

**LEASE/LICENSE AGREEMENT- BRT
DECEMBER 21, 2010**

Chairwoman Mary Teicholz called the meeting to order at 6:12 PM. In attendance were Committee Members Don Taylor and Paul Rotello, Mayor Mark Boughton, Corporation Counsel Les Pinter, Planning Director Dennis Elpern, Finance Director David St. Hilaire, Dan Bertram of BRT, ex-officio members Joe Cavo and Phil Curran and a member of the public.

Ms. Teicholz said this meeting was a continuation , and asked Mr. Elpern to give a synopsis of the Planning Commission report. Mr. Elpern said the Planning Commission gave a positive recommendation with five (5) conditions: 1. right to terminate, 2. BRT is responsible for maintenance, 3. indemnification, 4. easement rights and 5. review by Corporation Counsel.

Ms. Teicholz asked the difference between a lease and a license. Mr. Pinter said a license is a contract to use property. It doesn't require the formality of a public hearing and can be terminated more easily. Mayor Boughton said a license is the preference to get the bagel shop in more quickly. He was concerned about holding up the process especially for anyone developing the Main Street area.

Mr. Taylor asked what was the cost per parking space. Mr St.Hilaire said \$1800. for 4 spaces. Mr. Bertram added that would allow 4 seats per parking space in the bagel shop. Mr. Rotello said he opposes a lease and asked why can't the City keep control of the parking spaces and put in meters. Mr. Pinter said the Planning Commission would not approve additional seating without the parking.

Mr. Taylor moved to recommend to Council the City prepare and submit a 5-year license with a 5-year renewal clause with conditions as required by Planning Commission and a license fee rate now being charged for non-parking garage public spaces. Seconded by Ms. Teicholz. Motion passed with Mr. Rotello voting in the negative.

Mr. Rotello moved to adjourn at 6:52 PM. . Seconded by Mr. Taylor.

Respectfully submitted,

Mary Teicholz, Chairwoman
Don Taylor
Paul Rotello

LICENSE AGREEMENT

AGREEMENT entered this ____ day of January, 2011, between the CITY OF DANBURY and 33 CROSBY, LLC.

WHEREAS, CITY OF DANBURY is the owner of a certain parcel of land located at the corner of Crosby Street and Lee Hartell Drive, on which four (4) parking spaces are located, in the CITY OF DANBURY, Connecticut (the "CITY OF DANBURY PROPERTY"), more particularly identified as Spaces A, B, C, and D on the approved site plan attached hereto as Exhibit A; and

WHEREAS, 33 CROSBY, LLC is the long term Lessee, pursuant to Lease dated May 15, 2009 by and between it and Joseph V. Scalzo, Angelo P. Scalzo, Jr., Samuel L. Scalzo, and Barbara Scalzo, of a certain parcel of land known as 33-35 Crosby Street, in the City of Danbury, Connecticut (the "33 CROSBY PROPERTY") (Tax Assessor Lot #I13048) more particularly described on Exhibit B hereto;

WHEREAS, pursuant to the aforementioned long term lease, 33 CROSBY, LLC, BRT General Corporation and Daniel E. Bertram are authorized to act as agent for all land use applications, permits, approvals and the like associated with the 33 CROSBY PROPERTY; and

WHEREAS, on May 5, 2010, the CITY OF DANBURY approved a site plan for a pizza restaurant, two apartments, and a dance studio in the existing building located on the 33 CROSBY PROPERTY.

WHEREAS, CITY OF DANBURY has agreed to grant a license to 33 CROSBY, LLC for purposes of parking in accordance with the approved site plan subject to certain conditions, identified at the July 27, 2010 meeting of the CITY OF DANBURY Planning Commission.

NOW, THEREFORE, in consideration of the above, the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Term.** This license agreement ("Agreement") shall commence on the date hereof and shall remain in full force and effect for an initial term of five years, unless terminated pursuant to the terms hereof. The license shall automatically renew for an additional five year term, upon the same terms contained herein, unless written notice of termination is given to the CITY OF DANBURY by 33 CROSBY, LLC.

2. **Grant of License.** CITY OF DANBURY grants to 33 CROSBY, LLC subject to the terms and conditions set forth herein, the sole use of the four parking spaces owned by the CITY OF DANBURY, located on the CITY OF DANBURY PROPERTY.

