

AGREEMENT – 138 CAMBRIDGE STREET

THIS AGREEMENT entered into as of October 20, 2004, between **THE SAUSAGE GUY, INC.**, a Massachusetts corporation with a mailing address at 118 Dorchester Avenue, South Boston, MA 02127, and a place of business at 138 Cambridge Street, Boston, MA (the "Operator") as lessee and operator of a portion (more fully described below) of premises at 138 Cambridge Street, Boston, Massachusetts (the "Building"), and the **BEACON HILL CIVIC ASSOCIATION, Inc.**, a Massachusetts corporation (the "BHCA").

WHEREAS, the Operator has applied to the Boston Licensing Board for a Common Victualer's License to use for restaurant and take-out purposes a portion of the ground floor area of the Building (the "Application"; said portion of the Building as described in the Application is sometimes referred to below as the "Premises");

WHEREAS, the BHCA, which with its predecessor has acted on behalf of the Beacon Hill neighborhood in such matters for over 80 years, generally opposes, in the absence of unusual circumstances, the establishment of "fast food" and/or "take-out" food service uses in and adjacent to the residential neighborhood;

WHEREAS, the BHCA is cognizant of certain unusual circumstances relating to the Building due to its location on Cambridge Street and prior uses of the Premises, but also of the strong concern expressed by residents of the Cambridge Street/Temple Street/Ridgeway Lane areas about the detrimental impact of certain anticipated aspects of the facility's operation on the surrounding neighborhood;

WHEREAS, after due notice and a public hearing, the BHCA has determined that, *if operated in strict compliance with the conditions set forth below*, the proposed use will be appropriate for the location and will adequately comply with the concerns of the neighbors;

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration and in further consideration of the mutual agreements herein contained, the parties hereto do hereby covenant and agree as follows:

1. The BHCA agrees that not to oppose before the Boston Licensing Board the common victualer's and related licenses for operation of a take-out sandwich shop at the Premises.;
2. The Operator agrees to abide by, perform and observe each and every condition listed in **Exhibit A** attached hereto, and the provisions of said Exhibit A shall be interpreted and observed so as to respect and preserve Temple Street as a residential street;
3. The agreements, covenants and conditions herein contained shall be binding upon the Operator and upon its successors and assigns, including without limitation, any subtenant, assignee, or purchaser of the Premises and/or the said CV license hereafter, it being understood and agreed that each of the agreements, covenants and conditions herein contained shall inure to the benefit of the BHCA, its successors and assigns. If any provision of this Agreement or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions which can be given effect without the invalid provision or application, and to this end the provisions of this Agreement shall be severable. The failure of the BHCA to seek redress for a violation of, or to insist upon strict performance of, any provision or condition of this Agreement shall not be deemed a waiver of such violation nor prevent a subsequent act, which would have originally constituted a violation, from being a violation.

4. It is mutually agreed that in the event of any controversy arising out of or relating to this Agreement or breach thereof, the parties shall use their best efforts to settle the dispute by direct negotiations between individuals with full settlement authority. If the dispute is not settled promptly through negotiation, either party hereto may submit the dispute to mediation under the applicable Mediation Rules of the American Arbitration Association. Thereafter, any unresolved controversy or claim arising out of this Agreement, or breach thereof, shall be decided by binding arbitration in accordance with the commercial Arbitration Rules of the American Arbitration Association. The arbitrator shall determine the existence of any controversy or breach, make such findings as are reasonable and necessary and enter an award of injunctive relief and costs that are consistent with said findings. Judgment upon the award entered by the arbitrator may be enforced as hereinafter set forth, filed with any licensing or administrative board, or entered in any court of competent jurisdiction.

5. It is mutually agreed that in the event the Operator or its successors or assigns shall have been found to be in violation of any of the provisions of this Agreement by either the Housing Court of the City of Boston or the Superior Court of Suffolk County, the damage to the BHCA and the Beacon Hill neighborhood resulting therefrom shall be actual, substantial and irreparable, but that it will not be possible to ascertain even approximately the monetary amount of such damage. Accordingly, the parties agree that the BHCA shall be entitled to an injunction and all other appropriate equitable relief as may be deemed appropriate by any judicial tribunal to compel the Operator to comply with any and all provisions of this Agreement and to enforce the same. For purposes of this Article 5 the parties agree that they shall, at the election of the BHCA, submit to the jurisdiction of either the Housing Court of the City of Boston or the Superior Court sitting for Suffolk County.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be executed under seal as of the date first set forth above.

