

1  
2 **Resolution Relating to**

**RESOLUTION**  
Councilors Dober,  
Sponsor(s):  
Blais, Berezniak. 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 JUNIOR'S DOWNTOWN  
9

Introduced: 09/12/11  
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, JUNIOR'S IN THE ALLEY d/b/a JUNIOR'S DOWNTOWN of  
18 Burlington, Vermont (hereinafter JUNIOR'S) is an establishment doing business in a  
19 commercial building located at 176 Main Street in the City of Burlington, Vermont; and

20 WHEREAS, JUNIOR'S desires to place 2 tables and 6 chairs in the public right-of-way  
21 in front of its establishment at 176 Main Street; and

22 WHEREAS, JUNIOR'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 JUNIOR'S to place 2 tables and 6 chairs on a portion of the public right-of-way adjacent to its  
32 establishment at 176 Main Street. as indicated in and pursuant to its License

35 **Resolution Relating to** AUTHORIZATION TO ENTER INTO LICENSE  
36 AGREEMENT TO MAINTAIN TABLES AND CHAIRS  
37 ON A PORTION OF THE CITY'S RIGHT-OF-WAY  
38 WITH JUNIOR'S DOWNTOWN  
39

40 Agreement upon entering into the License Agreement in substantially the form attached hereto;

41 and

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 lb/naf/c: Resolutions 2011/License Agree for Encumbrance – JUNIOR'S DOWNTOWN, 176 Main St (Tables & Chairs) 2011  
48 8/24/11  
49

**LICENSE AGREEMENT FOR TABLES AND CHAIRS**  
**JUNIOR'S DOWNTOWN**  
**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 JUNIOR'S IN THE ALLEY d/b/a JUNIOR'S DOWNTOWN, a commercial establishment located at 176 Main Street, Burlington, Vermont (hereinafter JUNIOR'S or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 176 Main Street; and

WHEREAS, JUNIOR'S stated on its application (attached hereto as Exhibit A) that it wishes to place 2 tables and 6 chairs on the sidewalk area in front of the building at 176 Main Street; and

WHEREAS, JUNIOR'S has stated in its permit application that there are no physical barriers around the tables and chairs and they will cover a 60 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;

WITNESSETH:

The CITY and JUNIOR'S enter into the following License Agreement:

1. TERM

The CITY grants to JUNIOR'S (hereinafter LICENSEE) a license to place 2 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, 2012 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 at all times there is a 5 ft. right-of-way for pedestrian traffic and that the table and chairs are kept 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 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

JUNIOR'S IN THE ALLEY  
d/b/a JUNIOR'S DOWNTOWN

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Duly Authorized

l/c: NAF 2011/License Agree for Encumbrance – JUNIOR'S DOWNTOWN, 176 Main St. (Tables & Chairs) 2011  
7/26/11



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

need updated ins.

APR -4 2011

email:smeehan@ci.burlington.vt.us

RECLIN

Renewal

NEW ENCUMBRANCE APPLICATION

EFFECTIVE FROM MAY 1<sup>ST</sup> TO APRIL 30<sup>TH</sup> OF EACH YEAR

DATE: 2-21-11 CONTACT PERSON: Frank Salese Jr

DBA NAME: Junior's Downtown SIGNATURE: [Signature]

PHONE: 373-9169

COMPANY: Juniors in the Alley FAX: 655-6666

MAIL TO: 85 S. Pond Dr Colchester, VT 05446 E-MAIL: FrankJr@gmail.com

ENCUMBRANCE

Permission is requested to allow the encumbrance in the following area and manner (please describe fully physical barriers around area i.e. trees, grates, parking meters, etc.). You must also provide a sketch, photo or blueprint of what you are proposing. Attach an additional sheet if needed for description.

Description: 2 Tables w/ 6 chairs

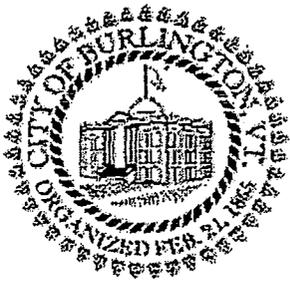
Total square feet used outdoors: (\$1.00 per square foot)

PLEASE ATTACH:

- 1. Certificate of Liability Insurance with certificate 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.
2. Check for the square feet fees: \$
3. Check for application fee: \$25.00

For clerk office use only: Amount received \$ 85.00 on 2/21/11
Check # 1285
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: JUNIOR'S DOWNTOWN

