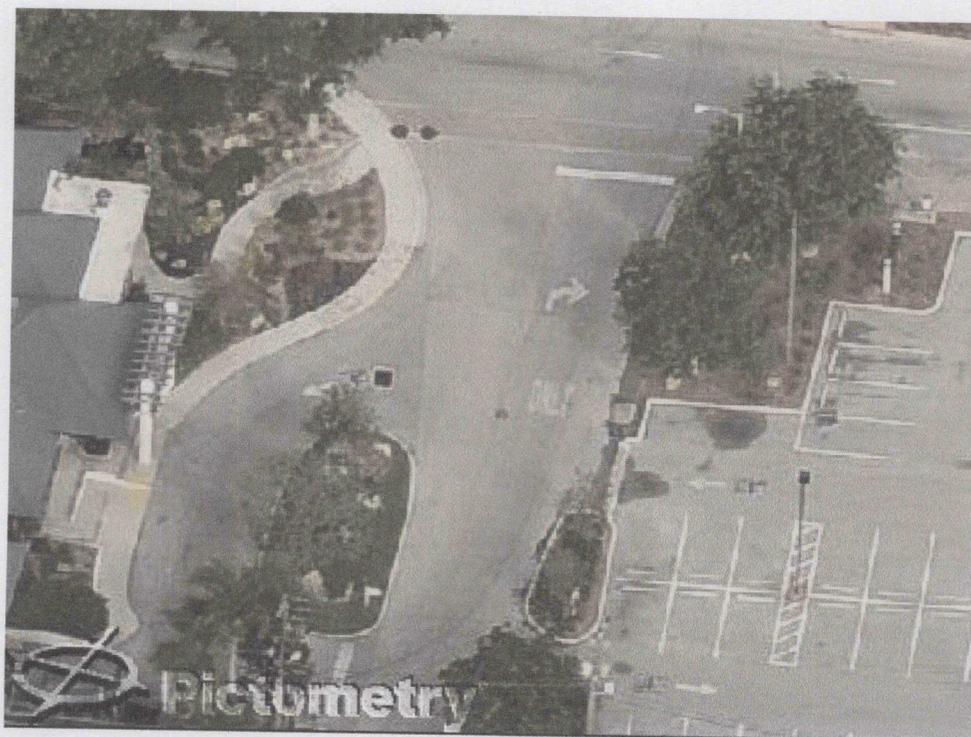


Town Parcel 1

Exhibit 1



www.BCPA.net Pictometry 2007



www.BCPA.net Pictometry 2010

LICENSE AGREEMENT

THIS IS AN AGREEMENT, made this 14 day of September, 2006 by and between:

THE TOWN OF LAUDERDALE-BY-THE-SEA, FLORIDA, a municipal corporation organized and existing under the laws of the State of Florida, hereinafter referred to as "TOWN"

And

BENIHANA NATIONAL of FLORIDA CORP. a Florida Corporation, hereinafter referred to as "LICENSEE". TOWN and LICENSEE may hereinafter collectively be referred to as the "Parties."

1. DESCRIPTION OF THE PREMISES

TOWN hereby grants to LICENSEE the right, license, and privilege of reserving certain TOWN-owned property, as more particularly described in **Exhibit "A"** attached hereto and by this reference made a part hereof (hereinafter referred to as the "Premises" or "Property") subject to the terms and conditions set forth in this License Agreement. LICENSEE shall not have any property interest in the Premises arising out of this License Agreement. Nothing herein shall create a landlord-tenant relationship between the Parties nor shall any rights, obligations, duties or interests associate with a landlord-tenant relationship accrue in law or in equity pursuant to the terms of this License Agreement.

2. COMPENSATION

In exchange for the license granted herein, LICENSEE shall pay to TOWN the amount of **TWENTY THOUSAND NINE HUNDRED EIGHTY SEVEN DOLLARS AND FIFTY CENTS (\$20,987.50)** per annum for the right to reserve such parking facilities as identified in **Exhibit "A"**, for the use of the property for ingress/egress. Payment shall be made in advance on an annual basis and shall be due and payable on the first day of October each year commencing with the execution of this License Agreement. No security deposit is required.

