

MEMORANDUM

**TO: CAROL FREDERICKS
BUSINESS ADMINISTRATOR**

**FROM: HENRY WATTS
SENIOR PLANNER**

DATE: JULY 1, 2008

**SUBJECT: OVER THE PUBLIC RIGHT OF WAY LICENSE
OFF-STREET PARKING SPACES
44 N. ALBANY AVENUE
BLOCK 240, LOT 1**

The applicant at 44 N. Albany Avenue must obtain, from City Council, a revocable Over the Public Right of Way License for the subject property (off-street parking spaces).

Kindly place this item on the next available agenda.

HW/bjl

cc: William Crane, Director, Division of Planning
Kim Baldwin, Solicitor, w/o enclosures
Debbie Enderlin, Office Manager, w/enclosures

A-6351
TS

REVOCABLE LICENSE AGREEMENT

THIS AGREEMENT is made and entered into as of the date set forth below by and between the City of Atlantic City (the "City"), having an address at 1301 Bacharach Boulevard, Atlantic City, New Jersey 08401 and **NIKMEHR PROPERTIES** (the "Licensee"), having an address at 300 Central Avenue, Egg Harbor Township, New Jersey 08234.

WHEREAS, the City is a municipal corporation of the State of New Jersey, owning and controlling certain real property within its territorial limits, including that certain portion of real property (Sidewalk) in front of the property located at 44 N. Albany Avenue, Block 240, Lot 1, (the "City Property" or "Licensed Area"); and

WHEREAS, the Licensee owns/leases certain real property (the "Licensee Property") directly adjacent to the City Property, known as Block 240 Lot 1 on the Tax Map of the City of Atlantic City, also known as 44 N. Albany Avenue, Atlantic City, New Jersey, including certain business improvements located thereupon (the "Business Premises"); and

WHEREAS, the Licensee desires permission from the City to construct, improve and/or maintain exterior improvements in the way of parking on Albany Avenue sidewalk in the Licensed Area ("improvements") under the terms and conditions set forth herein below; and

WHEREAS, the City desires to grant a License to the Licensee for construction and maintenance of the improvements upon the Licensed Area.

NOW, THEREFORE, in order to carry out the intent as expressed above, and in consideration of the payment of One Dollar (\$1.00) and the mutual covenants herein contained, the City and the Licensee hereby agree and covenant as follows:

PURPOSE

1. A revocable License to construct and maintain the improvements upon the Licensed Area is hereby granted to the Licensee.

PERMITTED STRUCTURE

2. The improvements permitted upon the Licensed Area shall be maintained in accordance with the design submitted to the Planning Department, or any amendments or supplements thereto required or approved by the City Planning Department or other appropriate departments or boards of the City. Said attachments and any required or approved amendment(s) are hereby made a part of this agreement as if fully set forth herein. In any event, any structure or improvement to be erected upon the licensed area must be approved by the City Planning Department and such other City agencies as may be appropriate.

SPECIFIC CONDITIONS OF USE

3. The within License is expressly subject to the following conditions:
- a. The Licensee's use of the above described Licensed Area is limited to the construction/maintenance of the improvements.
 - b. This revocable License shall terminate and be of no effect and the Licensed Area shall revert back to the City upon the occurrence of any of the following: (i) the Licensee or its successors shall cease to construct the improvements as described in subparagraph (a) above after a reasonable amount of time to do so as determined by the City; or (ii) the Licensee or its successors cease to properly maintain the improvements in the reasonable judgment of the City. In such event, within fifteen (15) days written notice from the City to the Licensee, the improvements shall be removed by the Licensee or its successors, at its own expense, or thereafter the City, at the City's discretion, may remove the improvements and the City, its agents, servants, and employees

shall bear no responsibility or liability for damage caused to the improvements or adjoining structures by such removal, and the City shall receive the reasonable cost for such removal from the Licensee or its successors.

c. No signs, banners, logos, emblems, advertisements or the like, not specifically approved by the Atlantic City Planning Department or the appropriate City land use board, shall be placed upon the improvements.

