



August 29, 2013

TO: Board of Finance
FROM: Ron Redmond, Church Street Marketplace
RE: **REQUEST TO APPROVE THREE YEAR LICENSE AGREEMENT
BETWEEN CITY OF BURLINGTON AND B HOSPITALITY GROUP
(Blue Bird Coffee Stop) FOR COLLEGE STREET KIOSK, 180
COLLEGE ST.**

BACKGROUND: The City of Burlington owns the kiosk on the northeast corner of the Church and College Street intersections. The Church Street Marketplace Department manages the kiosk for the City, which is licensed to a private business. Rent collected from the kiosk's tenant is applied to the Marketplace Department's operating budget.

B Hospitality Group, doing business as the Blue Bird Coffee Stop, has operated a coffee business from the College Street Kiosk since August 1, 2010 under a three-year license agreement with the City.

The Church Street Marketplace collects property taxes and common area fees owed for 180 College Street, from the tenant. The Marketplace then pays the Clerk/Treasurer's office directly.

The Church Street Marketplace Commission recommends that the Board of Finance and City Council approve the license agreement between the City of Burlington and B Hospitality for \$13,800 per year, with a \$50 per month increase, per year, commencing August 1, 2013 through July 31, 2016.

**REQUEST TO APPROVE THREE YEAR LICENSE AGREEMENT
BETWEEN CITY OF BURLINGTON AND B HOSPITALITY GROUP
(Blue Bird Coffee Stop) FOR COLLEGE STREET KIOSK, 180 COLLEGE ST.**

WHEREAS, the City of Burlington owns property at the northeast corner of College and Church Street, Burlington, Vermont, known as the College Street Kiosk that is managed by the City's Church Street Marketplace department; and

WHEREAS, B. HOSPITALITY GROUP, doing business as Blue Bird Coffee Stop, has operated a commercial business from the College Street Kiosk since August, 2010, and wishes to engage in another three-year license agreement with the City, from August 1, 2013 through July 31, 2016.

WHEREAS, City Charter Sec. 324 authorizes the CITY, through the Marketplace Commission, to lease space in the Marketplace subject to the approval of the Burlington City Council;

WHEREAS, B. HOSPITALITY GROUP agrees to pay a license fee of \$13,800 per year. Rent shall increase by \$50/month each year, with an ability to renew this agreement for one additional term of three (3) years under the same terms. The Marketplace Department will pay property taxes and Marketplace common area fees directly to the Marketplace department; the Marketplace department will then recover those costs from B Hospitality Group.

NOW, THEREFORE, BE IT RESOLVED, that the City of Burlington directs the Church Street Marketplace department to execute a three-year license agreement with B Hospitality Group, with the above terms and conditions.

LICENSE AGREEMENT
180 College Street, College Street Kiosk

THIS LISCENSE AGREEMENT is made by and between the City of Burlington, a municipal corporation organized and existing under the laws of the State of Vermont (hereinafter referred to as CITY), and B. HOSPITALITY GROUP, INC., a Vermont corporation with principal place of business located at 317 Riverside Avenue, Burlington, VT 05401-1405 (hereinafter referred to as B. HOSPITALITY GROUP).

WHEREAS, the CITY owns property at the northeast corner of College and Church Street, Burlington, Vermont, known as the College Street Kiosk (herein referred to as KIOSK) managed by the City's Church Street Marketplace; and

WHEREAS, B. HOSPITALITY GROUP wishes to use the KIOSK for commercial purposes, and

WHEREAS, the CITY is willing to allow B. HOSPITALITY GROUP use of the KIOSK provided that fit-up and use of the commercial space is complementary to the appearance and operation of the Church Street Marketplace as defined by the CITY; and

WHEREAS, City Charter Sec. 324 authorizes the CITY, through the Marketplace Commission, to lease space in the Marketplace subject to the approval of the Burlington City Council;

NOW, THEREFORE, the parties have agreed to the following terms and conditions of this License Agreement:

1. Approval

(A) B. HOSPITALITY GROUP shall have the exclusive right to occupy and use in conjunction with its business operations the KIOSK located at 180 College Street (at the northeast corner of College and Church Street). The KIOSK consists of

126 sq. ft. of floor space.

- (B) The KIOSK shall be used by B. HOSPITALITY GROUP exclusively for the sale of retail or food items. Any alterations or improvements and any other use of the KIOSK shall require written approval from the City.
- (C) Any alterations or improvements made by B. HOSPITALITY GROUP to the KIOSK shall be at its own expense.
- (D) B. HOSPITALITY GROUP shall be responsible for all utilities provided to the space. The City shall, at its own expense, separate from the KIOSK the electric service to the adjacent bus shelter and to move the light switch for the bus shelter lights from the KIOSK.