3. TERM

The initial term of this Agreement shall be for five (5) years from the date executed. Thereafter, this License Agreement may be renewable upon expiration upon mutual consent upon the Parties.

Sept 13, 2011

4. USE OF PREMISES

4.1 LICENSEE shall use and occupy the Premises as ingress/egress in conjunction with the operation of the official business of the LICENSEE conducted at 276 Commercial Boulevard, Lauderdale-by-The-Sea, Florida, in a manner as approved by the TOWN site plan approval of March 28, 2006 and shall not be used for any other purpose whatsoever without the written consent of the TOWN. LICENSEE covenants that it will not, without written consent of the TOWN, permit the Premises to be used or occupied in the same or similar manner as authorized herein by any other person, firm, entity or corporation other than LICENSEE or its agents, except customers of LICENSEE's business.

4.2 LICENSEE further covenants that no nuisance or hazardous trade or occupation shall be permitted and nothing shall be kept in or about said Premises which will increase the risk of any hazard, fire or catastrophe, and no waste shall be permitted or committed upon or any damage done to said Premises. LICENSEE shall not permit the licensed Premises to be used or occupied in any manner, which will violate any laws or regulations of any governmental authority.

4.3 LICENSEE further acknowledges that TOWN shall not provide any parking enforcement of the reservations provided under this License Agreement. LICENSEE acknowledges that any vehicle parked at the Premises upon the daily commencement of the License hereunder shall not be disturbed until removed by the owner or driver of such vehicle. Moreover, LICENSEE further agrees that it will not effectuate the removal nor direct any person who parks at the Premises to move or remove their vehicle regardless of whether or not the driver or any passenger of such vehicle conducts business with LICENSEE during the License period.

5. ASSIGNMENT

LICENSEE shall have no authority to assign any portion of the Premises during the Term of this Agreement. Should LICENSEE attempt to assign this license, and then the license shall be terminated forthwith without prior notice to LICENSEE.

6. DAMAGE TO PREMISES

LICENSEE agrees that all personal property, inventory, or stock placed on the Premises shall remain the property of LICENSEE, and shall be placed on the Premises at the risk of LICENSEE. LICENSEE shall give the TOWN prompt written notice of any occurrence, loss, incident or accident occurring on the licensed Premises.

7. INSPECTIONS

TOWN, its agents, or authorized employees may enter upon the Premises at all reasonable times and hours, to examine same to determine if LICENSEE is properly maintaining the Premises according to this Agreement.

8. INDEMNIFICATION

To the extent that personal property is placed on the Premises, it is at LICENSEE's sole risk. To the extent permitted by law, LICENSEE shall indemnify and save harmless and defend the TOWN, its trustees, elected and appointed officials, agents, servants and employees from and against any claim, demand or cause of action of whatsoever kind or nature arising out of error, omission, or negligent act of LICENSEE, its agents, servants or employees in the use of the Premises, for all costs, losses and expenses, including but not limited to, damages to persons or property, judgments and attorneys' fees arising out of or in connection with the uses or operations permitted under this Agreement.

The Parties recognize that various provisions of this Agreement, including but not necessarily limited to this Section, provide for indemnification by the LICENSEE and that a specific consideration shall be given therefor. The parties therefore agree that the sum of Ten Dollars and 00/100 (\$10.00), receipt of which is hereby acknowledged, is the specific consideration for such indemnities. Furthermore, the parties understand and agree that the covenants and representations relating to this indemnification provision shall survive the term of this Agreement and continue in full force and effect as to the party's responsibility to indemnify.

9. INSURANCE

The Parties hereby acknowledge that LICENSEE shall pay for and obtain all insurance required under this paragraph and such insurance has been approved by the Risk Manager of the TOWN.