d. Under no circumstances shall the improvements exceed the perimeter of the Licensed Area nor shall the improvements be expanded or embellished without the express permission of the City Department of Planning. The Licensee may, with the approval of the City Department of Planning, reduce the size of the improvements from that which is described in plans and specifications referred to in paragraph 2 herein, so long as the design of the reduced structure is consistent with such plans and specifications. Such reduction in size shall not affect any other terms, conditions or requirements of this Agreement. In no event shall a structure be erected upon the Licensed Area which is different in design from that which is described in plans and specifications referred to in Paragraph 2 herein, without the approval of the Department of Planning.

e. The improvements shall at all times be maintained by the Licensee at the Licensee's sole cost and expense.

f. Unless terminated by the City in accordance with this Paragraph 3 or revoked by the City in accordance with Paragraph 5, this Agreement may continue in effect for a term of fifty (50) years from the date of execution of this Agreement.

GOVERNMENTAL APPROVALS

4. All appropriate local, state and federal approvals or permits shall be obtained by Licensee or its agents, prior to constructing the improvements .

REVOCATION

5. Paragraph 3.b. hereinabove notwithstanding, the City retains the right, at any time, upon sixty (60) days notice from the City to the Licensee, to revoke this License, in part or in its entirety, and to require that the improvements or any structure existing at the time of such notice, be removed from the City's right of way described hereinabove. If, at the expiration of the said sixty (60) day notice period, the Licensee fails to remove such structure, the City is hereby authorized to remove the improvements itself and to receive reimbursement from the Licensee or its successor, for the reasonable costs of such removal. Should the City remove the improvements pursuant to the terms of this paragraph, the Licensee, on behalf of itself and its successors and assigns, agrees that the City and its agents and employees shall bear no responsibility or liability for damage caused to the improvements or adjoining structures, during such removal process.

INSURANCE

6. At all times during which this License shall be in effect, it is agreed and understood that as a condition hereof, the Licensee, at its own cost and expense, shall extend or maintain the Licensee's existing general liability insurance policy to cover the Licensed Area, and Licensee shall name the City as additional insured, insuring the City against any and all liability or claims of liability arising out of, occasioned by, or resulting from any accident or otherwise in or about the Licensed Area, or for injuries to any person or persons. The said insurance shall be for limits of no less than the greater of One Million (\$1,000,000) Dollars or the current limits on Licensee's existing general liability policy for injuries to persons, and for loss or damage to property of one person or persons. The policy or policies of insurance shall be of a company or companies

authorized to do business in New Jersey. Should the said policy be renewable on an annual, semiannual or other basis, the Licensee shall have a continuing obligation to provide proof to the City of such insurance coverage.

SUBJECT TO LAW

7. The Licensee and this License Agreement are subject to all Federal and State laws and the Ordinances of the City of Atlantic City as they now exist or may be hereafter adopted or amended and the Resolutions of the City now in effect or which may be hereafter passed and adopted.

INDEMNIFICATION

8. As a condition hereof, the Licensee and its successors and assigns agree and are bound to hold the City harmless and to defend the City against any and all claims for damages, costs and expenses to persons or property that may arise out of or be occasioned by use, occupancy, and/or maintenance of the aforementioned improvements, or from any act or occasion by any representative, agent, customer or employee of the Licensee. It is the intention of this paragraph on the part of the Licensee and a condition of this License that this paragraph shall serve as a full and total indemnification against any kind or character of claim whatsoever that may be asserted against the City by reasons of, or as a consequence of having granted this License.

BINDING EFFECT

9. This License Agreement shall be binding upon the heirs, assigns, and/or successors in right, title or interest of the parties to this Agreement.

