

1
2 **Resolution Relating to**
3

RESOLUTION
Councilor's Dober,
Sponsor(s): Blais, Bereznik. License Com.

4
5 Introduced: 08/08/11
6 Referred to: _____
7
8 Action: _____
9 Date: _____
10 Signed by Mayor: _____
11

7 **AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT**
8 **TO MAINTAIN BIKE RACKS ON A PORTION OF THE**
9 **CITY'S RIGHT-OF-WAY WITH NORTH STAR CYCLERY**
10

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, NORTHSTAR BMX, INC. d/b/a NORTH STAR CYCLERY of Burlington,
18 Vermont (hereinafter NORTH STAR) is an establishment doing business in a commercial
19 building located at 100 Main St. in the City of Burlington, Vermont; and

20 WHEREAS, NORTH STAR desires to place 2 bike racks in the public right-of-way in
21 front of its establishment at 100 Main St. covering an area of 15 sq. ft.; and

22 WHEREAS, NORTH STAR wishes to enter into a License Agreement with the City for
23 such bike racks; and

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

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

29 NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes
30 NORTH STAR to place 2 bike racks on a portion of the public right-of-way adjacent to its
31 establishment at 100 Main St. as indicated in and pursuant to its License Agreement upon
32 entering into the License Agreement in substantially the form attached hereto; and

35 **Resolution Relating to**

AUTHORIZATION TO ENTER INTO LICENSE
36 AGREEMENT TO MAINTAIN BIKE RACKS ON A
37 PORTION OF THE CITY'S RIGHT-OF-WAY WITH
38 NORTH STAR CYCLERY

39
40 BE IT FURTHER RESOLVED that Mayor Bob Kiss be and hereby is authorized to
41 execute a License Agreement, in substantially the form attached, on behalf of the City of
42 Burlington for a term commencing on the date of execution of the License Agreement and
43 terminating on April 30, 2012.

44

45 lb/naf/c: Resolutions 2011/License Agree for Encumbrance – NORTH STAR CYCLERY, 100 Main St. (Bike Racks) 2011
46 7/2/11
47

LICENSE AGREEMENT FOR BIKE RACKS
NORTH STAR CYCLERY
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 NORTH STAR BMX, INC.. d/b/a NORTH STAR CYCLERY, a commercial establishment located at 100 Main St., Burlington, Vermont (hereinafter NORTH STAR or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 100 Main St.; and

WHEREAS, NORTH STAR stated on its application (attached hereto as Exhibit A) that it wishes to place two bike racks on the sidewalk area in front of the building at 100 Main St. covering an area of 15 sq. ft.; and

WHEREAS, NORTH STAR has stated in its permit application that there are no physical barriers around the bike racks and they will cover a 15 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 NORTH STAR enter into the following License Agreement:

1. TERM

The CITY grants to NORTH STAR (hereinafter LICENSEE) a license to place two bike racks on the public right-of-way covering an area of 15 sq. ft. for a term commencing as

of the date of execution of this Agreement and terminating on April 30, 2012 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain two bike racks on the public right-of-way (hereinafter referred to as the premises) for the temporary parking of bicycles. Licensee must ensure that the sidewalk area is kept clear and at all times there is a 5 ft. right-of-way for pedestrian traffic. The bike racks are to be located up against the building. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

- a. LICENSEE shall maintain the bike racks in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the bike racks and any damage to the bike racks is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the bike racks, 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 bike racks shall be placed in accordance with all conditions set by the Department of Public Works and shall not impede the CITY'S ability to maintain the road, sidewalk, parking meters or greenbelt.
- d. The bike racks 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 bike racks. 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 bike racks 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 bike racks.

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

NORTH STAR BMX, INC.
d/b/a NORTH STAR CYCLERY

Witness

By: _____
Duly Authorized

1b/c: NAF 2011/License Agree for Encumbrance – NORTH STAR CYCLERY, 100 Main St. (Bike Racks) 2011
7/26/11



CITY ATTORNEY
JUN -8 2011
RECEIVED

Need endorsement

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

PATRICIA MILLER
NORTH STAR SPORTS
100 MAIN STREET
BURLINGTON VT 05401

DATE: Thursday, January 13, 2011
PHONE: 802-863-3832
FAX:
EMAIL:

DBA NAME: NORTH STAR SPORTS

COMPANY: 100 MAIN ST CONDO ASSOCIATION

LOCATION: 100 MAIN 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: bike rack against building AT 100 Main St.

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 15

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 \$15.00

Application Fee \$25.00

Total **\$40.00**

Signature *Patricia Miller*
PATRICIA MILLER

Date 4/12/11

For office use only: Amount received \$ 40.00 on 4/13/11 Check # 11600

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: NORTH STAR SPORTS

DATE: Thursday, January 13, 2011

COMPANY: 100 MAIN ST CONDO ASSOCIATION

PHONE: 802-863-3832

LOCATION: 100 MAIN STREET

FAX:

MAILING ADDRESS: PATRICIA MILLER
 100 MAIN STREET
 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: KEEP BIKE RACK OFF SIDEWALK