2. License Fee

- (A) For the rights granted pursuant to this License Agreement, B. HOSPITALITY GROUP shall pay the CITY a license fee of \$13,800.00 (Thirteen Thousand, Eight Hundred and 00/100 Dollars) U. S. per twelve (12) month period to be paid in advance in equal consecutive monthly installments of \$1,150.00 (One Thousand, One Hundred Fifty and 00/100 Dollars) U.S. due and payable on the first day of each month beginning on August 1, 2013 or such earlier commencement date as mutually agreed by the parties. The rent shall increase by \$50/month each year beginning August 1, 2014 and annually thereafter.

3. Duration

- (A) The CITY grants B. HOSPITALITY GROUP the right to use the KIOSK for a term of three (3) years, commencing on August 1, 2013 and terminating July 31,

2016 or sooner, as provided herein.

(B) B. HOSPITALITY GROUP shall have the right, if in compliance with the terms and conditions set forth herein and not in default at the time of renewal, to renew this License Agreement for one additional term of three (3) years under the same terms.

(C) Provided B. HOSPITALITY GROUP is not in default on any terms and conditions, B. HOSPITALITY GROUP shall have the option to extend the License Agreement for up to one (1) additional three-year terms, subject to all the terms and conditions of the License Agreement.

(D) B. HOSPITALITY GROUP must notify the City of its intentions to exercise such option not less than 180 days or more than one year prior to the expiration of the license agreement.

4. Taxes and Fees

For the term of this License Agreement the appropriate fiscal year Property Taxes for the KIOSK, listed on the Property tax payment schedule set by the City Charter, shall be due and payable by B. HOSPITALITY GROUP to the CITY.

(A) Common Area Fees.

The computation for common area fees shall include all elements applied by the Church Street Marketplace Commission in the setting of Common Area fees for Marketplace properties on Church Street. For the term of this License Agreement the appropriate fiscal year common area fee for the KIOSK that is set forth on the common area fee payment schedule set by the City Charter shall be due and

payable by B. HOSPITALITY GROUP to the CITY.

(B) Common Area Fee Formula Negotiation.

In the event that the formula used to determine the common area fees for Church Street property owners for any fiscal year during the term of this License Agreement is changed such that a simple mathematical calculation of the amounts due CITY from B. HOSPITALITY GROUP for the rights granted hereby cannot be made, the parties agree to negotiate the amounts owed CITY for such year or years which amount(s) shall not be less than the amount(s) paid for the preceding fiscal year.

(C) Delivery of Payments

All payments to CITY pursuant to this License Agreement shall be by check made out to the City of Burlington and delivered to the Church Street Marketplace District Commission offices. **Rent, Property Taxes and Common Area Fees are to be paid directly to the Church Street Marketplace, 2 Church Street, Suite 2A, Burlington, Vermont 05401. The Church Street Marketplace shall keep a record of payments of rent, property taxes and common area fees and be responsible of fees to appropriate CITY accounts.**

(D) Nonpayment.

Nonpayment of any amounts due CITY pursuant to this License Agreement shall immediately subject all amounts owed to a five (5%) percent penalty, plus one (1%) percent additional for each month the amount(s) remain(s) unpaid. Any amounts owed with penalty thereon for a period in excess of one year shall be

increased by an additional eighteen (18%) percent penalty applied annually to the total amount so owed.

5. Maintenance of Premises.

(A) B. HOSPITALITY GROUP shall maintain the KIOSK in a manner which, in the sole discretion of the CITY, befits the appearance of the Church Street Marketplace. B. HOSPITALITY GROUP is responsible for the maintenance of the inside and exterior of the KIOSK; the CITY is responsible for maintenance at ground level around the KIOSK and the sculpture in the upper portion of the KIOSK.

(B) If failure to perform maintenance in the manner deemed appropriate by the CITY shall continue for thirty (30) days after written notice thereof, the CITY may contract with others for maintenance of the KIOSK. In such event, B. HOSPITALITY GROUP shall be responsible for all such costs.

