

1
2 **Resolution Relating to**

3
4
5 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT
6 TO ERECT AND MAINTAIN AWNINGS EXTENDING OVER
7 A PORTION OF THE CITY'S RIGHT-OF-WAY WITH
8 STACKS SANDWICHES
9

RESOLUTION
Sponsor(s) Councilors Blais,
Tracy, Ayres: License Com.
Introduced: _____
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

10
11
12 **CITY OF BURLINGTON**
13

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

16
17 That WHEREAS, STACKS SANDWICHES, INC. d/b/a STACKS SANDWICHES of
18 Burlington, Vermont (hereinafter STACKS) is an establishment doing business in a commercial
19 building located at 2 No. Winooski Ave. in the City of Burlington, Vermont; and

20 WHEREAS, STACKS desires to erect and maintain an awning extending over the
21 sidewalk area in front of the building at 2 No. Winooski Ave. and an awning on the side of the
22 building on Pearl Street; and

23 WHEREAS, STACKS wishes to enter into a License Agreement with the City for such
24 awnings; and

25 WHEREAS, the placement of the respective awnings has been reviewed and approved by
26 the Department of Public Works with conditions to address public safety concerns; 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 STACKS to maintain awnings extending over the sidewalk area in front of the building at 2 No.
32 Winooski Ave. and on the side of the building on Pearl Street covering an area of 112 sq. ft. as
33 indicated in and pursuant to its License Agreement upon entering into the License Agreement in
34 substantially the form attached hereto; and

35 BE IT FURTHER RESOLVED that Mayor Weinberger be and hereby is authorized to
36 execute a License Agreement, in substantially the form attached, on behalf of the City of
37 Burlington for a term commencing on the date of execution of the License Agreement and
38 terminating on April 30, 2014.

LICENSE AGREEMENT FOR AWNINGS
WITH STACKS SANDWICHES
2013-2014 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 STACKS SANDWICHES, INC. d/b/a STACKS SANDWICHES, a commercial establishment located at 2 No. Winooski Avenue, Burlington, Vermont (hereinafter STACKS or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 2 No. Winooski Ave.; and

WHEREAS, STACKS stated on its application (attached hereto as Exhibit A) that it wishes to erect and maintain an awning extending over the sidewalk area in front of the building at 2 No. Winooski Ave. and an awning on the side of the building on Pearl Street; and

WHEREAS, STACKS has stated in its permit application that there are no physical barriers around the awnings and they will cover a 112 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 STACKS enter into the following License Agreement:

1. TERM

The CITY grants to STACKS (hereinafter LICENSEE) a license to erect and maintain awnings covering an area of 112 sq. ft. extending over the public right-of-way in front of the

building at 2 No. Winooski Ave. and on the side of the building on Pearl Street for a term commencing as of the date of execution of this Agreement and terminating on April 30, 2014 or sooner as provided herein.

2. LOCATIONS

LICENSEE may erect, use and maintain awnings extending over the public right-of-way (hereinafter referred to as the premises) to provide a covered area around the entrance to its establishment. The awnings are to be attached to the building and must be exactly as described and placed as approved by the Department of Public Works. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

- a. LICENSEE shall maintain the awnings in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the awnings and any damage to the awnings is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the awnings, 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 awnings 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 awnings 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 awnings. 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 awnings 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 and endorsement which shall include the provision that the CITY is named as an additional insured and shall be given 15 days written notification prior to cancellation of such insurance for nonpayment of premium and 45 days notice for any other reason. The certificate shall be attached to this Agreement as Exhibit D and the endorsement as Exhibit E.

c. The certificate of insurance shall be provided annually on or before its stated expiration. 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 awnings.

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.

12. This License Agreement supersedes all other License Agreements executed for this location.

DATED at Burlington, Vermont this _____ day of _____,

2013.

