

1
2 **Resolution Relating to**

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

3
4
5 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT
6 TO MAINTAIN TABLES AND CHAIRS ON A
7 PORTION OF THE CITY'S RIGHT-OF-WAY WITH
8 ZABBY'S STONE SOUP
9

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

10
11
12 **CITY OF BURLINGTON**

13
14 In the year Two Thousand Eleven.....

15 Resolved by the City Council of the City of Burlington, as follows:

16
17 That WHEREAS, BAREBONES, LLC. d/b/a ZABBY'S STONE SOUP of Burlington,
18 Vermont (hereinafter ZABBY'S) is an establishment doing business in a commercial building
19 located at 211 College St. in the City of Burlington, Vermont; and

20 WHEREAS, ZABBY'S desires to place 3 tables and 6 chairs in the public right-of-way
21 in front of its establishment at 211 College St.; and

22 WHEREAS, ZABBY'S wishes to enter into a License Agreement with the City for such
23 tables and chairs; and

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

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

30 NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes
31 ZABBY'S to place 3 tables and 6 chairs on a portion of the public right-of-way adjacent to its
32 establishment at 211 College St. as indicated in and pursuant to its License Agreement upon

35 **Resolution Relating to**
36

AUTHORIZATION TO ENTER INTO LICENSE
AGREEMENT TO MAINTAIN TABLES AND CHAIRS
ON A PORTION OF THE CITY'S RIGHT-OF-WAY
WITH ZABBY'S STONE SOUP

37
38
39
40 entering into the License Agreement in substantially the form attached hereto; and

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

45

46 lb/naf/c: Resolutions 2010/License Agree for Encumbrance – ZABBY'S STONE SOUP, 211 College St. (Tables & Chairs) 2010
47 5/7/10

LICENSE AGREEMENT FOR TABLES AND CHAIRS
ZABBY'S STONE SOUP
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 BAREBONES, LLC d/b/a ZABBY'S STONE SOUP, a commercial establishment located at 211 College Street, Burlington, Vermont (hereinafter ZABBY'S or LICENSEE);

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 211 College Street; and

WHEREAS, ZABBY'S 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 211 College Street; and

WHEREAS, ZABBY'S has stated in its permit application that there are no physical barriers around the tables and chairs and they will cover a 50 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 ZABBY'S enter into the following License Agreement:

1. TERM

The CITY grants to ZABBY'S (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 (hereinafter referred to as the premises) for the consumption of food and beverage. Licensee must ensure that the sidewalk area is kept clear and at all times there is an 8 ft. right-of-way for pedestrian traffic. The tables and chairs are to be kept in the greenbelt area. 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

Witness

By: _____
Bob Kiss, Mayor
Duly Authorized

BAREBONES, LLC
d/b/a ZABBY'S STONE SOUP

Witness

By: _____
Duly Authorized

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



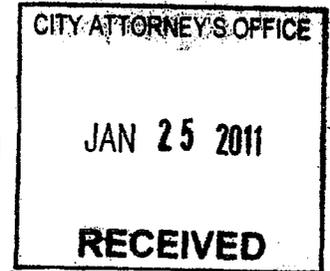
OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice (802)865-7000
 FAX (802)865-7014
 TTY (802)865-7142
 Sue Meehan (802)865-7135
 Ron Gore (802)865-7562

Encumbrance Application / Renewal

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

TIM ELLIOTT
 ZABBY'S STONE SOUP
 211 COLLEGE ST
 BURLINGTON, VT 05401

DATE: Thursday, January 13, 2011
 PHONE: 802-862-7616 860-3331
 FAX:
 EMAIL:



DBA NAME: ZABBY'S STONE SOUP

COMPANY: BAREBONES LLC

LOCATION: 211 COLLEGE ST

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 to be placed next to curb area at 211 College St.

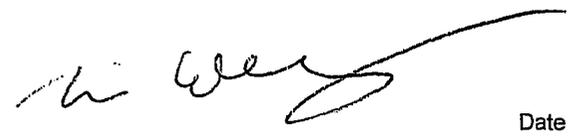
Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 50

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 | \$50.00 |
| Application Fee | \$25.00 |
| Total | \$75.00 |

Signature  Date 1/19/2011
 TIM ELLIOTT

For office use only: Amount received \$ 75.00 on 1/19/11 Check # 13252

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: ZABBY'S STONE SOUP

DATE: Thursday, January 13, 2011

COMPANY: BAREBONES LLC

PHONE: 802-862-7616 860-3331

LOCATION: 211 COLLEGE ST

FAX:

MAILING ADDRESS: TIM ELLIOTT
 211 COLLEGE ST
 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: DO NOT PLACE TABLES/ CHAIRS NEXT TO BUILDING

