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Resolution Relating to

RESOLUTION
Councilors Dober,
Berezniak, Mulvaney-Stanak: License Com.
Sponsor(s): _____

Introduced: 03/28/11
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT
TO MAINTAIN TABLES AND CHAIRS ON A
PORTION OF THE CITY'S RIGHT-OF-WAY WITH
SAINT NICHOLAS, LLC d/b/a SKY BURGERS

CITY OF BURLINGTON

In the year Two Thousand Eleven.....
Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, SAINT NICHOLAS, LLC d/b/a SKY BURGERS of Burlington, Vermont
(hereinafter SKY BURGERS) is an establishment doing business in a commercial building
located 161 Church Street in the City of Burlington, Vermont; and

WHEREAS, SKY BURGERS desires to place 3 tables and 6 chairs in the public right-of-
way in front of its establishment at 161 Church Street; and

WHEREAS, SKY BURGERS wishes to enter into a License Agreement with the City for
such tables and chairs; and

WHEREAS, the placement of the respective tables and chairs has been reviewed and
approved by the Department of Public Works with conditions to address public safety concerns;
and

WHEREAS, the Charter of the City of Burlington, Sec. 48XLIX and the Code of
Ordinances Sec. 27-32 require authorization by the City Council for such use of a public
thoroughfare for periods in excess of thirty (30) days;

NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes SKY
BURGERS to place 3 tables and 6 chairs on a portion of the public right-of-way adjacent to its
establishment at 161 Church Street as indicated in and pursuant to its License Agreement upon
entering into the License Agreement in substantially the form attached hereto; and

36 **Resolution Relating to**

AUTHORIZATION TO ENTER INTO LICENSE
AGREEMENT TO MAINTAIN TABLES AND CHAIRS
ON A PORTION OF THE CITY'S RIGHT-OF-WAY
WITH SAINT NICHOLAS, LLC
d/b/a SKY BURGERS

42 BE IT FURTHER RESOLVED that Mayor Bob Kiss be and hereby is authorized to
43 execute a License Agreement, in substantially the form attached, on behalf of the City of
44 Burlington for a term commencing on the date of execution of the License Agreement and
45 terminating on April 30, 2012.

46
47
48 lb/naf/c: Resolutions 2011/License Agreement for Encumbrance – SKY BURGERS (Tables & Chairs 2011)
49 3/17/11

LICENSE AGREEMENT FOR TABLES AND CHAIRS
SKY BURGERS
2011-2012 SEASON

This LICENSE AGREEMENT is made by and between the City of Burlington, a municipal corporation organized and validly existing under the laws of the State of Vermont (hereinafter CITY) and SAINT NICHOLAS, LLC d/b/a SKY BURGERS, a commercial establishment located at 161 Church Street, Burlington, Vermont (hereinafter SKY BURGERS or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 161 Church Street; and

WHEREAS, SKY BURGERS stated on its application (attached hereto as Exhibit A) that it wishes to place 3 tables and 6 chairs on the sidewalk area in front of the building at 161 Church Street; and

WHEREAS, SKY BURGERS has stated in its permit application that there are no physical barriers around the tables and chairs and they will cover a 108 sq. ft. area; and

WHEREAS, this application was reviewed and approved by the Department of Public Works attached hereto as Exhibit B; and

WHEREAS, such use of a public thoroughfare for periods in excess of 30 days requires approval of the City Council under Charter Sec. 48XLIX and Burlington Code of Ordinances Chap. 27, Sec. 27-32;

W I T N E S S E T H :

The CITY and SKY BURGERS enter into the following License Agreement:

1. TERM

The CITY grants to SKY BURGERS (hereinafter LICENSEE) a license to place 3 tables and 6 chairs on the public right-of-way for a term commencing as of the date of

execution of this Agreement and terminating on April 30, 2011 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain tables and chairs on the public right-of-way not to exceed 108 square feet (hereinafter referred to as the premises) as an outdoor dining area.