CITY OF BURLINGTON

Witness

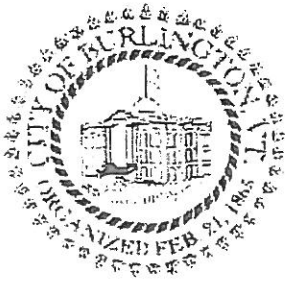
By: _____
Miro Weinberger, Mayor
Duly Authorized

STACKS SANDWICHES, INC.
d/b/a STACKS SANDWICHES

Witness

By: _____
Duly Authorized

lb/c: GM 2013/License Agree for Encumbrance – STACKS SANDWICHES, 2 No. Winooski Ave.. (Awnings) 2013
6/12/13



OFFICE OF THE CLERK AND TREASURER

149 CHURCH STREET

BURLINGTON, VT 05401

Voice (802)865-7000

FAX (802)865-7014

TTY (802)865-7142

Amy Bovee (802)865-7019

Ron Gore (802)865-7562

Encumbrance Application / Renewal

Effective 05/01/2012 - 04/30/2013

JODI WHALEN
STACKS SANDWICHES
2 N. WINOOSKI AVE.

DATE: Friday, May 17, 2013

PHONE: (802) 540-0070

FAX:

EMAIL:

DBA NAME: STACKS SANDWICHES

COMPANY: STACKS SANDWICHES

LOCATION: 2 N. WINOOSKI AVE.

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: AWNINGS TO HANG OVER STOREFRONT

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 112

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 \$112.00

Application Fee \$25.00

Total \$137.00

Signature

JODI WHALEN

Date

5/17/13

For office use only: Amount received \$ 137.00 on 5/17 Check # 1318

Sent to Attorney:

6/6

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
Amy Bovee (802)865-7019
Ron Gore (802)865-7562

Encumbrance DPW Approval Form

Effective 05/01/2013 - 04/30/2014

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: STACKS SANDWICHES

DATE: Friday, May 17, 2013

COMPANY: STACKS SANDWICHES

PHONE: (802) 540-0070

LOCATION: 2 N. WINOOSKI AVE.

FAX:

MAILING ADDRESS: JODI WHALEN
2 N. WINOOSKI AVE.

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 112 square foot placement of AWNING TO HANG OVER STOREFRONT at 2 N. WINOOSKI AVE.

DEPARTMENT OF PUBLIC WORKS

Approved?

Yes



No



Explain:

AWNING HEIGHT TO BE 7'-0"
ABOVE GROUND

Signature

Ron Gore

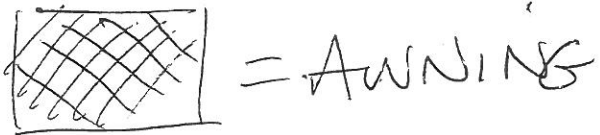
Date:

06/06/13

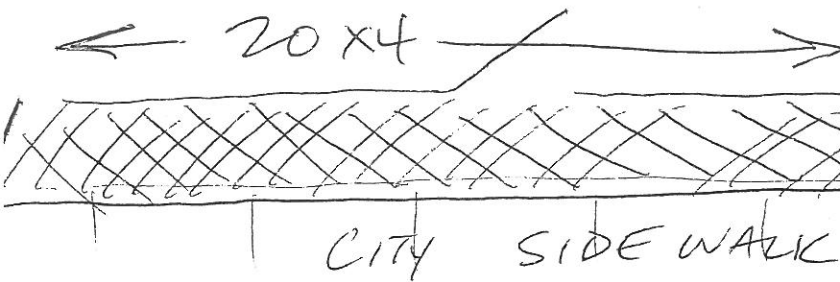
Exhibit B

STACKS SANDWICHES
(FORMER VT SANDWICH CO)

2 NORTH WINDSOR AVE, BURLINGTON



TOTAL 80 SQ FT Front
+ 32 SQ FT SIDE
112 SQ FT 8x4



((("GREEN BELT" (NOT GREEN))

