

1
2 **Resolution Relating to**
3

RESOLUTION
Sponsor(s): Councilors Blais,
Tracy: License Com.
Introduced: _____
Referred to: _____
Action: _____
Date: _____
Signed by Mayor: _____

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5
6 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT
7 FOR AN AWNING EXTENDING OVER A PORTION OF THE CITY'S
8 RIGHT-OF-WAY WITH MERCHANTS BANK
9

10
11
12 **CITY OF BURLINGTON**

13 In the year Two Thousand Fourteen.....
14 Resolved by the City Council of the City of Burlington, as follows:

15
16 That WHEREAS, MERCHANTS BANK TRUST COMPANY of Burlington, Vermont
17 (hereinafter MERCHANTS BANK) is an establishment doing business in a commercial building
18 located at 172 College Street in the City of Burlington, Vermont; and

19 WHEREAS, MERCHANTS BANK desires to erect and maintain an awning extending
20 over the sidewalk area in front of the building at 172 College Street; and

21 WHEREAS, MERCHANTS BANK wishes to enter into a License Agreement with the
22 City for such awning; and

23 WHEREAS, the placement of the awning has been reviewed and approved by the
24 Department of Public Works with conditions to address public safety concerns; and

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

28 NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes
29 MERCHANTS BANK to erect and maintain an awning extending over the sidewalk area in front
30 of the building at 172 College Street covering an area of 42 sq. ft. as indicated in and pursuant to
31 its License Agreement upon entering into the License Agreement in substantially the form
32 attached hereto; and

33 BE IT FURTHER RESOLVED that Mayor Weinberger be and hereby is authorized to
34 execute a License Agreement, in substantially the form attached, on behalf of the City of
35 Burlington for a term commencing on the date of execution of the License Agreement and
36 terminating on April 30, 2014.

**LICENSE AGREEMENT FOR AWNING
WITH MERCHANTS BANK TRUST COMPANY
2013-2014 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 MERCHANTS BANK TRUST COMPANY, a commercial establishment located at 172 College Street, Burlington, Vermont (hereinafter MERCHANTS BANK or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 172 College Street; and

WHEREAS, MERCHANTS BANK stated on its application (attached hereto as Exhibit A) that it wishes to install a metal and glass awning over the walk-up ATM entrance on the front of the building overhanging the public right-of-way; and

WHEREAS, MERCHANTS BANK has stated in its permit application that there will be no physical barriers around the awning and it will cover a 42 sq. ft. area; and

WHEREAS, this application was reviewed and approved by the Department of Public Works 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 MERCHANTS BANK enter into the following License Agreement:

1. TERM

The CITY grants to MERCHANTS BANK (hereinafter LICENSEE) a license to install and maintain a metal and glass awning over the walk-up ATM entrance on the front of

the building overhanging the public right-of-way covering an area of 42 sq. ft. at 172 College Street, for a term commencing as of the date of execution of this Agreement and terminating on April 30, 2014 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain an awning on and over the public right-of-way (hereinafter referred to as the premises) to provide a covered area over the walk-up ATM entrance. Licensee must ensure that the sidewalk area is kept clear and at all times there is a 5 ft. right-of-way for pedestrian traffic. The awning is to be placed as approved by the Department of Public Works. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

- a. LICENSEE shall maintain the awning in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the awning and any damage to the awning is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the awning, 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 awning shall be placed in accordance with all conditions set by the Department of Public Works and shall not impede the CITY'S ability to maintain the road, sidewalk, parking meters or greenbelt.
- d. The awning shall not cause an obstruction or inconvenience to members of the public using the sidewalk, parking meters or street.

e. 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 awning. 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 awning 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 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 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 D and the endorsement shall be attached as Exhibit E.

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.**

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 awning.

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.

12. This License Agreement supersedes all other License Agreements executed for this location.

DATED at Burlington, Vermont this _____ day of _____,

2014.

CITY OF BURLINGTON

By: _____
Miro Weinberger, Mayor
Duly Authorized

Witness

MERCHANTS BANK TRUST COMPANY

By: _____
Duly Authorized

Witness



OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice (802)865-7000
 FAX (802)865-7014
 TTY (802)865-7142
 Amy Bovee (802)865-7019
 Ron Gore (802)865-7562

JAN 7 2014

Encumbrance Application / Renewal

DBA NAME: Merchants Bank Trust Company DATE: 12-9-13
 CONTACT NAME: Kris Francis PHONE: 802-865-1995
 MAILING ADDRESS: 257 Kennedy Drive FAX: _____
So. Burlington, VT 05403 EMAIL: kfrancis@mbvt.com