Licensee must ensure that the sidewalk area is kept clear and at all times there is a 6 ft. right-of-way for pedestrian traffic. The tables and chairs must be placed next to the building. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

a. LICENSEE shall maintain the tables and chairs in proper condition.

b. LICENSEE shall be responsible for the maintenance and upkeep of the tables and chairs and any damage to the tables and chairs is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the tables and chairs, this License Agreement is revocable on notice by the CITY to LICENSEE of a violation of this section; however LICENSEE shall have 14 days to cure any problem if it notifies the CITY in writing within three (3) days of its intent to cure the violation.

c. The tables and chairs shall be placed in accordance with all conditions set by the Department of Public Works (attached hereto as Exhibit B) and shall not impede the CITY'S ability to maintain the road, sidewalk, parking meters or greenbelt.

d. The tables and chairs shall not cause an obstruction or inconvenience to members of the public using the sidewalk, parking meters or street.

e. LICENSEE shall pick up and sweep debris created by its use of the public right-of-way.

4. LICENSE FEE

There shall be a fee for this license equal to the encumbrance application fee and the square foot use fee. This fee shall be payable immediately to the Burlington City Clerk's Office. **Failure to pay the annual fee shall result in the immediate revocation of the license.**

5. REVOCATION

This License Agreement is immediately revocable should LICENSEE discontinue use of the tables and chairs. In any event, this Agreement is revocable by the CITY within 30 days upon sending written notice to LICENSEE. Upon revocation, LICENSEE must remove at its own expense the tables and chairs and other materials or obstructions placed on the property. If LICENSEE refuses to promptly remove such obstructions, they may be removed by the CITY and LICENSEE shall be liable for all expenses of such removal.

6. INSURANCE

a. LICENSEE shall maintain in effect throughout the term of this Agreement comprehensive public liability insurance with an A rated insurance carrier, or better, qualified to transact business in the State of Vermont, insuring against all legal liability for injuries or damages suffered as a result of the exercise of rights granted pursuant to this Agreement in an amount not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate. The CITY shall be named as an additional insured on such insurance policy.

b. Prior to execution of this Agreement, LICENSEE shall furnish the CITY with a certificate of insurance which shall include the provision that the CITY is named as an

additional insured and shall be given 30 days written notification prior to cancellation of such insurance. The certificate shall be attached to this Agreement as Exhibit D.

c. It is the responsibility of LICENSEE to ensure that a current certificate of insurance is on file with the CITY at all times. **Failure to furnish a current certificate of insurance will result in immediate revocation of this license.**

7. INDEMNIFICATION

LICENSEE agrees to indemnify, defend and hold the CITY harmless and free from liability arising out of LICENSEE'S use of the CITY'S right-of-way, and LICENSEE agrees to make no claim against the CITY or any of its officers, employees, agents or representatives for any loss or damage caused by the CITY'S use or maintenance of its right-of-way.

8. PERMITS

LICENSEE shall be responsible for obtaining all necessary CITY and/or State permits including zoning permits, prior to placement of the tables and chairs.

9. NUISANCES PROHIBITED

LICENSEE shall not, during the term hereof, on or in the premises maintain, commit, or permit the maintenance or commission of any nuisance or violation of any applicable City of Burlington ordinance, State or Federal statute, or controlling bylaw, regulation, or condition imposed whether existing at the time of commencement of this Agreement or enacted, amended, or otherwise put into effect during the term of this Agreement.

10. ASSIGNMENT OF RIGHTS

LICENSEE shall not sell or assign its rights pursuant to this Agreement or permit the use of the premises or any part thereof by any other entity without the express prior written

consent of the CITY. Any unauthorized action in violation of this provision shall be void, and shall terminate LICENSEE'S rights pursuant to this Agreement.

11. LIMITATION OF RIGHTS

LICENSEE acknowledges that no property or other right is created other than that specifically defined and limited by this Agreement.

DATED at Burlington, Vermont this _____ day of _____,

2011.