9.1 Certificates of Insurance reflecting evidence of the required insurance shall be filed with the TOWN'S Risk Manager prior to the commencement of this Agreement. These Certificates shall contain a provision that coverage's afforded under these policies will not be cancelled until at least forty-five days (45) prior written notice has been given to the TOWN. Policies shall be issued by companies authorized to do business under the laws of the State of Florida. Financial Ratings must be not less than "A-VI" in the latest edition of "Best Key Rating Guide", published by A.M. Best Guide.

9.2 Insurance shall be in force until the termination of this License. In the event the insurance certificate provided indicated that the insurance shall terminate and lapse during the period of this contract, then in that event, the LICNESEE shall furnish, at least forty-five (45) days prior to the expiration of the date of such insurance, a renewed certificate of insurance as proof that equal and like coverage for the balance of the period of the contract and extension thereunder is in effect. The LICENSEE shall not utilize the Premises pursuant to this License Agreement unless and until all required insurance remains in full force and effect.

9.3 Commercial General Liability insurance to cover liability bodily injury and property damage. Exposures to be covered are: premises, operations and certain contracts. Coverage must be written on an occurrence basis, with the following limits of liability:

\$1,000,000	Combined Single Limit – each occurrence
\$1,000,000	Combined Single Limit – general aggregate
\$1,000,000	Personal Injury
\$1,000,000	Products/Completed Operations Aggregate

LICENSEE shall have its insurer name the TOWN as an additional insured on its General Liability policy.

10. MAINTENANCE OF LICENSED PREMISES AND UTILITIES

The LICENSEE agrees to maintain the Premises and all personal property placed thereon in accordance with the terms and conditions of this Agreement and consistent with prudent and well-reasoned maintenance procedures and techniques.

11. AMENDMENTS

It is agreed that no modifications, amendment or alteration in the terms or conditions contained herein shall be effective unless contained in a written document executed with the same formality and of equal dignity herewith.

12. SURRENDER UPON TERMINATION

Upon the conclusion of the term, or upon termination of this License Agreement, LICENSEE agrees to peaceably surrender and deliver the premises to the TOWN in substantially the same condition as it was delivered to LICENSEE at the beginning of this Agreement, ordinary wear and tear excluded.

Furthermore, LICENSEE agrees to remove from the Premises at their expense, any personal property or inventory placed therein. Upon completion of removal the condition of the Premises shall be safe and not a hazard.

13. WAIVER

Failure of the TOWN to insist upon strict performance of any covenant or condition of this Agreement, or to execute any right herein contained, shall not be construed as a waiver or relinquishment for the future of any such covenant, condition or right, but the same shall remain in full force and effect.

14. TERMINATION

During the initial term hereunder, the TOWN may terminate this Agreement with forty-eight (48) hours written notice to LICENSEE. Thereafter, upon any renewal hereof, this Agreement may be terminated by either party during the term thereof upon ten (10) calendar days' written notice to the other of its desire to terminate this License Agreement. Notice shall be deemed given upon receipt. Upon termination of this License Agreement, the TOWN shall reimburse LICENSEE of its pro rata share of the License fee paid hereunder.

15. INDEPENDENT CONTRACTOR

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the LICENSEE is an independent contractor under this Agreement and not the TOWN'S employee for all purposes, including but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The LICENSEE shall retain sole and absolute discretion in the judgment of the manner and means of carrying out LICENSEE'S activities and responsibilities hereunder. The LICENSEE agrees that it is a separate and independent enterprise from the TOWN, that it has full opportunity to find other business, that it make its own investment in its business, and that it will utilize a high level of skill necessary to perform the work. This Agreement shall not be construed as creating any joint employment relationship between the LICENSEE and the TOWN and the TOWN will not be liable for any obligation incurred by LICENSEE, including but not limited to unpaid minimum wages and/or overtime premiums.