4. A 15 square foot placement of bike rack against building AT 100 Main St. at 100 MAIN STREET

DEPARTMENT OF PUBLIC WORKS

Approved? Yes

No

Explain: RENEWAL - SAME AS PREVIOUS

Signature Ron Gore

Date: 06-07-11

Exhibit B

NATHAN

Pine Street

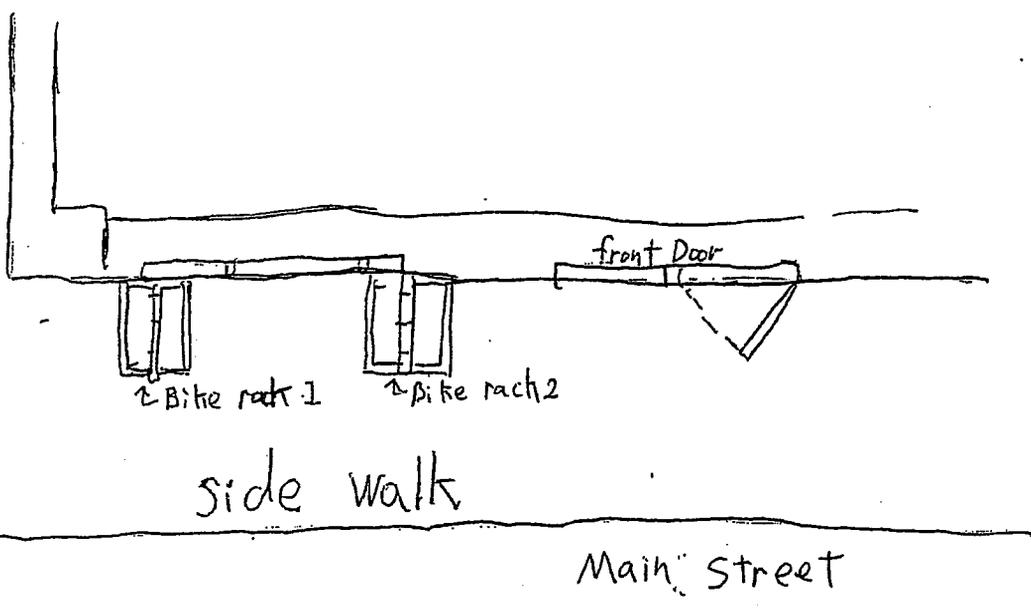


Exhibit C



OFFICE OF THE CLERK/TREASURER
City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000
Fax (802) 865-7014
TTY (802) 865-7142

March 29, 2011

Patricia Miller
North Star Sports
100 Main Street
Burlington, VT 05401

Dear Ms. Miller:

An Encumbrance Renewal Application was sent to you on January 13, 2011. To date, we have not received a response from you. Please let us know immediately if you would like to renew your application or not.

Please keep in mind that it is a violation of B.C.O. § 27-32 to encumber City property without a properly executed license agreement or extension granted by the City Council. You may be ticketed and the Code Enforcement Office is authorized to remove any encumbrances at your expense.

Please notify me of your decision at 802-865-7135.

Thank you.

A handwritten signature in cursive script that reads "Susan Meehan".

Susan Meehan
Customer Service Associate



OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000

Fax (802) 865-7014

TTY (802) 865-7142

email:smeehan@ci.burlington.vt.us

January 13, 2011

Encumbrance Applicant

I am enclosing the Encumbrance Renewal Application for your establishment. Please complete it as soon as possible, make any changes necessary and return form to this office together with your payment so that it can be completed on time. Please fill in Email address on renewal form.

We require specific wording on the Certificate of Liability Insurance which your agency can fax to this office attention Susan Meehan. The Certificate should read **exactly as follows** or the attorney's office will not accept it.

- Coverage in an amount not less than \$1,000,000 each occurrence and \$2,000,000, Aggregate
- A "detailed" description of the address and the property that will be encumbering the City's property (i.e. 60 Main Street – number of tables and chairs, etc) under Description of Operations/Locations on the insurance certificate
- The City named as an additional-insured (under Description of Operations/Locations also)
- 30 days notice to the City of cancellation of the policy
- Certificate holder should be listed as follows:
City of Burlington
City Clerk's Office/Encumbrance Application Division
149 Church Street
Burlington, VT 05401

Please enclose a sketch or rough drawing of the proposed encumbrance.

Please call me if you need additional information. My telephone number is 865-7135.

Sincerely,

Susan Meehan

P.S. Please respond by January 31, 2011. Thank you.

ACORD™

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
07/29/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Smith, Bell & Thompson, Inc. 40 Main St., Suite 500 P.O. Box 730 Burlington, VT 05402-0730	CONTACT NAME: PHONE (A/C, No, Ext): 802.658.4600		FAX (A/C, No): 802.658.6191
	E-MAIL ADDRESS: PRODUCER CUSTOMER ID #:		
INSURED NORTH STAR BMX, INC. 100 MAIN STREET BURLINGTON, VT 05401	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURER A: Maryland Casualty Company		19356
	INSURER B: Northern Insurance Company NY		19372
	INSURER C:		
	INSURER D:		
	INSURER E:		

COVERAGES: CERTIFICATE NUMBER: 2011-2012 Master REVISION NUMBER:

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADD'L SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	X	PAS001034620	06/16/2011	06/16/2012	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	X	PAS001034620	06/16/2011	06/16/2012	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000
						BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DEDUCTIBLE RETENTION \$					EACH OCCURRENCE \$ AGGREGATE \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N	WC001034661	06/16/2011	06/16/2012	WC STATUTORY LIMITS E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
		N/A				

DESCRIPTION OF OPERATIONS / LOCATIONS (VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required))
 Certificate holder is included as additional insured with reference to general liability. Certificate is issued with reference to 2 bicycle racks with an encumbrance of 15 square feet located in front of North Star BMX at 100 Main Street, Burlington, VT 05401. 30 days cancellation notice is in force.

CERTIFICATE HOLDER FAX: 802.865.7014 City of Burlington City Clerk's 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, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE <i>Nancy Danforth</i> Nancy Danforth/NDANFO
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