(C) B. HOSPITALITY GROUP shall repair any damage to the KIOSK caused by or arising from operation of its business. If B. HOSPITALITY GROUP fails to make such repairs or replacements promptly, the CITY may, at its option make such repairs or replacements, and B. HOSPITALITY GROUP shall repay the cost(s) thereof. In case of damage by fire or other elements, or other causes beyond the control of B. HOSPITALITY GROUP, such as to make the KIOSK untenable or substantially unfit for use by B. HOSPITALITY GROUP, if the cost of repair or reconstruction exceeds the extent of insurance proceeds, then B. HOSPITALITY GROUP may terminate this License Agreement upon reasonable

notice to the CITY. The CITY shall not be liable to B. HOSPITALITY GROUP for losses due to theft, burglary or other casualty, or for damages done by persons on the KIOSK. The CITY will ensure that there is an even surface on the northern side of the KIOSK so that water does not run into the KIOSK from adjacent areas.

- (D) B. HOSPITALITY GROUP shall be responsible for cleaning the KIOSK including but not limited to window washing. Window washing shall occur bi-weekly.
- (E) B. HOSPITALITY GROUP shall be responsible for all graffiti removal on the exterior of the KIOSK.
- (F) B. HOSPITALITY GROUP shall be responsible for all trash removal and will not use Church Street Marketplace litter receptacles for disposal.
- (G) B. HOSPITALITY GROUP shall recycle all appropriate materials.
- (H) B. HOSPITALITY GROUP understands and agrees that CCTA bus patrons may use the eastern-most portion of the KIOSK being that portion presently covered by an awning, and as shown in Exhibit A. B. HOSPITALITY GROUP understands and agrees that it will not block or interfere in any way with such use. The CITY understands and agrees that if seating in or about the entire KIOSK area for use by bus patrons or other members of the public is provided, such furniture shall not be more than four (4) feet in length.
- (I) B. HOSPITALITY GROUP understands and agrees that the Neon Art Sculpture in the upper portion of the KIOSK will not be touched, used or interfered with in

any manner.

(J) B. HOSPITALITY GROUP will, within its control, maintain a barrier-free walkway 9 ft. or more in width along the northernmost and eastern portion of the KIOSK at all times; (i.e., no inventory, stock, supplies or signs, etc. will be allowed in such walkway).

(K) B. HOSPITALITY GROUP at all times shall operate the business in an orderly manner. B. HOSPITALITY GROUP shall not, with intent to cause public inconvenience or annoyance, engage in fighting or in violent, tumultuous behavior, make unreasonable noise, use abusive or obscene language, make an obscene gesture, obstruct vehicular or pedestrian traffic, or engage in any conduct which is proscribed by Chapter 19 of Title 13 of Vermont Statutes Annotated.

(L) B. HOSPITALITY GROUP shall not, during the term hereof, in the KIOSK maintain, commit, or permit the maintenance of any nuisance or violation of any applicable city ordinance, state or federal statute, or controlling bylaw, regulation or condition imposed whether existing at the time of commencement of this License Agreement or enacted, amended, or otherwise put into effect during the term of this License Agreement.

6. Improvements to Premises.

(A) B. HOSPITALITY GROUP shall submit detailed plans and specifications to the CITY for any alterations or improvements to the KIOSK, prior to commencing improvements. No change, other than routine maintenance, shall be made without the written consent of the CITY. B. HOSPITALITY GROUP shall cause all

improvements, and/or alterations to be constructed according to the plans and specifications submitted to and approved in writing by the CITY, and any other legally necessary and/or appropriate boards, CITY or entities of the City of Burlington. Any alterations or improvements made by B. HOSPITALITY GROUP to the KIOSK shall be at B. HOSPITALITY GROUP expense.

(B) Upon expiration or earlier termination of this License Agreement, all improvements to the KIOSK, unless otherwise agreed upon in writing, shall become the property of the CITY.

7. Operation of Premises.

(A) B. HOSPITALITY GROUP shall operate the KIOSK at least between the hours of 10:00 a.m. and 6:00 p.m. Monday through Saturday, and Noon to 4 p.m. on Sunday, weather permitting. Provided however, for the months of January through April, B. HOSPITALITY GROUP may determine hours of operation.

8. Insurance and Indemnification.

(A) B. HOSPITALITY GROUP shall maintain in effect throughout the term of this License Agreement comprehensive general public liability insurance with responsible insurance underwriters, qualified to transact business in the State of Vermont, naming the City of Burlington as an additional insured-loss payee and insuring against all legal liability for injuries to persons (including wrongful death) and damages to property suffered on or about the KIOSK, the affected public right-of-way or as a result of the exercise of rights granted pursuant to this License Agreement in an amount not less than \$1,000,000 combined single limit. B.