16. NOTICES

Whenever any party desires to give notice unto any other party, it must be given by written notice, sent by registered United States mail, with return receipt requested, hand delivery or facsimile transmission with receipt of delivery, addressed to the party for whom it is intended and the remaining party, at the places last specified, and the places for giving of notice shall remain such until they shall have been changed by written notice in compliance with the provisions of this section. Notice shall be deemed to have been given upon receipt. For the present, the LICENSEE and the TOWN designate the following as the respective places for giving of notice:

TOWN: Bob Baldwin, Town Manager
 Town of Lauderdale-By-The-Sea
 4501 Ocean Drive
 Lauderdale-By-The-Sea, Florida 33308
 Telephone No. (954) 776-0576
 Facsimile No. (954) 776-1857

Copy To: James Cherof, Town Attorney
Goren, Cherof, Doody & Ezrol, P.A.
3099 East Commercial Boulevard, Suite 200
Fort Lauderdale, Florida 33308
Telephone No. (954) 771-4500
Facsimile No. (954) 771-4923

LICENSEE: Benihana National of Florida Corp.
8685 NW 53 Terrace
Miami, Fl 33166
Telephone No. (305) 593-0770
Facsimile No. (305) 592-6371

17. BINDING AUTHORITY

Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

18. LAWS AND ORDINANCES

The Parties agree to observe all laws and ordinances of the TOWN, state, federal, local or other public agencies directly relating to the operations being conducted on the Premises.

19. SEVERABILITY

If any provision of this Agreement or application thereof to any person or situation shall to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those as to which it shall have been held invalid or unenforceable shall not be affected thereby, and shall continue in full force and effect, and be enforced to the fullest extent permitted by law.

20. GOVERNING LAW

This Agreement shall be governed by the laws of the State of Florida with venue lying in Broward County, Florida.

21. ENTIRE AGREEMENT

This Agreement represents the entire and integrated agreement between the TOWN and the LICENSEE and supersedes all prior negotiations, representations or agreements, either written or oral.

IN WITNESS OF THE FOREGOING, the parties have set their hands and seals the day and year first written above.

TOWN OF LAUDERDALE-BY-THE-SEA

ATTEST:

[Signature]
Town Clerk

By: [Signature]
Mayor

APPROVED AS TO FORM:

[Signature]
Town Attorney

LICENSEE

BENIHANA NATIONAL OF FLORIDA CORP.

WITNESSES:

[Signature]

JUAN GARCIA
Print Name

By: [Signature]
PRESIDENT

[Signature]
Mary P. Rodriguez
Print Name

STATE OF FLORIDA)

COUNTY OF BROWARD)

)SS:

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Jel Schwartz of BENIHANA, a Florida corporation, and acknowledged executed the foregoing License Agreement as the proper official of BENIHANA for the use and purposes mentioned in it and that the instrument is the act and deed of that corporation.

He is personally known to me; or
 has produced _____ as identification.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 5 day of October, 2006.

My commission expires:

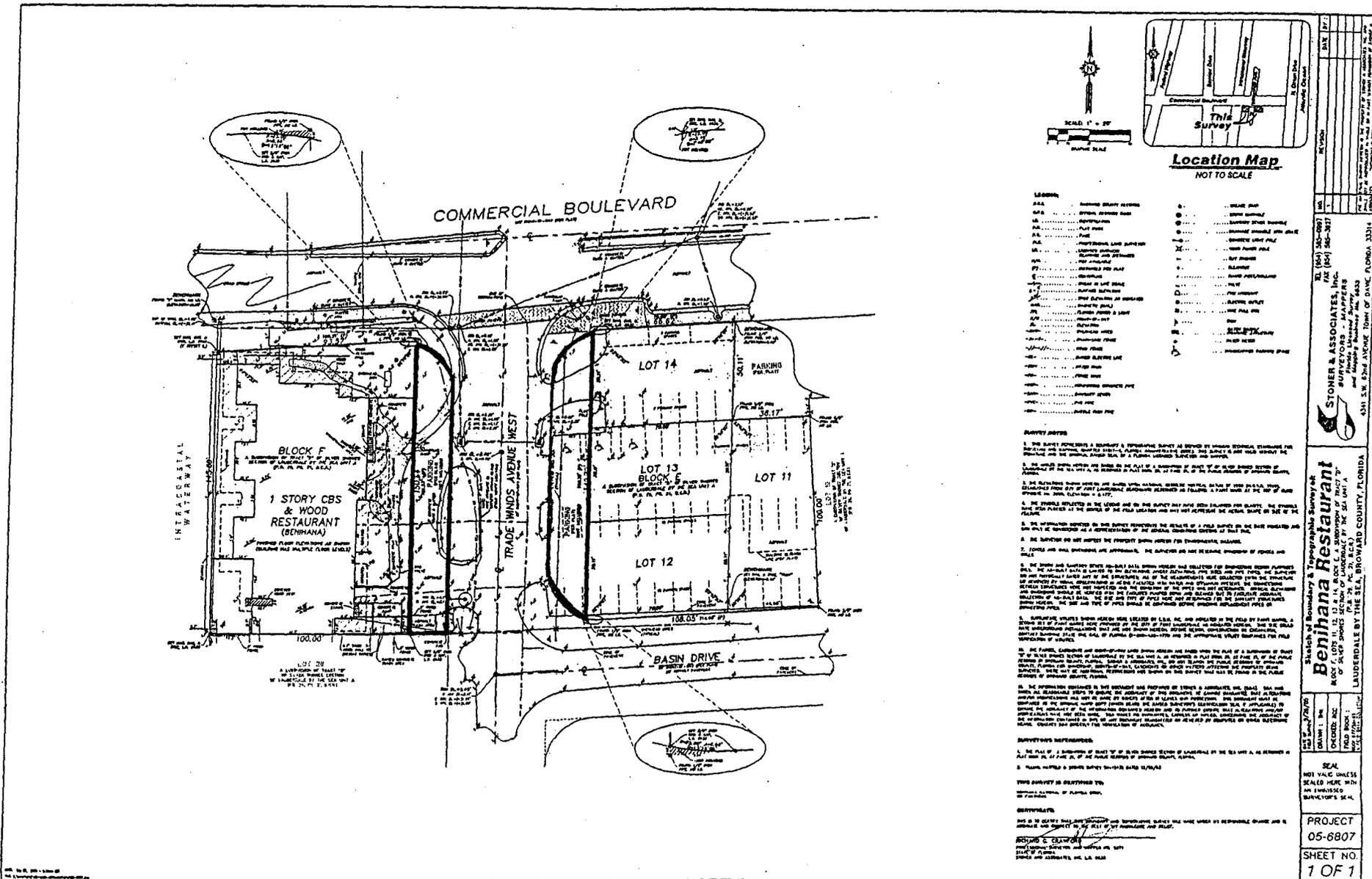
[Signature]
NOTARY PUBLIC



Exhibit 'A'

Area of property included in license.

C:\Documents and Settings\Brad\Documents\Development Review\Site Plans\Benhana\license Agreement Benhana 8-2-06.doc



Memo

To: Robert Baldwin, Town Manager
From: Bill Mason, Municipal Services Director 
Date: July 14, 2006
Re: License Agreement for Benihana

I have reviewed the memorandum from Brad Townsend dated June 23, 2006, letter from Bill Lotz, Entitlement Services Manager for WD Partners dated June 20, 2006, memorandum from Brad Townsend thru Harry Diehl dated April 5, 2006, Benihana Site Plan Approval Development Order dated April 5, 2006, the Town's 117' x 20' and 108' x 20' Right of Way and the draft License Agreement between the Town and Benihana National of Florida Corp.

I have also checked current meter rates in the area, the days and hours of operation of Benihana and possible parking spaces including handicapped on the Town's property as follows:

- Hours of use: 11:00 a.m. – 2:00 p.m. and 4:00 p.m. – 11:00 p.m. = 10 hours
- 10 hours x 25 cents per hour = \$2.50 per day per meter
- 23 meters x \$2.50 per day = \$57.50 per day
- \$57.50 per day x 365 days = \$20,987.50

Based on my review, I recommend Benihana pay \$20,987.50 annually.

Thank you.

JUL 14 2006