Exhibit C



CERTIFICATE OF LIABILITY INSURANCE

AUGUFIR-01

KDF

DATE (MM/DD/YYYY)

6/12/2013

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 Hickok & Boardman, Inc. - BUR 346 Shelburne Road PO Box 1064 Burlington, VT 05402-1064		(802) 658-3500	CONTACT NAME: Louise C Harris PHONE (A/C, No, Ext): (802) 383-1626 FAX (A/C, No): (802) 658-0541 E-MAIL ADDRESS: lharris@hbinsurance.com
INSURED August First, Inc. Stacks Sandwiches, Inc. 149 South Champlain St. Burlington, VT 05401		INSURER(S) AFFORDING COVERAGE INSURER A: Acadia Insurance Co INSURER B: INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****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	X	BOA029922413	5/22/2013	5/22/2014	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:						PRODUCTS - COMP/OP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS				BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				PROPERTY DAMAGE (Per accident) \$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	DED	RETENTION \$				
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N <input checked="" type="checkbox"/> Y	WCA030821913	5/22/2013	5/22/2014	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER
	E.L. EACH ACCIDENT \$ 250,000					
	E.L. DISEASE - EA EMPLOYEE \$ 250,000					
	E.L. DISEASE - POLICY LIMIT \$ 500,000					
A	Business Owners Policy		BOA029922413	5/22/2013	5/22/2014	Business personal pro 236,844

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

City of Burlington is listed as an additional insured for the Burlington Farmers Market, selling baked goods by way of bicycle in the City of Burlington including while parked on Bank St, and for the sign encumbrances at 61 Main St. and 2 N. Winooski Ave. and awnings at 2 N. Winooski Ave. Burlington.

CERTIFICATE HOLDER**CANCELLATION**

City of Burlington Clerk/Treasurers Office 149 Church Street Burlington, VT 05401-	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

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Exhibit D

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VERMONT CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

A. Section I - Property is amended as follows:

1. The following is added to Paragraph E.4. **Legal Action Against Us** Property Loss Condition:

However, your right to bring legal action against us is not conditioned upon your compliance with the provisions of the Appraisal Property Loss Condition, if any.

2. The following is added to Paragraph E.5. **Loss Payment** Property Loss Condition and replaces any provision to the contrary:

We will pay for covered loss or damage within 10 working days after we reach agreement with you on the amount of loss, provided all other terms of the Loss Payment Property Loss Condition are satisfied.

B. Section III - Common Policy Conditions is amended as follows:

1. Paragraph A. **Cancellation** is replaced by the following:

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

2. Cancellation Of Policies In Effect For Less Than 60 Days.

If this policy has been in effect for less than 60 days and this policy is not a renewal of a policy we issued, we may cancel this policy by:

- a. Giving the first Named Insured at least 15 days' notice prior to the cancellation date for nonpayment of premium or substantial increase in hazard; or
- b. Mailing or delivering the first Named Insured at least 45 days' notice prior to the cancellation date for any other reason.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.

3. Cancellation Of Policies In Effect For 60 Days Or More.

If this policy has been in effect for 60 days or more, or if this is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. Nonpayment of premium;
- b. Fraud or material misrepresentation affecting this policy or in the presentation of claims under this policy;
- c. Violation of any provisions of this policy; or
- d. Substantial increase in hazard, provided we have secured approval for the cancellation from the commissioner of insurance.

If we cancel this policy for one of the reasons specified in Paragraph 3., we will cancel only in the following manner:

- a. By giving at least 15 days' notice before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. By mailing or delivering at least 45 days' notice before the effective date of cancellation if we cancel for any other reason.

Exhibit E

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):
City of Burlington, Clerk/Treasurers Office Attn: Jean Poulin/Peddler 149 Chruch St, Burlington, VT 05401
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following is added to Paragraph C. Who Is An Insured in Section II - Liability:

- Any person(s) or organization(s) shown in the Schedule is also an additional insured, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your ongoing operations or in connection with your premises owned by or rented to you.