HOSPITALITY GROUP shall maintain in effect throughout the term of this License Agreement public liability insurance providing for a minimum of One Million (\$1,000,000) Dollars per person, Two Million (\$2,000,000) Dollars per accident, and One Million (\$1,000,000) Dollars for property damage, which insurance shall cover any accident, injuries or damages suffered on, about or within the KIOSK affected by this License Agreement.

(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 any 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 B and the endorsement as Exhibit 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.**

(C) B. HOSPITALITY GROUP shall at all times prior to the termination of this License Agreement, indemnify and defend the CITY against all liens and charges of any and every nature that may at any time be established against the KIOSK or any improvements thereon or therein or any part thereof as a consequence, direct, or indirect, of any act or omission of B. HOSPITALITY GROUP.

(D) B. HOSPITALITY GROUP shall indemnify and defend the CITY and City of

Burlington against all liability, loss, cost, damage or expense sustained by the CITY and/or the City, including attorney's fees and other expenses of litigation arising from the use and operation of the KIOSK.

9. Default, Termination and Liquidated Damages.

(A) This License Agreement is made on the express condition that if B.

HOSPITALITY GROUP shall default in the performance of any term or condition of this License Agreement and the default shall continue for fourteen (14 days) after written notice of any default in meeting its obligations hereunder is given by the CITY to B. HOSPITALITY GROUP, then the CITY shall have the option to declare this License Agreement terminated. In the event that the CITY gives written notice of its option to declare this License Agreement terminated, B.

HOSPITALITY GROUP shall cease commercial use of the KIOSK immediately upon receipt of such written notice.

(B) In the event that the CITY terminates the rights of B. HOSPITALITY GROUP pursuant to this License Agreement for default in the performance of any terms and conditions of this License Agreement, then B. HOSPITALITY GROUP shall be responsible to reimburse the CITY for all of the CITY'S costs including attorneys' fees, litigation fees, sheriff's fees, etc. arising from the CITY'S availing itself of its rights pursuant to this License Agreement.

(C) Failure of the CITY to declare any default immediately upon occurrence thereof, or delay in taking action in connection therewith, shall not waive such default, but the CITY shall have the right to declare any such default(s), at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

(D) In the event of holding over after expiration or sooner termination of this License Agreement without the written consent of the CITY, B. HOSPITALITY GROUP shall pay as liquidated damages double rent (2,300.00) each month for the entire holdover period. No holding over by B. HOSPITALITY GROUP after the term of this License Agreement shall operate to extend this License Agreement. In the event of any unauthorized holding over, B. HOSPITALITY GROUP shall indemnify the CITY against all claims for damages by any other person with whom the CITY may have entered a License Agreement for all or any part of the KIOSK effective upon the termination of this Agreement.

10. Modification, Assignment and Limitation of Rights.

(A) B. HOSPITALITY GROUP shall not sell or assign its rights pursuant to this License Agreement, or permit the use of the KIOSK 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, at the CITY'S option, B. HOSPITALITY GROUP rights pursuant to the License Agreement. This License Agreement may not be altered, changed, or amended, except by an instrument in writing, signed by all parties hereto.

(B) B. HOSPITALITY GROUP acknowledges that no property or other right to

KIOSK is created other than as specifically defined and limited by this License Agreement.

AGREED to at Burlington, Vermont this _____ day of _____, 2013.

CITY OF BURLINGTON, VERMONT

By: _____
Ron Redmond, Executive Director
Church St. Marketplace District Commission
Duly Authorized

STATE OF VERMAONT)

CHITTENDEN COUNTY, SS)

At Burlington, this _____ day of _____, 2013 personally appeared Ron Redmond, Executive Director of the Church Street marketplace District Commission, and he acknowledged this instrument, by him sealed and subscribed, to be his free act and deed and the free act and deed of the City of Burlington.

Before me,

Notary Public

B. HOSPITALITY GROUP, INC.

By: _____
Owner

STATE OF VERMAONT)

CHITTENDEN COUNTY, SS)

At Burlington, this _____ day of _____, 2013 personally appeared _____, duly authorized agent for B Hospitality Group, and s/he

acknowledged this instrument, by him/her sealed and subscribed, to be his/her free act and deed and the free act and deed of B. Hospitality Group.

Before me,

Notary Public

lb/GM 2013/Church St. Marketplace - College St. Kiosk Agreement with B Hospitality Group (180 College St.)
8/29/13