3. **License Fee.** In addition to the cost of constructing and maintaining the 4 parking spaces, 33 CROSBY, LLC will pay to the CITY OF DANBURY a sum of _____ per month, as established by the present and future non garage, per space rate charged by the Danbury parking Authority.

4. **Indemnification.** 33 CROSBY agrees to and shall indemnify, defend and hold harmless CITY OF DANBURY, from any and all payment, liability, loss or damage, including reasonable attorney's fees and court costs, arising out of any claims, demands or actions for property damages, personal injuries, including bodily injuries or death, caused by or resulting from the use and occupancy of the Licensed Premises by 33 CROSBY. 33 CROSBY will cause to have the CITY OF DANBURY named as additionally insured on 33 CROSBY's insurance policies for the duration of the License.

5. **Termination of License.** (a) This Agreement shall be terminable by the CITY OF DANBURY with not fewer than 60 days written notice, should the CITY OF DANBURY undertake work to improve or widen the roadway in such a way that necessitate an encroachment into the CITY OF DANBURY PROPERTY defined herein.

(b) In the event of such termination, 33 CROSBY, LLC shall upon written request by CITY OF DANBURY execute and record in the Land Records an instrument evidencing such termination.

6. **Maintenance.** 33 CROSBY, LLC shall bear sole responsibility for the upkeep and maintenance of all improvements within the licensed area;

7. **Drainage and Passage Rights.** The CITY OF DANBURY shall retain drainage rights and rights to pass and repass over, across and to the licensed area in a manner that does not interfere with the sole use of the parking spaces by Licensee, 33 CROSBY, LLC, in accordance with the terms of this license.

8. **Notice.** Any notice required hereunder shall be in writing and delivered to the other party at the address noted below, or to such other person or place as either party may notify the other which notice shall either be sent by Federal Express, first class mail, or hand delivery. Any notice given by Federal Express shall be deemed to have been given and actually received by the receiving party on the day after it is deposited with Federal Express (overnight next business day delivery).

As to CITY OF DANBURY:

Office of the Corporation Counsel
City of Danbury
155 Deer Hill Avenue
Danbury, CT 06810
Telephone: (203) 797-4518
Facsimile: (203) 796-8043

As to 33 CROSBY, LLC:

c/o BRT General Corporation
50 Newtown Road
Danbury, Connecticut 06810
Telephone: 203.748.5100
Facsimile: 203.796.7678

with copy to Julia B. Morris, Esq.

O'Connell, Flaherty & Attmore, LLC
280 Trumbull Street, 23rd Fl.
Hartford, CT 06103
Telephone: (860) 548-1300
Facsimile: (860) 548-0023

Either party may, from time to time, change the office or address to receive notice on its behalf by giving notice of said change to the other party as provided herein.

9. Miscellaneous.

9.1 No amendments or modifications to this Agreement shall be valid unless contained in writing and signed by all parties.

9.2 This instrument shall not be construed nor shall it operate to grant to 33 CROSBY, LLC anything other than a license in the Licensed Premises and shall not under any circumstances, be construed or operate to grant to 33 CROSBY, LLC any estate or interest in land relating to the Licensed Premises or any other land owned by CITY OF DANBURY.

9.3 If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected and each term and condition of this agreement shall be valid and enforceable to the fullest extent permitted by law.

9.4 This Agreement is governed by the laws of the State of Connecticut without application of its conflict of law rules.

9.5 This instrument contains the entire agreement of the parties with regard to its subject matter and purpose as set forth in this Agreement but may be subject to and shall not supersede or replace prior agreement between the parties unrelated to the subject matter and purpose of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement and a duplicate hereof, to be executed on the day and year first above written.

Witnessed by:

**LICENSOR:
CITY OF DANBURY**

(Sign & Print Name)

BY: _____
Its:

(Sign & Print Name)

14-4

LICENSEE:
33 CROSBY, LLC

(Sign & Print Name)

BY: _____
Its: _____

(Sign & Print Name)

STATE OF CONNECTICUT :
: SS. _____
COUNTY OF :

On this _____ of January, 2011, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public/My Commission Expires:

STATE OF CONNECTICUT :
: SS. _____
COUNTY OF :

On this _____ of January 2011, before me, the undersigned officer, personally appeared _____, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purpose therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public/My Commission Expires:

