


City of Alexandria, Virginia

M E M O R A N D U M

DATE: MAY 26, 2010

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: JAMES K. HARTMANN, CITY MANAGER 
JAMES L. BANKS, JR, CITY ATTORNEY

SUBJECT: LICENSE AGREEMENT WITH 106 UNION DUBLIN, LLC

ISSUE: Consideration of a license agreement with 106 Union Dublin, LLC for the use of a portion of Wales Alley for outdoor dining associated with SUP #2010-0010 for a restaurant use at 106 S. Union Street.

RECOMMENDATION: That the City Council:

- (1) pass the ordinance on first reading and schedule it for public hearing, second reading and final passage on June 12; and
- (2) authorize the City Manager to execute the attached 5-year license agreement with 106 Union Dublin, LLC and to take any other actions necessary to implement the agreement.

DISCUSSION: On May 15, 2010, the City Council approved Special Use Permit number 2010-0010 authorizing 106 Union Dublin, LLC to operate a restaurant in the building located at 106 South Union Street. The restaurant proposal includes an area for outdoor dining that would extend into the right of way known as Wales Alley. The attached license agreement¹ is the implementation of the concept for the use of Wales Alley that City Council approved with the Special Use Permit and gives the opportunity for you to review and approved the terms of the license agreement.

The license agreement includes many of the standard provisions found in license agreements used by the City Council for the use of public property in other locations, including but not limited to:

1. Limitations of who the Licensee is and who it can be assigned to;

¹ Virginia State Code Section 15.2-2100 authorizes the City to enter into agreements for the use of public property for terms of 5 years or less without receiving bids for the property.

2. Limitation of the term of the agreement to 5 years with a right of first negotiation for up to 3 additional 5 year terms.
3. Requirement that the licensee maintain the outdoor dining area as well as the remainder of Wales Alley including snow removal and replacement of the surface materials.
4. Requirement to remove all facilities upon termination of the agreement and restore the alley to its upgraded status.

FISCAL IMPACT: In addition to the more standard conditions, the license agreement includes a calculation for the annual license fee using a fair market value formula with an annual 3% inflationary adjustment. Pursuant to the Special Use Permit the licensee is required to install certain improvements to Wales Alley including brick paving. In consideration of the benefit that this will have for the public in this area, we have included a credit to compensate the licensor for half of the cost of such improvements calculated over the expected 20 year life of the improvements to the alley. Therefore, the license fee includes a credit on an annual basis which is equal to ½ the cost of the improvements to the alley divided by 20 years. Pursuant to this calculation, the annual license fee for this license agreement will be \$14,078 and the estimated annual credit will be \$3,675 (this is calculated using the estimated cost of the alley improvements, this will be updated when licensee provides the City with the actual costs). Therefore, the annual payment to the City will be approximately \$10,403 and the total that will be received by the City over the 5 years is approximately \$52,051.

ATTACHMENTS:

Attachment 1: License Agreement

Attachment 2: Ordinance

STAFF:

Mark Jinks, Deputy City Manager

Joanna Frizzell, Assistant City Attorney

Barbara Ross, Deputy Director, Planning and Zoning

LICENSE AGREEMENT

The AGREEMENT (the “**Agreement**”) is executed in duplicate this _____ day of _____, 2010, by the CITY OF ALEXANDRIA, a municipal corporation of Virginia (“**Licensor**”) and 106 Union Dublin, LLC a Virginia Limited Liability Company (“**Licensee**”).

RECITALS

A. Licensee desires to obtain the rights to use, subject to the terms and conditions of this Agreement, certain property owned by Licensor located adjacent to the it owns at building at 106 South Union Street (the “**Restaurant**”) and the holder of Special Use Permit #2010-0010 to operate a restaurant approved by the City Council on May 15, 2009 (the “**SUP**”).

B. Licensor is willing to permit Licensee to use the property adjacent to the Restaurant as an outdoor dining seating area associated with Licensee’s restaurant, and subject to obtaining all required permits and approvals, specifically including the design approval of the Old and Historic Alexandria District’s Board of Architectural Review, an elevated deck for outdoor dining associated with Licensee’s restaurant and as generally depicted in the SUP, on the terms and conditions contained in this Agreement.

NOW THEREFORE

For and in consideration of the sum of One Hundred Dollars (\$100.00), the receipt and sufficiency of which is hereby acknowledged and of the Recitals which are deemed as substantive and material part of this Agreement, Licensor and Licensee agree as follows:

1 Premises. The real property for which the license is granted to Licensee, consist of a portion of the City of Alexandria public right of way land shown and designated on the City of Alexandria Tax Map 75.01 Block 05 as “Wales Alley” (the “**Alley**”) containing approximately

1099 square feet of the Wales Alley public right of way and more fully described and designated: “License Agreement Area” on the plat titled: “Exhibit “A” Showing License Agreement Between The Owners of the Property Located at 106 S. Union St. and The City of Alexandria” prepared by RC Fields and Associates of Alexandria, Virginia dated April 19, 2010 attached hereto incorporated herein by reference as Exhibit A. (The “**Outdoor Dining Area**”).

2. License. In exchange for the consideration described herein and based upon the terms and conditions described herein, Licensor grants Licensee a license to use the Outdoor Dining Area for continuous periods during the term of this Agreement exclusively for outdoor seating associated with Licensee’s restaurant as described in the SUP. Notwithstanding the foregoing, provided Licensee is not in default and has obtained all required City permits and approvals, Licensee shall have the right to use the Outdoor Dining Area for construction related activities in connection with the renovation, repairs or maintenance of the Restaurant.

3. Term. The term of this License shall begin the date the Certificate of Occupancy is issued for the Restaurant and shall continue for five (5) years from that date.

4. Renewal. Provided Licensee is not in default of its obligations of performance under this Agreement at the end of the initial five (5) year term of this Agreement, or at the end of an additional term, Licensee shall have the right to negotiate this Agreement for up to three (3) additional five (5) years terms each to be exercised by Licensee by written notice to Licensor within six months immediately preceding the expiration of the original or additional term of this Agreement. The City Manager for the City will analyze and review use of the Outdoor Dining Area by Licensee under terms of this Agreement to determine if additional or modifications to terms and conditions of the Agreement are necessary. Each new license agreement will require the approval of the City Council.

5. License Fee. Licensee shall pay the Licensor an annual fee for the license rights to use the Outdoor Dining Area.

(a) *Calculation of the Annual Fee.* The annual fee shall be based on a calculation as follows: \$183 (Fair Market Value (license rate) of the adjacent underlying land at 106 S. Union Street) x 1099 S.F. (size of Outdoor Dining Area) x 7% (a factor representing a reasonable rate of return for a like commercial use consistent with commercial real estate standards) = \$14,078. This amount will increase by 3% annually.

(b) *Credit for Alley Improvements.* As set forth more specifically as part of the SUP and paragraph 6(b) herein, Licensee proposed to and the City agreed that the Licensee will construct certain improvements to the Alley and the Outdoor Dining Area (“**Alley Improvements**”). In recognition of the substantial public benefits to City for the portion of the Alley Improvements that are located within the portion of the Alley that is not subject to this License and therefore will remain open to the public, the Licensor will credit against future annual license fees one half of the costs of the Alley Improvements calculated over the anticipated twenty year life of the improvements) (the “**City Reimbursement**”) by deducting the amount from each annual license fee assuming, but not guaranteeing, that the License is renewed for sufficient periods to recapture the full amount. In the event the License is not renewed, at no fault of or decision by the Licensee, for subsequent periods of time sufficient to recapture the City Reimbursement towards the Alley Improvements in the manner set forth in this Section 5(b), then the City shall pay Licensee the balance of the City Reimbursement within 90 days of the expiration of the License or any renewed license, as applicable.

(c) *Calculation of City Reimbursement.* The Alley Improvements are estimated to cost approximately \$147,000 based on information provided by the Licensee (“**Estimated Cost**”). Licensee shall provide Licensor with documentation of the actual cost of the construction of the Alley Improvements within Forty-five days (45) days of completion of the Alley Improvements (“**Actual Cost**”). The City Reimbursement for the initial annual license fee will be based on the Estimated Cost listed in this paragraph 5(c) herein and will be calculated as follows $1/2$ of \$147,000 = \$73,500.00 divided by 20 = \$3,675. Upon receipt of the Actual Costs, the City will recalculate the City Reimbursement and any difference in the amount of the City Reimbursement credit will be reconciled by either increasing or decreasing the amount of the credit against the amount of the second at the time the second fee is due. The City

Reimbursement for the second and all subsequent annual license fees will be calculated using the Actual Cost calculation, up to an Actual Cost of \$200,000.

(c) *Due Date.* The initial fee is due within Thirty (30) days from the date the Certificate of Occupancy is issued for the Restaurant. Each subsequent annual license fee after the initial fee will be due one date that is (1) year from the date of the initial payment.

(d) *Payment Mailing Address.*

All payments shall be sent to Licensor at the following address:

City of Alexandria

General Services (Rent – Unit 25)

Post Office box 178

Alexandria, Virginia 22313

Checks tendered in payment of the annual fee shall be made payable to “City of Alexandria.”

(e) *Late Payment.* In the event any payment due to the Licensor hereunder is delayed by more than thirty (30) business days, such payment shall be deemed to increase by ten percent (10%) of the payment due. Interest on the unpaid amount shall accrue at the rate of 2.5% per month from the due date until paid.

6. Special Condition of License.

(a) *Special Use Permit.* The Licensee is required to comply with the conditions of the SUP and in particular the conditions that pertain to the Outdoor Dining Area. Any violation of the conditions of the SUP pertaining to the Outdoor Dining Area or the Alley shall be considered a violation of this Agreement and the Agreement shall be subject to Termination as described in Paragraph 9 herein.

(b) *Alley Improvements.* The licensee shall be required to install the Alley Improvements within the entire limits of the alley (the existing 5’ brick sidewalk and concrete curbing along #104 South Union are to remain). As part of the building permit for the renovation of the building, the licensee shall submit an H-20 load rated design section for the brick alley for approval from the Director of Transportation & Environmental Services and the Director of Planning and Zoning which shall include raising the tops of the two existing manholes within the alley to be flush with the proposed alley elevation. The applicant shall coordinate any

improvements and/or future modifications to the alley with the City's future roadway drainage improvement project as required by the Potomac River Waterfront Flood Mitigation Study.

(c) *Maintenance.* The Licensor shall be responsible for the maintenance of both the Alley and the Outdoor Dining Area (“**Maintenance Area**”). The Licensee shall be responsible for daily trash and litter pick up and shall be responsible for all maintenance and repair of the surface of the Maintenance Area including snow removal and repair and replacement of the brick and base material. Failure of the Licensee to do so may be considered a condition of default under Section 9 of this License Agreement. Licensee shall address any maintenance requests from the Licensor within fourteen (14) days from the date the request is received.

(d) *Outdoor Dining Facilities.* Any improvements placed within the Outdoor Dining Area, with the exception of the Alley Improvements, including but not limited to tables, chairs, elevated decking, awnings, fencing or railings, or any other facilities necessary for the use of the Outdoor Dining Area pursuant to this Agreement (“**Outdoor Dining Facilities**”) shall remain the property and the responsibility of Licensee. In the event this Agreement is terminated pursuant to paragraph 9 herein or for any reason, Licensee shall remove the Outdoor Dining Facilities within ten (10) days of such termination and shall restore the Alley including the Alley Improvements.

7. Liability

(a) *Insurance.* Licensee agrees to provide, and shall certify to the satisfaction of the Licensor that it is covered by (1) liability insurance in the amount not less than \$1,000,000 per person and \$3,000,000 per occurrence, which insures Licensee against (i) all claims of personal injury and personal property damage arising from the use of the Outdoor Dining Area and the Alley, which allege that the injury or damage has been caused by the negligence or gross negligence of the Licensee and the Licensee's agents and employees, and (ii) claims of personal injury and property damage arising from the use of the Outdoor Dining Area. Licensor shall be named as an additional insured in the policy required by this paragraph 7(a). In the event the Licensee is unable to obtain the required insurance naming Licensor as a named insured, or the required insurance lapses, this License Agreement shall terminate unless, by amendment to this

Agreement acceptable to Licensor, Licensee agrees to indemnify and hold harmless Licensor and all of its agents, officers and employees from and against any and all claims identified in this paragraph 7(a), including any and all suits, damages, judgments, liability, losses and costs including reasonable attorneys' fees and expenses, associated with such claims. Licensee agrees to maintain insurance coverage required by this provision throughout the term of this Agreement and furnish evidence to Licensor of such prior to the issuance of the Certificate of Occupancy for the Restaurant and throughout the term of this Agreement.

(b) *Indemnification.* Subject to the dollar limitations set out in paragraph 7(a), Licensee agrees to indemnify and hold harmless the Licensor and all of its officers, employees and agents from and against all suits, action, causes of action, damages, claims, liability and expenses (including court costs and attorney's fees), and against any losses incurred by Licensor, resulting from or arising out of any act or omission of the Licensee or any of its employees, agents, invitees, licensees or guests in the course of operating, maintaining or using the Outdoor Dining Area.

(c) *Waiver of Licensor's Liability.* By executing this Agreement, Licensee expressly acknowledges and agrees that the Licensor and its officers and employees shall not be liable to Licensee or to any of its employees, agents, invitees, licensees or guests for any bodily injury or property damage sustained by any of them while on the Outdoor Dining Area or for any property damage to Licensee's facilities located within the Outdoor Dining Area, except to the extent such injury or damage is caused by the negligence of the Licensor or its officers or employees.

8. Applicability of Federal, State and Local Laws. This Agreement is subject to the Alexandria City Code, and all applicable provisions of federal and state law. In particular, this Agreement is subject to and Licensee shall comply with the criminal, fire, health and safety laws of the City of Alexandria and the Commonwealth of Virginia. Licensee shall permit officers of the City of Alexandria charged with enforcement of such laws to inspect the Outdoor Dining Area during the periods of the Licensee's use.

9. Termination. In the event Licensee violates any term of this Agreement, Licensee shall be considered in default. If such continues for a period of thirty (30) days after Licensee has received written notice of the default, the Licensor may terminate this Agreement effective immediately unless such default is of such a nature that it cannot be cured within such thirty (30) day period, in which case, Licensee may request that Licensor agree to extend the cure period for a reasonable amount of time to effect such a cure and such agreement shall not be unreasonable withheld by Licensor. Further, Licensor shall have the right to terminate this Agreement, effective immediately, in the event Licensee shall cease to own and operate the Restaurant.

10. Assignment. This Agreement may not be assigned by Licensee without the written consent of Licensor, which consent may not be unreasonably withheld, but may require the approval of the Alexandria City Council. An assignment by Licensee to affiliate, which is under the control of the Licensee or formed for the purpose of operating the Restaurant for Licensee, shall not require the Licensor's consent.

11. Quiet Enjoyment. Licensor covenants that it has full right, power and authority to enter into the Agreement and that Licensee, upon paying the annual license fees, and performing all of Licensee's other obligations pursuant to the Agreement, shall peaceably and quietly have, hold and enjoy the Outdoor Dining Area during the term of this Agreement and any renewal terms, without hindrance, ejection or molestation by any person lawfully claiming by, through or under Licensor, or as a member of the general public. Licensor will vigorously defend all challenges to its authority to enter into this Agreement.

12. Governing Law. This Agreement shall be governed in all respects by the laws of the Commonwealth of Virginia.

{Signatures to follow}

IN WITNESS WHEREOF

The parties have affixed their signatures and seals as of the date first above written.

106 Union Dublin, LLC, a Virginia limited liability company

By _____

Date _____

CITY OF ALEXANDRIA a municipal corporation of the Commonwealth of Virginia

By _____

Date _____

1	Introduction and first reading:	06/08/10
2	Public hearing:	06/12/10
3	Second reading and enactment:	06/12/10

INFORMATION ON PROPOSED ORDINANCE

Title

AN ORDINANCE authorizing the City Manager to execute the attached 5-year license agreement to authorize 106 Union Dublin, LLC to utilize a portion of Wales Alley right of way pursuant thereto and to take any other actions necessary to implement the agreement.

Summary

The proposed ordinance implements the concept of using the Wales Alley right of way for outdoor dining that was recommended by the Planning Commission May 4, 2010 and approved by City Council on May 15, 2010 pursuant to Special Use Permit #2010-0010.

Sponsor

Department of Planning and Zoning

Staff

Farroll Hamer, Director of Planning and Zoning
Barbara Ross, Deputy Director of Planning and Zoning
Christopher P. Spera, Deputy City Attorney
Joanna C. Frizzell, Assistant City Attorney

Authority

§§ 2.03(h) and 2.04(e) Alexandria City Charter
§15.2-2100 Virginia State Code

Estimated Costs of Implementation

None

Attachments in Addition to Proposed Ordinance and its Attachments (if any)

Draft License Agreement between City of Alexandria and 106 Union Dublin, LLC.

ORDINANCE NO. _____

AN ORDINANCE authorizing the City Manager to execute the attached 5-year license agreement to authorize 106 Union Dublin, LLC to utilize a portion of Wales Alley right of way pursuant thereto and to take any other actions necessary to implement the agreement.

WHEREAS, the City Council finds and determines that:

1. On May 4, 2010, the Planning Commission recommended approval and on May 15, 2010 the City Council approved Special Use Permit Number 2010-0010 authorizing 106 Union Dublin, LLC to operate a restaurant at 106 South Union Street including outdoor dining;

2. The area to be used as outdoor dining for the restaurant would occupy and otherwise encroach into a portion of the Wales Alley right of way, pursuant to the terms specifically set forth in the attached 5-year license agreement;

3. All requirements of law precedent to the adoption of this ordinance have been complied with; now, therefore,

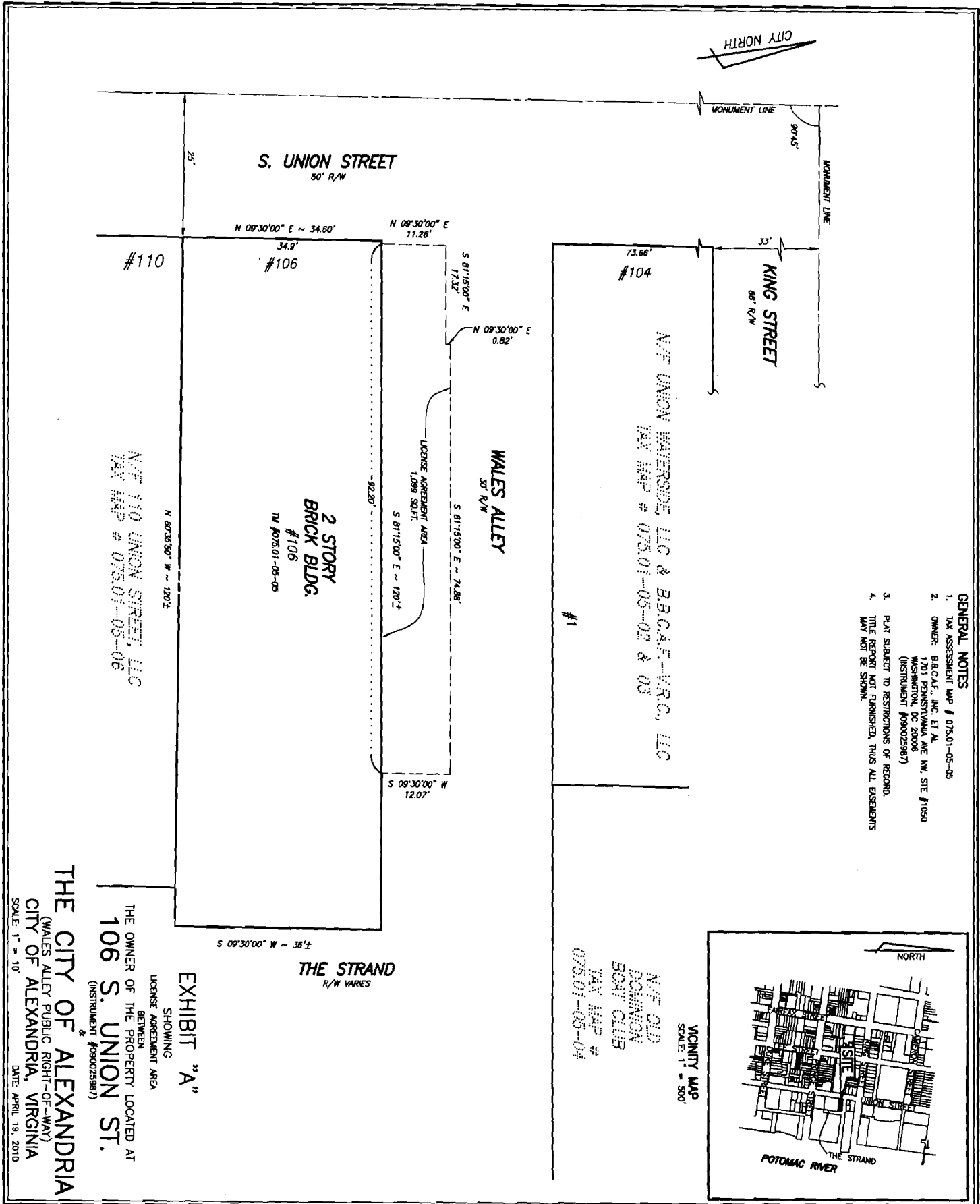
THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That the City Manager execute the attached 5-year license agreement authorizing 106 Union Dublin, LLC to utilize a portion of the Wales Alley right of way pursuant thereto and take any other actions necessary to implement the agreement.

Section 2. That this ordinance shall become effective on the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Introduction: 06/08/10
First Reading: 06/08/10
Publication:
Public Hearing:
Second Reading:
Final Passage:



R.C.F. FIELDS, JR. & ASSOCIATES
A PROFESSIONAL CORPORATION

● LAND SURVEYING ● SITE PLANNING ● SUBDIVISION DESIGN
730 S. Washington St. Alexandria, Virginia 22314 (703) 549-6422

FILE NO. 10-05
SHEET 1 OF 1

COMP.	T.G.
DRAWN	T.G.
CHECKED	R.C.F.