ARBITRATION

10. All claims, disputes, questions and controversies (hereinafter controversy) other than claims of breach of indemnification obligations arising out of or in connection with this agreement, not resolved by negotiation between the parties, shall be submitted to and be determined by a panel of three arbitrators. Any such arbitration shall be conducted at Atlantic City, New Jersey. Either party may initiate the arbitration by giving written demand for arbitration to the other party by registered or certified mail, setting forth the nature of the controversy, the amount involved, if any, the remedy sought, and the name of one arbitrator. The panel of three arbitrators shall be appointed as follows: The party initiating the arbitration shall appoint one arbitrator and shall name him/her in the written demand for arbitration as aforesaid. Within twenty (20) days after receipt of said written demand, the other party shall appoint a second arbitrator by written notice to the initiating party by registered or certified mail. Within thirty (30) days after the appointment of the second arbitrator, the two arbitrators so appointed shall appoint a third arbitrator by written notice by registered or certified mail to the two parties. If either party shall fail to appoint an arbitrator as above provided, or if the first two arbitrators shall fail to appoint a third arbitrator as above provided, then said arbitrator, upon written application of either party shall be appointed by the Chief Judge of the United States District for the Third Circuit.

The arbitration shall be conducted by the panel of three arbitrators in accordance with the Commercial arbitration Rules then in effect of the American Arbitration Association, except as such rules may be modified for the purpose of the arbitration proceeding by action of a majority of the panel and by written notice by registered or certified mail to each party. The decision of the arbitrators shall be by majority vote, and the award of the arbitrators shall be final and binding

upon the parties and judgment thereon may be entered in any court having jurisdiction with respect thereto. Each party shall bear its own expenses in connection with the preparation and presentation of its case at the arbitration proceedings. The fees and expenses of the arbitrators and all other expenses of the arbitration (except those referred to in the preceding sentence) shall be borne equally by the parties to such arbitration.

This agreement to arbitrate and any award rendered pursuant thereto shall be enforceable under and pursuant to the laws of the State of New Jersey. The parties hereto hereby submit to the jurisdiction of the duly constituted courts of said state for the purpose of enforcement of this agreement to arbitrate and any and all awards rendered pursuant thereto, provided that this sentence shall not limit in any way the right of any party hereto to bring an action or actions to enforce this agreement to arbitrate or any award rendered pursuant thereto in any other proper form.

WAIVER AND RENUNCIATION.

11. No waiver or renunciation by either party to this agreement with respect to any breach or default or of any right or remedy consequent thereon shall be deemed to constitute a continuing waiver or renunciation or a waiver or renunciation of any other breach or default or any other right or remedy consequent thereon unless such waiver or renunciation be expressed in writing, signed by the party making such waiver or renunciation and specifying the nature and extent of such waiver or renunciation.

RECORDATION

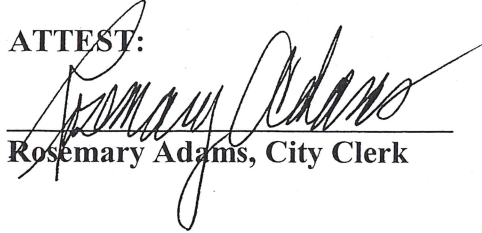
12 This License Agreement may be recorded by the Licensee in the Office of the Clerk of the County of Atlantic.

EFFECTIVE DATE

13. This License Agreement is effective as of the date of the Mayor's signature.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year first below written.

ATTEST:



Rosemary Adams, City Clerk

CITY OF ATLANTIC CITY

By 

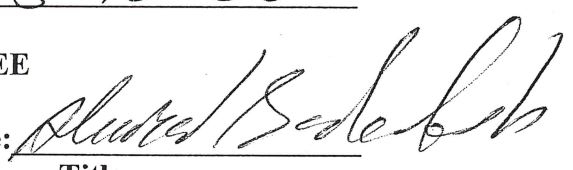
Scott K. Evans, Mayor

Date: 8-12-08

ATTEST:

Secretary

LICENSEE

Signature: 

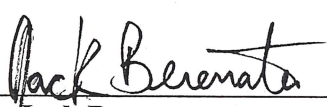
Title

Alimora Salortash, Managing Member
(PLEASE PRINT NAME ABOVE)
of Nikmehr Properties LLC

Date: 8/4/08

The within Agreement is approved as to form and execution.

Date: 8/8/08

By: 

Jack Berenato
For the City of Atlantic City

STATE OF New Jersey)
COUNTY OF Atlantic) ss.

I CERTIFY that on August 4,, 2008,
Alinorzel Solartash, personally came before me and
acknowledged under oath, to my satisfaction, that this person (or if more than
one, each person):

- (a) is named in and personally signed this document; and
- (b) signed, sealed and delivered this document as his or her voluntary
act and deed.

Signed and sworn to before me on

August 4,, 2008

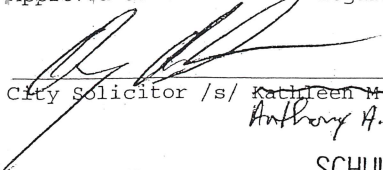
Clementina B. Giacinto
Notary Public of New Jersey
(Seal attached) **CLEMENTINA B. GIACINTO**
NOTARY PUBLIC OF NEW JERSEY
Commission Expires Dec. 4, 2011

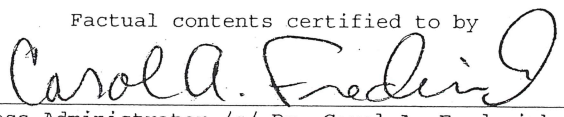
Resolution of the City of Atlantic City

No. 731

Approved as to Form and Legality on Basis of Facts Set Forth

Factual contents certified to by


City Solicitor /s/ Kathleen M. Kiscane


Business Administrator /s/ Dr. Carol A. Fredericks

Prepared by City Solicitor's Office

Council Member SCHULTZ & MANCUSO

Presents the following Resolution:

WHEREAS, NIKMEHR PROPERTIES ("applicant") is leasing and/or renovating the property at 44 N. Albany Avenue and would like to put in parking on the Albany Avenue sidewalk ("encroachment"); and

WHEREAS, the Division of Planning cannot issue a certificate of land use compliance unless and until the applicant receives approval by City Council of a license from the City to permit said encroachment; and

WHEREAS, City Council finds and declares that the public interest of the City will not be harmed by the granting to the applicant a REVOCABLE LICENSE.

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Atlantic City, that for the consideration of **ONE DOLLAR (\$1.00)** paid by applicant, the Mayor is hereby authorized to execute and the City Clerk to attest to a REVOCABLE LICENSE to authorize the applicant and its assignees to encroach upon the rights over the City's right-of-way, as more particularly set forth and described in the attached license Agreement.

BE IT FURTHER RESOLVED, that the applicant shall enter into a license agreement with the City for the encroachments and shall be subject to the following terms and conditions:

1. The proposed license agreement shall contain a provision by which the proposed licensee and its successors shall hold harmless and indemnify the City for all costs, liabilities and claims arising out of or related to the existence, maintenance, or use of the said encroachments upon the City's right-of-way, or any use of the City's right-of-way by the proposed licensee or its successors; and shall require the proposed licensee and its successors to keep and maintain such liability insurance as will accomplish the foregoing.

2. The form and language of the license agreement authorized by this Resolution shall be approved by the City Solicitor prior to its execution.
3. The license agreement shall be binding upon the heirs, assigns and/or successors in right, title or interest of the parties to the said agreement.

haj July 17, 2008 10:28:59 AM

DO NOT USE SPACE BELOW THIS LINE													
RECORD OF COUNCIL VOTE ON FINAL PASSAGE													
COUNCIL MEMBER	AYE	NAY	N.V	A.B.	MOT.	SEC.	COUNCIL MEMBER	AYE	NAY	N.V.	A.B.	MOT.	SEC.
MANCUSO	/						SCHULTZ	/				/	
MASON	/					/	SMALL	/					
MOORE	/			/			TIBBITT	/					
ROBINSON	/						WARD	/					
MARSH, PRESIDENT							/						
X-Indicates Vote NV-Not Voting AB-Absent MOT-Motion SEC-Second													

This is a Certified True copy of the Original Resolution on file in the City Clerk's Office.

DATE OF ADOPTION: **JUL 23 2008**

Rosemary Adams
/s/ Rosemary Adams, City Clerk