DBA NAME: _____

COMPANY: _____

LOCATION OF ENCUMBRANCE: 172 College St., Burlington, VT, 05401

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):

Description: New metal and glass 14' W x 3'D x 2'H awning over walk-up ATM entrance

Total Square Feet (\$1.00 per SF): 42=\$42

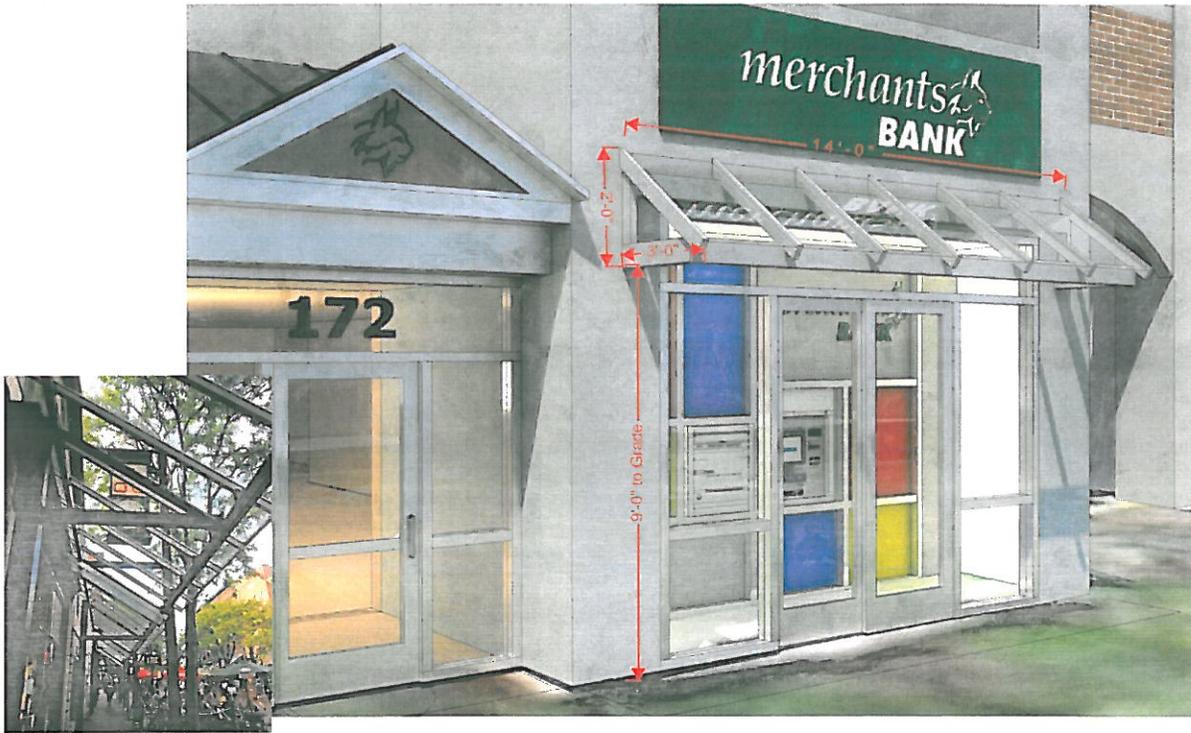
PLEASE ATTACH:

1. 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.
2. Sketch, Photo, or Blueprint of what you are proposing.
3. Check for the square feet fees (\$1 per square foot) + \$25 Application fee: \$67

Signature: *Kris Francis* Date: 12-9-13

For office use only: Amount received \$ 67 on 12/12 Check # 1094
 Sent to DPW: 12/12 Sent to Attorney: 1/6 *Exhibit A*

CITY OF BURLINGTON
PLANNING AND ZONING APPLICATION
NOT FOR CONSTRUCTION



Church Street Awning inspiration

TERRY FINDIENSEN
ARCHITECT

Merchants Bank - College Street Branch
Renovation and Addition
172 College Street
Burlington, Vermont 05401

Proposals
M1440001

PROPOSED
GLASS
AWNING
Date: November 2011
Scale: NTS

SD3.4

Exhibit C

Liability Insurance

Endorsement

Policy Period

Effective Date

Policy Number

Insured

Name of Company

Date Issued

This Endorsement applies to the following forms:

Under Who Is An Insured, the following provision is added.

Who Is An Insured

Additional Insured - Scheduled Person Or Organization

Persons or organizations shown in the Schedule are **insureds**; but they are **insureds** only if you are obligated pursuant to a contract or agreement to provide them with such insurance as is afforded by this policy.

However, the person or organization is an **insured** only:

- if and then only to the extent the person or organization is described in the Schedule;
- to the extent such contract or agreement requires the person or organization to be afforded status as an **insured**;
- for activities that did not occur, in whole or in part, before the execution of the contract or agreement; and
- with respect to damages, loss, cost or expense for injury or damage to which this insurance applies.

No person or organization is an **insured** under this provision:

- that is more specifically identified under any other provision of the Who Is An Insured section (regardless of any limitation applicable thereto).

EXHIBIT E

Who Is An Insured

*Additional Insured -
Scheduled Person
Or Organization
(continued)*

with respect to any assumption of liability (of another person or organization) by them in a contract or agreement. This limitation does not apply to the liability for damages, loss, cost or expense for injury or damage, to which this insurance applies, that the person or organization would have in the absence of such contract or agreement.

Under Conditions, the following provision is added to the condition titled Other Insurance.

Conditions

*Other Insurance –
Primary, Noncontributory
Insurance – Scheduled
Person Or Organization*

If you are obligated, pursuant to a contract or agreement, to provide the person or organization shown in the Schedule with primary insurance such as is afforded by this policy, then in such case this insurance is primary and we will not seek contribution from insurance available to such person or organization.

Schedule

City of Burlington
149 Church St
Burlington, VT 05401

All other terms and conditions remain unchanged.

Authorized Representative

@ @ @ @

Property Insurance

Endorsement

Policy Period JULY 9, 2013 TO JULY 9, 2014
Effective Date JULY 9, 2013
Policy Number 3527-63-83 EUC
Insured MERCHANTS BANCSHARES INC

Name of Company GREAT NORTHERN INSURANCE COMPANY
Date Issued JULY 24, 2013

This Endorsement applies to the following forms:

COMMON POLICY CONDITIONS

The following changes are made as respects exposures in the state of Vermont.

Under Common Policy Conditions, the conditions titled Cancellation and When We Do Not Renew are deleted and replaced by the following:

Conditions

Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance notice of cancellation.
2. Cancellation of Policies in Effect for **Less than 60 Days**.
If this policy has been in effect for less than 60 days and this policy is not a renewal of a policy we issued, we may cancel this policy by:
 - a. Giving the first Named Insured at least 15 days' notice prior to the cancellation date for nonpayment of premium or substantial increase in hazard; or
 - b. Mailing or delivering the first Named Insured at least 45 days' notice prior to the cancellation date for any other reason.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.
3. Cancellation of Policies in Effect for **60 Days or More**
If this policy has been in effect for 60 days or more, or if this is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

Reference Copy

Conditions

Cancellation (continued)

- a. Nonpayment of premium;
- b. Fraud or material misrepresentation affecting this policy or in the presentation of claims under this policy;
- c. Violation of any provisions of this policy; or
- d. Substantial increase in hazard, provided we have secured approval for the cancellation from the commissioner of insurance.

If we cancel this policy for one of the reasons specified in paragraph 3., we will cancel only in the following manner:

- a. By giving at least 15 days' notice before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. By mailing or delivering at least 45 days' notice before the effective date of cancellation if we cancel for any other reason.

Written notice of cancellation, including the reason for cancellation, will be mailed or delivered to the first Named Insured at the first Named Insured's last mailing address known to us.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is canceled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

When We Do Not Renew

1. We may elect not to renew this policy by mailing, by certified mail, or delivering written notice of nonrenewal to the first Named Insured's last mailing address known to us. We will mail or deliver this notice at least 45 days before the:
 - a. Expiration of the policy; or
 - b. Anniversary date of this policy if this policy has been written for a term of more than one year.
2. This provision does not apply:
 - a. If we have indicated a willingness to renew;
 - b. In case of nonpayment of premium;
 - c. If you do not pay an advance premium required by us for renewal; or
 - d. If any property covered in this policy is insured under any other insurance policy.

Reference Copy

Policy Conditions

Endorsement

Policy Period

Effective Date

Policy Number

Insured

Name of Company

Date Issued

This Endorsement applies to the following forms:

Under Conditions, the following condition is added.

Conditions

Notice Of Cancellation To Scheduled Persons Or Organizations When We Cancel

When we cancel this policy for any reason, other than non-payment of premium, we will notify person(s) or organization(s) shown in the Schedule at least 30 days in advance of the cancellation date. Note: VT Statutory-45 Days

Any failure by us to notify such person(s) or organization(s) will not:

- impose any liability or obligation of any kind upon us; or
- invalidate such cancellation.

Schedule

City of Burlington
149 Church St
Burlington, VT 05401