CITY OF BURLINGTON

By: _____

Bob Kiss, Mayor
Duly Authorized

Witness

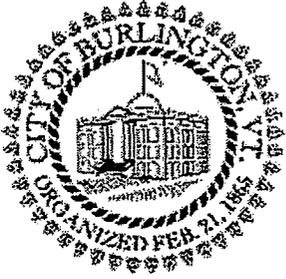
SAINT NICHOLAS, LLC d/b/a
SKY BURGERS

By: _____

Duly Authorized

Witness

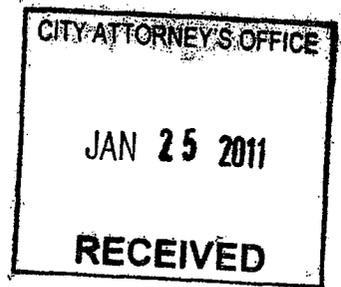
lb/c: NAF 2011/License Agree for Encumbrance – SKY BURGERS Stone Soup, 211 College St. (Tables & Chairs) 2011
3/17/11



OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice (802)865-7000
 FAX (802)865-7014
 TTY (802)865-7142
 Sue Meehan (802)865-7135
 Ron Gore (802)865-7562

Encumbrance Application / Renewal

Effective 05/01/2011 - 04/30/2012



STEPHEN KENNEY
 SKY BURGERS
 40 COLLEGE STREET #313
 BURLINGTON, VT 05401

DATE: Thursday, January 13, 2011
 PHONE: 802-578-2026

FAX: 802-881-0645

EMAIL: *skypup22@ash.com*
skyburgers@gmail.com

DBA NAME: SKY BURGERS

COMPANY: SAINT NICHOLAS, LLC

LOCATION: 161 CHURCH STREET

Permission is requested to allow/continue the encumbrance in the following area and manner (please describe fully, including size and physical barriers around area i.e. trees, grates, parking meters, etc with photos, diagrams, blueprints; may reference prior application):

Placement of Encumbrance: 3 tables/6 chairs in front of window area at 161 Church Street

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 108 *6x18*

PLEASE ATTACH:

Certificate of Liability Insurance with holder as the: "CITY OF BURLINGTON, CLERK/TREASURER'S OFFICE ENCUMBRANCE APPLICATION DEPT., 149 CHURCH ST., BURLINGTON, VT 05401" with a 30 DAY NOTICE FOR CANCELLATION EFFECTIVE MAY 1 TO APRIL 30 OF THE CURRENT YEAR in the amount of \$2 million for the general aggregate and \$1 million for each occurrence. Your insurance agent can fax the certificate to this office at the above number.

Encumbrance Fee \$108.00

Application Fee \$25.00

Signature *SK*
 STEPHEN KENNEY

Date 1-18-2011

Total **\$133.00**

For office use only: Amount received \$ *133.00* on *1/18/11* Check # *1248*

Sent to Attorney:

Exhibit A



OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice (802)865-7000
 FAX (802)865-7014
 TTY (802)865-7142
 Sue Meehan (802)865-7135
 Ron Gore (802)865-7562

Encumbrance DPW Approval Form

Effective 05/01/2011 - 04/30/2012

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: SKY BURGERS

DATE: Thursday, January 13, 2011

COMPANY: SAINT NICHOLAS, LLC

PHONE: 802-578-2026

LOCATION: 161 CHURCH STREET

FAX:

MAILING ADDRESS: STEPHEN KENNEY
 40 COLLEGE STREET #313
 BURLINGTON, VT 05401

RACKS / RAMPS / STAIRS / TABLES / CHAIRS ETC

1. Racks, ramps, sidewalks encumbrances should be located on private property, if possible. In the opinion of the City Building Inspector, is there an available alternative location for the ramp on private property? Yes No

2. Will there be sufficient width for plows and pedestrian access if racks, ramp, sidewalk, tables & chairs encumbrances are added on the sidewalk? Yes No

