

PARKING LICENSE AGREEMENT

This Parking License Agreement (“Agreement”) is made effective as of the ___ day of June, 2013 (“Effective Date”) by and between National Bank of Arizona, a national banking association (“NBAZ”) and City of Flagstaff, an Arizona municipal corporation (“City”).

RECITALS

WHEREAS, NBAZ owns the real property located east of the northeast corner of 4th Street and Route 66 in Flagstaff, Arizona, as more particularly depicted on Exhibit “A” attached hereto (the “Property”);

WHEREAS, City owns certain real property near the Property, the parking area of which real property will undergo construction and improvements and a portion of which will be temporarily unavailable for use by the City while under construction.

WHEREAS, City desires to occupy the Property, on a temporary basis, for parking use by City, its employees, agents, invitees, tenants and customers (the “City Parties”), and NBAZ is willing to allow such use by the City Parties, on the terms and conditions as set forth in this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

AGREEMENT

1. License. NBAZ hereby grants to City a non-exclusive license to utilize the Property for parking for the Term of this Agreement. In connection with the foregoing, NBAZ hereby grants to City a non-exclusive license for cross-access for vehicular and pedestrian ingress, egress, and parking over, across and through the NBAZ’s Property for the Term of this Agreement.
2. Term. The term of this Agreement shall be for a period commencing on the Effective Date and expiring at midnight on September 30, 2013 (“Term”), except as otherwise may be earlier terminated hereunder.
3. License Fee. As a condition to NBAZ granting the license hereunder, City shall pay to NBAZ a license fee in the amount of \$1,000.00, which license fee is due and payable upon the execution of this Agreement.
4. Condition of the Property; Maintenance. During the Term, NBAZ shall not be obligated make any alterations or improvements to the Property to conform the Property for the intended use by City under this Agreement. City acknowledges and agrees that it has inspected the Property and is taking the Property in its condition “AS-IS” and with all faults. During the Term, City shall, at its cost and expense, keep the surface of the property clean and free rubbish, garbage, and all personal property of City Parties. Upon the expiration of the Term, City shall remove any and all personal property, rubbish, garbage, and debris from the Property. As a condition to its use of the Property and the license granted hereunder, City shall not place, keep or store any personal property, rubbish, debris, or garbage on any portion of the Property which is unsightly, or otherwise causes a nuisance to NBAZ. City shall not make any alterations or improvements to the Property at any time without the prior written consent of NBAZ.
5. Insurance. City agrees that at all times during the Term of this Agreement, City will, at its sole cost and expense, carry and maintain: (i) commercial general liability insurance written on an

occurrence form, with limits of not less than \$1,000,000 per occurrence for bodily injury and property damage combined, and \$2,000,000 general aggregate; (ii) commercial automobile liability insurance covering "all autos" with a combined single limit of not less than \$1,000,000; (iii) workers' compensation insurance satisfying any statutory limits; and (iv) employers liability insurance with limits not less than \$1,000,000 each accident for bodily injury by accident, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease. City's general liability policy shall name NBAZ as additional insured and shall be primary and noncontributing to any other insurance which may be available to NBAZ. All policies of insurance required herein shall provide a waiver of subrogation in favor of NBAZ. Prior to the commencement of the Term, City shall provide to NBAZ satisfactory evidence of insurance, including a copy of each endorsement form required herein.

6. Binding on Successors. This Agreement is binding upon the parties hereto and their respective officers, agents, employees, successors and assignees.
7. Indemnity. City hereby agrees to indemnify, defend and hold NBAZ harmless from and against all loss, damage, claim or liability that may occur or be claimed with respect to any person or property on, in or about the Property (i) arising out of or pertaining to or based upon any negligence or willful misconduct by City, its agents, employees, invitees, contractors or any person on the Property by reason of City's use or possession of the Property or (ii) in connection with the license granted hereunder except for the gross negligence of the Property owner.
8. Termination. Either party may terminate this Agreement at any time during the Term effective immediately upon thirty (30) days' written notice to the other party. Upon termination of this Agreement, and upon the request of NBAZ, City shall remove all improvements constructed by City (if any) on the Property or any other personal property from the Property and return the Property to its original condition, at its sole cost and expense.
9. Liens. City shall keep the Property free from all liens and encumbrances in connection with City's use thereof.
10. Costs and Attorneys' Fees. In the event either party to this Agreement takes any action, judicial or otherwise, to enforce or interpret any of the terms of this Agreement, the prevailing party is entitled to recover from the other party all expenses it may reasonably incur in taking such action, including without limitation, reasonable attorneys' fees, whether incurred prior to litigation or in a suit or action or appeal or petition for review from a judgment or decree, or in connection with non-judicial action.
11. Modification. No modification of this Agreement is valid unless made in writing and executed by both parties to this Agreement.
12. Miscellaneous. This Agreement shall be governed by and construed in accordance with the laws of the State of Arizona. This Agreement may be executed in counterparts. This Agreement, including all attached exhibits, contains the entire and final understanding of the parties with respect to the subject matter of this Agreement. There are no representations or warranties by the parties, their agents, servants and employees whether oral or in writing, relating to or concerning this Agreement other than as specifically set forth herein. Each of the parties hereto warrants and represents to the other that it is authorized or empowered to enter into this Agreement and perform the terms hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date above first written.

NBAZ:

NATIONAL BANK OF ARIZONA

By: _____

Name: _____

Title: _____

CITY:

CITY OF FLAGSTAFF

By: _____

Name: _____

Title: _____

ATTEST:

CITY CLERK, City of Flagstaff

APPROVED AS TO FORM:

CITY ATTORNEY, City of Flagstaff

Exhibit A

Property

[See Attached]