

Resolution Relating to

RESOLUTION

Sponsor(s) Councilors Dober,
Blais, Berezniak, : License Com.

AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT
TO MAINTAIN TABLES AND CHAIRS ON A
PORTION OF THE CITY'S RIGHT-OF-WAY WITH
BIG DADDY'S RESTAURANTS

Introduced: 06/13/11
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

In the year Two Thousand Eleven **CITY OF BURLINGTON**.....
Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, BIG DADDY'S RESTAURANTS of Burlington, Vermont (hereinafter BIG DADDY'S) is an establishment doing business in a commercial building located at 177 Church Street in the City of Burlington, Vermont; and

WHEREAS, BIG DADDY'S desires to place 11 tables and 42 chairs, properly roped off on all sides, in the public right-of-way in front of its establishment at 177 Church St.; and

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

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

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

NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes BIG DADDY'S to place 11 tables and 42 chairs on a portion of the public right-of-way adjacent to its establishment on Church Street as indicated in and pursuant to its License Agreement for a period in excess of thirty (30) days upon entering into the License Agreement in

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substantially the form attached hereto; and

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

LICENSE AGREEMENT FOR TABLES AND CHAIRS
BIG DADDY'S RESTAURANTS
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 BIG DADDY'S RESTAURANTS, a commercial establishment located at 177 Church Street, Burlington, Vermont (hereinafter BIG DADDY'S or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 177 Church Street; and

WHEREAS, BIG DADDY'S has requested that it be permitted to place 11 tables and 42 chairs on the sidewalk area in front of the building at 177 Church Street; and

WHEREAS, this application was reviewed and approved by the Department of Public Works with modifications 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 BIG DADDY'S enter into the following License Agreement:

1. TERM

The CITY grants to BIG DADDY'S (hereinafter LICENSEE) a license to place 11 tables and 42 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 7 ft. right-of-way for pedestrian traffic. 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 an area totaling 336 square feet, properly roped off on all sides, as follows: 7 feet out from the building, 2 feet in from the north and south boundary lines of the property and 2 feet in from the outside of the curb (at red pavers). 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, if any.

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 will clear all tables and chairs by 9:00 p.m.

f. 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

BIG DADDY'S RESTAURANTS

Witness

By: _____
Duly Authorized

lb/c: NAF 2011/License Agree for Encumbrance – BIG DADDY'S, 177 Church St. (Tables & Chairs) 2011
6/8/11



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

FRANCES KEHOE, III
 BIG DADDY'S RESTAURANTS
 BURLINGTON, VT 05401

DATE: Thursday, January 13, 2011
 PHONE: 802-863-0000

FAX:

EMAIL:

DBA NAME: BIG DADDY'S RESTAURANTS

COMPANY: BIG DADDY'S RESTAURANTS

LOCATION: 177 CHURCH 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: ~~3 tables and 9 chairs against front of building (garage door)~~

Area 19x28 Directly in front of BO (Allowing for 5' rite of way) 12-15 Tables

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 532⁰⁰

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.

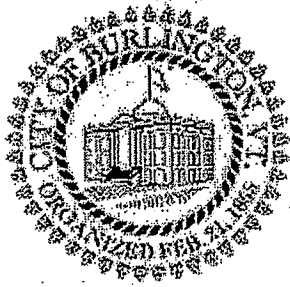
Encumbrance Fee	532
Application Fee	\$25.00
Total	557⁰⁰

Signature Frances Kehoe III Date 5/16/11
 FRANCES KEHOE, III

For office use only: Amount received \$ 557.00 on 5/17/11 Check # 3282

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 05/01/2008 - 04/30/2009

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: BIG DADDY'S
 COMPANY: RESTAURANTS
KEHOW INC
 LOCATION: 177 CHURCH ST
 MAILING ADDRESS: BURLINGTON VT

DATE: 06.08.11
 PHONE: 802-863-
 FAX:

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: AREA 18' x 29' (336 SF)