THE SAUSAGE GUY, INC.

By: _____

David M. Littlefield, President

BEACON HILL CIVIC ASSOCIATION, INC.

By: _____

Jeannette Herman, President

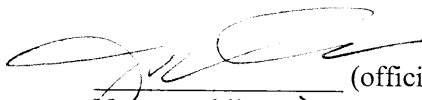
By: _____

, Co-Chair
Zoning and Licensing Committee

Commonwealth of Massachusetts

Suffolk, ss

On this 13th day of October, 2004, before me, the undersigned notary public, personally appeared David M. Littlefield (name of document signer), proved to me through satisfactory evidence of identification, which were drivers license, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he signed it voluntarily for its stated purpose as President of The Sausage Guy, Inc., a corporation.



Notary public Joseph P. Hanley
exp. 2009

EXHIBIT A – CONDITIONS
PREMISES AT 138 CAMBRIDGE STREET

GENERAL CONDITIONS:

1. The Premises shall open no earlier than 6:00 a.m. daily and shall close no later than 11:00 p.m. Sunday through Wednesday and 12:00 p.m. on Thursday, Friday and Saturday. The Operator agrees to ensure that personnel arriving, conducting activities at and leaving the Premises between 11:00 p.m. and 7:00 a.m. make every reasonable effort to do so quietly so as not to disturb nearby residents.
2. The shop will provide indoor seating for no fewer than 5 and no more than 15 patrons, the intent being to provide a suitable eating place for patrons who wish to consume their food immediately.
3. The Operator agrees to use all reasonable management practices to prevent patrons of the Premises from being rowdy on the premises and disruptive to the quiet enjoyment of the neighborhood and surrounding streets, queuing on the sidewalk and/or double-parking on neighborhood streets.
4. To limit queuing of patrons in front of the Building and prevent noise and congestion problems, the Operator will appoint an employee to monitor any line of patrons which extends outside the Building.
5. No television sets, motion pictures, pinball machines, electronic games or other amusement or gaming devices or machines shall be located at or in the Premises; and no music or other sounds shall be so amplified within the Premises as to be audible to neighbors, abutters or passersby; provided, however, that the Chair of the BHCA Zoning and Licensing Committee may waive this prohibition with respect to one or two television monitors for the broadcast of sporting events and Fenway Park-related images (with low/no-volume audio), provided that they can be situated in interior locations that cannot be seen from Temple Street or Cambridge Street.
6. The Operator shall from time to time inform the BHCA in writing of the name or names and telephone number(s) of the current and any proposed manager(s) of the Premises and shall designate a person with full authority to act for the Operator with respect to operational matters who will be immediately available at the Premises during all operating hours to correct problems and respond to concerns.
7. No application shall be made to any licensing authority for a license to sell alcoholic beverages, including beer, wine and other spirituous drinks at the Premises.
8. The Operator shall not transfer ownership of or the possessory interest in the Premises and/or the common victualer's license unless the transferee agrees in writing with the BHCA in a substitute contract signed at least fifteen days before the transfer hearing before the Licensing Board (or, if no hearing is required, fifteen days before the effective date of the transfer) to observe and perform all the conditions herein.
9. The Operator agrees to meet with the BHCA and the committee of neighbors every second month during the first six months of operation and to consider in good faith any reasonable changes suggested by the neighbors to minimize any adverse impacts on the residential neighborhood.

Thereafter, upon request, the applicant will undergo a yearly review by the Zoning and Licensing Committee of the Beacon Hill Civic Association of its compliance with the conditions herein as a condition of the renewal of its CV license.

TRASH, TRAFFIC, PARKING, AND DELIVERIES

10. The name of the establishment shall be printed on all take-out food containers including coffee cups and paper bags. Subject to City requirements, the Operator shall, upon request of the BHCA, place, maintain and regularly empty one large outdoor trash barrel near the corner of Cambridge and Temple Streets in a location reasonably satisfactory to the city authorities and BHCA.
11. The Operator shall (either itself, individually, or in cooperation with other common victualers operating on upper Cambridge Street) establish and maintain a litter patrol at least three times daily (morning, mid-day and evening) to collect litter from sidewalks, gutters and adjacent yards and entryways (and dispose of it via the store's regular disposal procedures) on the south side of Cambridge Street for the portion thereof between Joy Street and Bowdoin Street, such collection to include trash and litter from the first block of any side street (Joy, Hancock, Temple, Ridgeway Lane and Bowdoin).
12. Trash, garbage and refuse ("Trash") from the Premises shall be stored indoors until no more than one hour before scheduled pick-up by a commercial removal firm, and the Operator shall use diligent efforts on a continuing basis to prevent infestations of rats or other animals at, or release of Trash, seepage or obnoxious odors from, the Trash storage and pick-up areas. Deliveries, trash removal and service calls shall be scheduled and conducted so as to minimize noise in the residential area during sleeping hours (11:00 p.m. to 7:00 a.m.) and minimize congestion on Cambridge Street, and in no event shall delivery, trash removal and service vehicles be permitted to park or stop on, back into, or block egress from Temple Street.
13. No request shall be made to convert any metered or unmetered parking space to a loading zone or to a valet parking zone, and no application shall be made for a valet parking permit.
14. The Operator acknowledges that double-parking is illegal and potentially hazardous and disruptive to the neighborhood, and covenants to use all reasonable management procedures to prevent patrons of the Premises from double-parking on neighborhood streets, including Cambridge Street. The Operator further recognizes that any stationing of vehicles by its patrons (or service vehicles) on Temple Street (which is a narrow, one-way street designated primarily for pedestrian use) will cause serious inconvenience to residents; accordingly, the Operator covenants not to allow parking, standing or stopping on or in front of Temple Street by its patrons and/or delivery or service vehicles.
15. Sidewalks and gutters abutting the Building will be kept free of refuse and litter at all times; and such sidewalks will be kept clear of ice and snow and sanded if slippery.

SIGNAGE AND EXTERIOR CHANGES:

16. The Premises HVAC and kitchen ventilation systems shall be designed, located, constructed (including reasonable screening) and continually maintained so as to (a) prevent the emanation of objectionable odors from the Premises, (b) cause no noise and/or vibration which might reasonably be found to disturb abutters or neighbors or materially increase ambient levels at street level and (c) minimize visual impact.

17. Exterior signage shall be limited to (a) a front sign consisting of raised letters mounted on the brick façade, totaling no more than 2 feet in height and 19 feet in width, and lit by gooseneck lamps, (b) one unlit sign above the window on the Temple Street façade sign consisting of raised letters mounted on the brick façade totaling no more than 7 inches in height and 5 feet in width, and (c) a menu of up to 200 square inches to be posted in the front window near the entry, and no neon, fluorescent or other illuminated signs relating to the Premises will be placed on the exterior of the Building or within the Building in locations that make them readily visible from Temple or Cambridge Street.
18. No free-standing signs or sandwich board signs shall be placed outside the Building, and (except for the menu mentioned above) no advertising posters or displays or other signs, permanent or temporary, shall be affixed to the interior or exterior of windows at the Premises (or elsewhere in or on the Building if advertising the restaurant). There shall be no outdoor sales activities, and no display of merchandise or placement of furniture or equipment on the sidewalk.
19. Notwithstanding the requirements of items 6 and 7 above, the Operator may post temporary signage announcing the opening of his business as follows: paper signs totaling no more than 24 square feet to be placed inside the front windows at the Premises for a period not to exceed sixty (60) days. The time limit for each such sign shall run continuously from the date it is initially installed, and all such signage shall in any event be removed no later than December 31, 2004.
20. **Special condition:** Operator shall not use its existing logo^{*} or any graphic image similar thereto in or on the Premises, including without limitation on any signage, menus, packaging, merchandise, decoration, apparel, printed forms, manuals or advertising matter.

* Said logo depicting woman on logo.