DATE: Thursday, January 13, 2011

COMPANY: JUNIOR'S DOWNTOWN

PHONE: 802-373-9169

LOCATION: 176 MAIN STREET, BURLINGTON, VT

FAX: 802-655-6666

MAILING ADDRESS: FRANK SALESE  
 85 SOUTH PARK DRIVE  
 COLCHESTER, VT 05446

**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: \_\_\_\_\_

4. A 60 square foot placement of 3 tables, 6 chairs against building - 176 Main Street at 176 MAIN STREET, BURLINGTON, VT 05401

**DEPARTMENT OF PUBLIC WORKS**

Approved? Yes

No

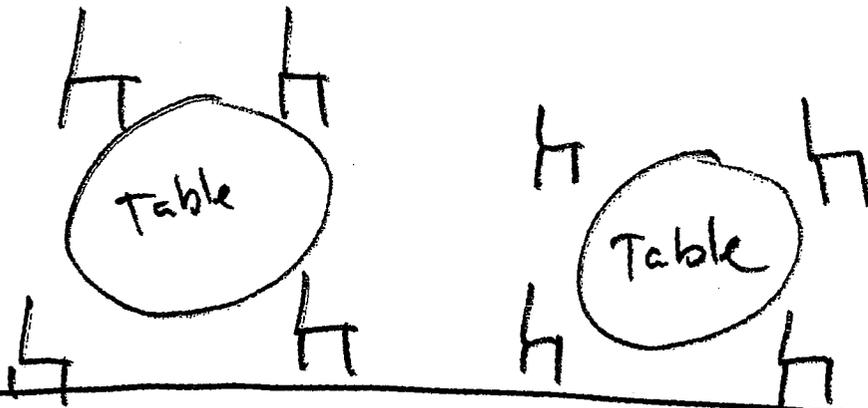
Explain: RENEWAL SAME AS PREVIOUS YEAR

Signature Ron Gore

Date: 03/31/11

*Exhibit B*

H = Chairs



Junior's  
Downtown  
176 Main St.  
Burkington VT  
05403

Door

exhibit c

# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
**08/15/2011**

**PRODUCER**  
Cheeseman Insurance Group  
84 Pine Street  
Suite 802  
Burlington VT 05401

**INSURED**  
Junior's In the Alley  
DBA: Junior's Downtown  
85 South Park Drive  
Colchester VT 05446

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.

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: <u>National Grange Mutual</u>	
INSURER B: <u>Preserver Group</u>	
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	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC	BPT0960U	4/01/2011	4/01/2012	EACH OCCURRENCE \$ <b>2,000,000</b> DAMAGE TO RENTED PREMISES (Ea. occurrence) \$ <b>500,000</b> MED EXP (Any one person) \$ <b>10,000</b> PERSONAL & ADV INJURY \$ <b>2,000,000</b> GENERAL AGGREGATE \$ <b>4,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>4,000,000</b>
B		<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input checked="" type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS	744-0038648-01/000	5/05/2011	5/05/2012	COMBINED SINGLE LIMIT (Ea. accident) \$ <b>1,000,000</b>  BODILY INJURY (Per person) \$ _____  BODILY INJURY (Per accident) \$ _____  PROPERTY DAMAGE (Per accident) \$ _____
		<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ _____  OTHER THAN AUTO ONLY: EA ACC \$ _____ AGG \$ _____
		<b>EXCESS / UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE RETENTION \$ _____				EACH OCCURRENCE \$ _____ AGGREGATE \$ _____ \$ _____ \$ _____
A		<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input checked="" type="checkbox"/> Y/N (Mandatory in NH) (If yes, describe under SPECIAL PROVISIONS below)	WCT7058U	04/29/2011	4/29/2012	WC STATUS: <input checked="" type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ <b>100,000</b> E.L. DISEASE - EA EMPLOYEE \$ <b>500,000</b> E.L. DISEASE - POLICY LIMIT \$ <b>100,000</b>
A		<b>OTHER</b> Liquor Liability	BPT0960U	4/01/2011	4/01/2012	\$1,000,000 ea occur \$1,000,000 agg

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

Encumbrance two tables and up to six chairs on sidewalk directly in front of Junior's Downtown.

City of Burlington considered additional insured.

**CERTIFICATE HOLDER**

City of Burlington Clerk/Treasurer's  
Office Encumbrance Application Dept.  
149 Church Street  
Burlington, VT 05401  
Phone:  
Fax:

**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: *Samuel Cummings* <PC>

Exhibit D