4. A 50 square foot placement of 3 tables/6 chairs to be placed next to curb area at 211 College St. at 211 COLLEGE ST

DEPARTMENT OF PUBLIC WORKS

Approved? Yes

KEEP PUBLIC WAY CLEAN

No

Explain: TABLES/ CHAIRS NEXT TO CURB AREA

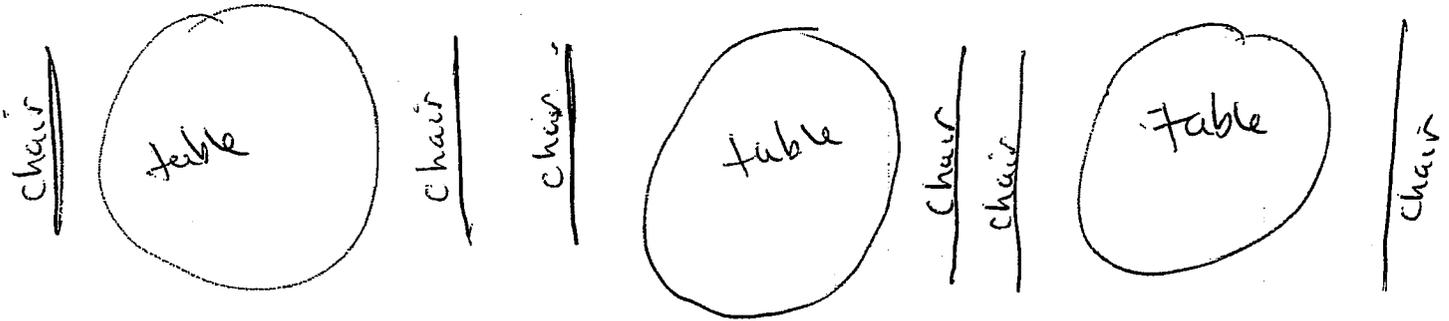
Signature Ron Gore

Date: 01-24-11

Exhibit B

College Street

Exhibit C



Side walk

Building

211
College St

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
01/19/2011

| | | | | | | | | | | | | | |
|--|--|------------------------------------|---------------|----------------------|--|----------------------|--|------------|--|------------|--|------------|--|
| PRODUCER Cheeseman Insurance Group Bancall Plaza Pine Street, Suite 602 Burlington VT 05401 | THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. | | | | | | | | | | | | |
| INSURED Zabby & Elfs Stone Soup Llc 211 College Street Burlington 05401 | <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURERS AFFORDING COVERAGE</td> <td style="width: 20%;">NAIC #</td> </tr> <tr> <td>INSURER A: TRAVELERS</td> <td></td> </tr> <tr> <td>INSURER B: LEXINGTON</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table> | INSURERS AFFORDING COVERAGE | NAIC # | INSURER A: TRAVELERS | | INSURER B: LEXINGTON | | INSURER C: | | INSURER D: | | INSURER E: | |
| INSURERS AFFORDING COVERAGE | NAIC # | | | | | | | | | | | | |
| INSURER A: TRAVELERS | | | | | | | | | | | | | |
| INSURER B: LEXINGTON | | | | | | | | | | | | | |
| INSURER C: | | | | | | | | | | | | | |
| INSURER D: | | | | | | | | | | | | | |
| INSURER E: | | | | | | | | | | | | | |

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

| INSR | ADD'L | TYPE OF INSURANCE | POLICY NUMBER | POLICY EFFECTIVE DATE (MM/DD/YYYY) | POLICY EXPIRATION DATE (MM/DD/YYYY) | LIMITS |
|------|-------|---|-----------------------|------------------------------------|-------------------------------------|---|
| A | X | GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC | I-680-9421M917-ACJ-11 | 01/08/2011 | 01/08/2012 | EACH OCCURRENCE \$1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$50,000 MED EXP (Any one person) \$5,000 PERSONAL & ADV INJURY \$1,000,000 GENERAL AGGREGATE \$2,000,000 PRODUCTS - COMP/OP AGG \$2,000,000 |
| | | AUTOMOBILE LIABILITY ANY AUTO ALL OWNED AUTOS SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS | | | | COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ |
| | | GARAGE LIABILITY ANY AUTO | | | | AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$ |
| | | EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$ | | | | EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ |
| A | | WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input type="checkbox"/> If yes, describe under SPECIAL PROVISIONS below | ICUB-9422M98-7-11 | 01/08/2011 | 01/08/2012 | WC STATUTORY LIMITS <input type="checkbox"/> OTH. LER. <input type="checkbox"/> E.L. EACH ACCIDENT \$100,000 E.L. DISEASE - EA EMPLOYEE \$100,000 E.L. DISEASE - POLICY LIMIT \$500,000 |
| B | | LIQUOR LIABILITY | 64200556 | 05/13/2010 | 05/13/2011 | Each Occurrence \$1,000,000 General Aggregate \$2,000,000 |

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

3 small tables and 6 chairs directly in from the restaurant at 211 College Street, Burlington Vermont. -Please view sketch- Certificate holder is additional insured on General Liability

CERTIFICATE HOLDER

City of Burlington
 City Clerks Office
 Encumbrance Application Division
 Attn: Susan Meehan
 149 Church Street
 Burlington, VT 05401

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
 AUTHORIZED REPRESENTATIVE

Exhibit D