4. 11 TABLES ROPED OFF ON 2 SIDES
42 CHAIRS 7' CLEARANCE FOR
PEDESTRIAN WALKWAY

DEPARTMENT OF PUBLIC WORKS

Approved? Yes

No

Explain: APPROVED PER REVISED PLAN

Signature Ron Gore

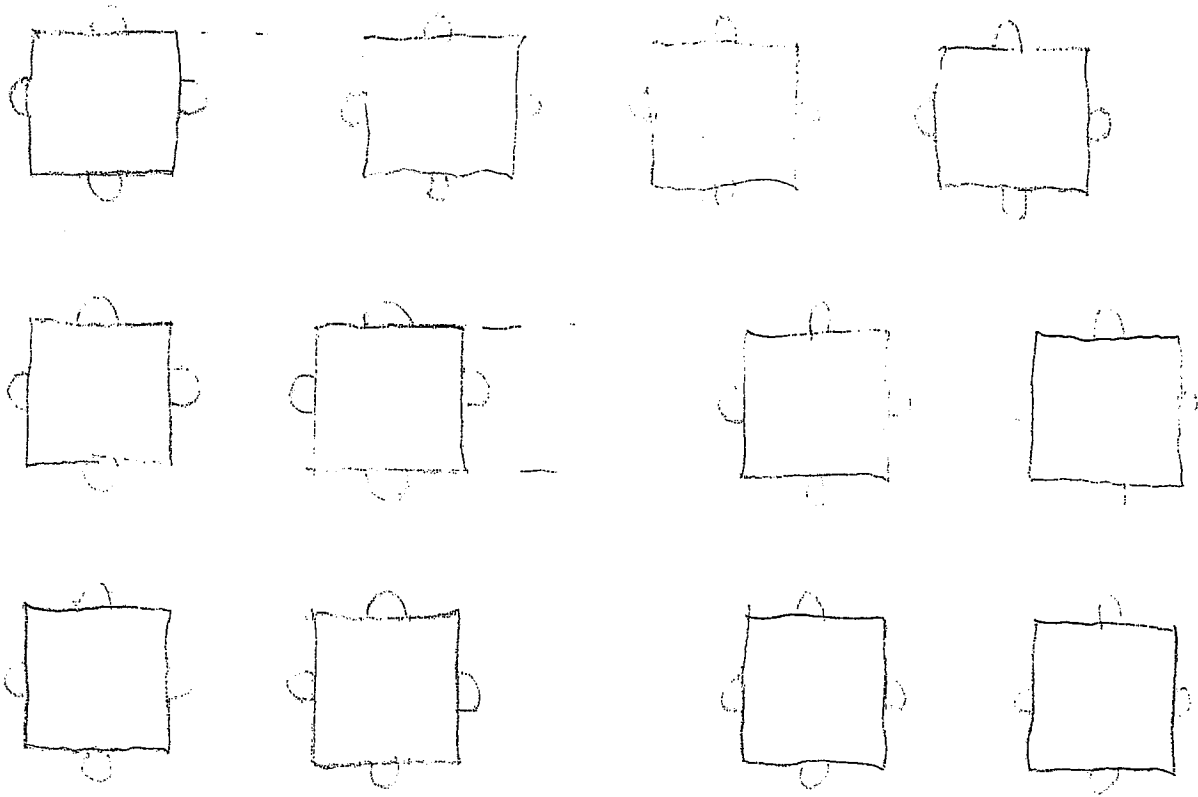
Date: 06-08-11

Exhibit B

Church St

28'

Curbing



Not To Scale

3
rows

Rig Daddy's

15
01

Exhibit C



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)
5/17/2011

PRODUCER (802)223-7735 FAX: (802)223-7515
 Noyle W Johnson Insurance Agency Inc.
 1 River Street
 Box 279
 Montpelier VT 05601-0279

INSURED
 KEHOE INC DBA BIG DADDYS DELIVERY RESTAURANT
 100 RIVERS EDGE DR
 BURLINGTON VT 05408

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: Peerless Indemnity Ins. Co.	18333
INSURER B: Peerless	24198
INSURER C: Excelsior	11045
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 LTR INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	BOP8707264	6/25/2010	6/25/2011	EACH OCCURRENCE \$ 1,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 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
B	AUTOMOBILE LIABILITY ANY AUTO <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS NON-OWNED AUTOS	BA1275748	7/21/2010	7/21/2011	COMBINED SINGLE LIMIT (Ea accident) \$ 500,000
					BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS / UMBRELLA LIABILITY OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under SPECIAL PROVISIONS below	WC1041830	6/25/2010	6/25/2011	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 100,000 E.L. DISEASE - EA EMPLOYEE \$ 100,000 E.L. DISEASE - POLICY LIMIT \$ 500,000
	OTHER				

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS
 State of Vermont requires 45-day non-payment notice on Workers Compensation policies. Francis L. Kehoe III and Stephanie Kehoe, as officers of the corporation, have elected to be excluded from Workers Compensation coverage. City of Burlington, Encumbrance Application Division, is Additional Insured on General Liability as respects three tables, with three chairs at each table, which insured will set up outside his pizzeria at 177 Church Street in Burlington, Vermont.

CERTIFICATE HOLDER

(802) 865-7014
 City of Burlington
 Encumbrance Application Division
 Att: City Clerk
 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

Christy Nelson

Exhibit D