3. Additional Comments: CHAINS/TABLES NEXT TO BUILDING

4. A 108 square foot placement of 3 tables/6 chairs in front of window area at 161 Church Street at 161 CHURCH STREET

DEPARTMENT OF PUBLIC WORKS

Approved? Yes

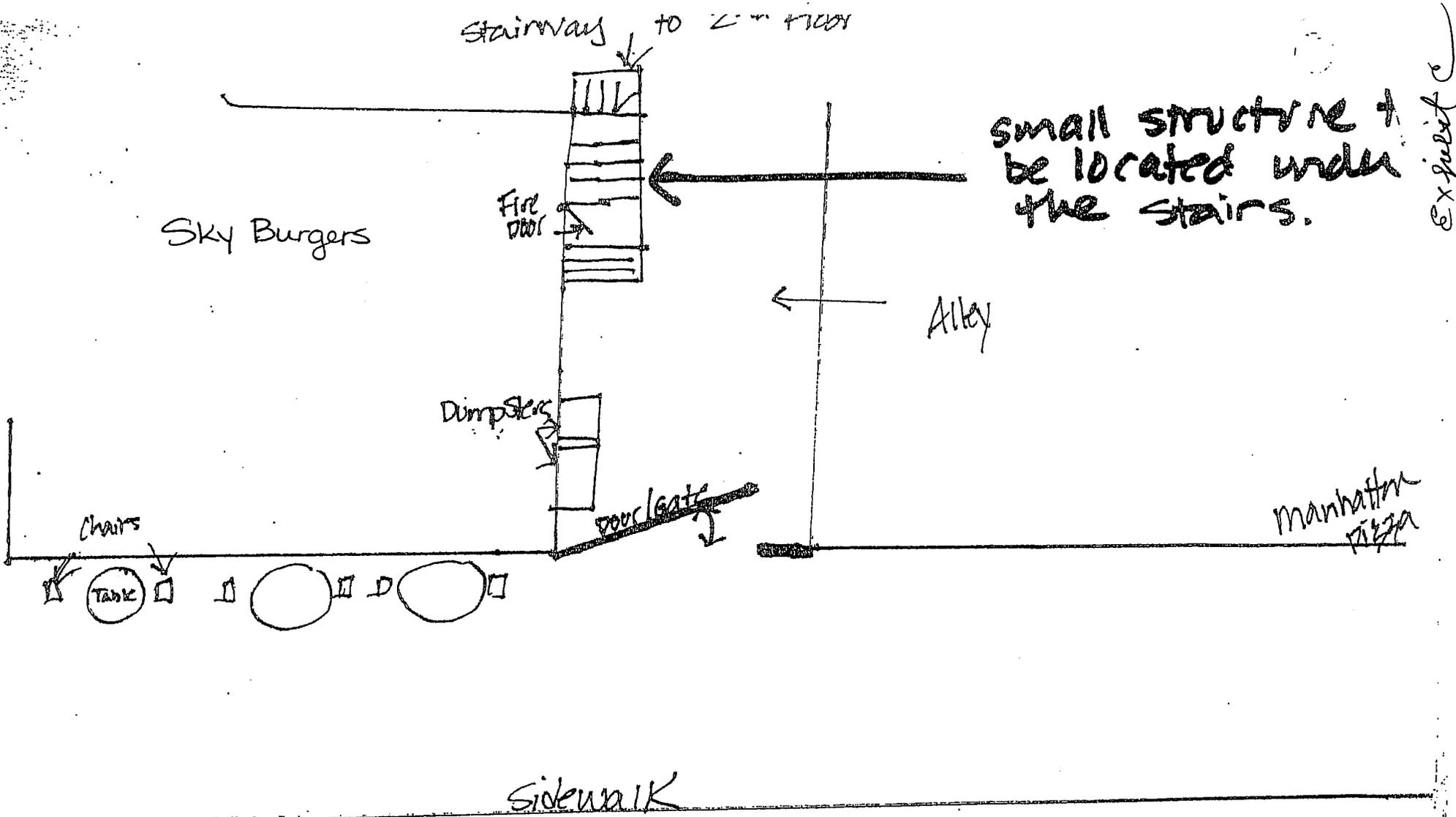
No

Explain: RENEWAL - SAME AS 2010

Signature Ron Gore

Date: 01-24-11

Exhibit B



Small structure to be located under the stairs.

Exit

Road (Church Street)

Sky Burgers

outdoor seating

On The Hill N.C. B... in town Ro...

