

# Resolution Relating to

## RESOLUTION \_\_\_\_\_

Sponsor(s): Councilors Dober,

Blais, Berezniak: License Com.  
Introduced: 06/20/11

Referred to: \_\_\_\_\_

Action: \_\_\_\_\_

Date: \_\_\_\_\_

Signed by Mayor: \_\_\_\_\_

AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT  
TO MAINTAIN TABLES AND CHAIRS ON A  
PORTION OF THE CITY'S RIGHT-OF-WAY WITH  
SAINT NICHOLAS, LLC d/b/a SKY BURGERS

### CITY OF BURLINGTON

In the year Two Thousand Eleven.....

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, SAINT NICHOLAS, LLC d/b/a SKY BURGERS of Burlington, Vermont (hereinafter SKY BURGERS) is an establishment doing business in a commercial building located 161 Church Street in the City of Burlington, Vermont; and

WHEREAS, SKY BURGERS desires to place 13 tables and 42 chairs in the public right-of-way in front of its establishment at 161 Church Street; and

WHEREAS, SKY BURGERS 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, this License Agreement will replace SKY BURGERS' current 2011-2012 License Agreement; 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 SKY BURGERS to place 13 tables and 42 chairs on a portion of the public right-of-way adjacent to its

**Resolution Relating to**

AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT TO MAINTAIN TABLES AND CHAIRS ON A PORTION OF THE CITY'S RIGHT-OF-WAY WITH SAINT NICHOLAS, LLC  
d/b/a SKY BURGERS

establishment at 161 Church Street as indicated in and pursuant to its License Agreement upon entering into the License Agreement in 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**

**SKY BURGERS**  
**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 SAINT NICHOLAS, LLC d/b/a SKY BURGERS, a commercial establishment located at 161 Church Street, Burlington, Vermont (hereinafter SKY BURGERS or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 161 Church Street; and

WHEREAS, SKY BURGERS stated on its application, attached hereto as Exhibit A, that it wishes to place 13 tables and 42 chairs on the sidewalk area in front of the building at 161 Church Street; and

WHEREAS, SKY BURGERS has stated in its permit application that there are no physical barriers around the tables and chairs and they will cover a 378 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;

WITNESSETH:

The CITY and SKY BURGERS enter into the following License Agreement:

1. TERM

The CITY grants to SKY BURGERS (hereinafter LICENSEE) a license to place 13 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, 2011 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain tables and chairs on the public right-of-way not to exceed 378 square feet (hereinafter referred to as the premises) as an outdoor dining area. Licensee must ensure that the sidewalk area is kept clear and at all times there is a 7 ft. right-of-way for pedestrian traffic. The tables and chairs must be placed next to the building. 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 378 square feet, with a proper barrier 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 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

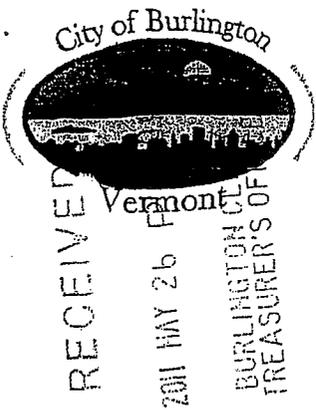
By: \_\_\_\_\_  
Bob Kiss, Mayor  
Duly Authorized

\_\_\_\_\_  
Witness

SAINT NICHOLAS, LLC d/b/a  
SKY BURGERS

By: \_\_\_\_\_  
Duly Authorized

\_\_\_\_\_  
Witness



# OFFICE OF THE CLERK/TREASURER

City of Burlington

City Hall, Room 20, 149 Church Street, Burlington, VT 05401

Voice (802) 865-7000

Fax (802) 865-7014

TTY (802) 865-7142

AMENDMENT

email: smeehan@ci.burlington.vt.us

Renewal

~~NEW~~ ENCUMBRANCE APPLICATION  
EFFECTIVE FROM MAY 1<sup>ST</sup> TO APRIL 30<sup>TH</sup> OF EACH YEAR



DATE: 5-26-11 CONTACT PERSON: SKY KENNEY

DBA NAME: SKY BURGERS SIGNATURE: [Signature] PHONE: 802-578-2026 CELL 951-9924 OFFICE

COMPANY: St. Nicholas Group FAX: 802-881-0645

MAIL TO: 40 COLLEGE ST # 313 E-MAIL: SKYPUP22@MSN.COM

### ENCUMBRANCE

Permission is requested to allow the encumbrance in the following area and manner (please describe fully physical barriers around area i.e. trees, grates, parking meters, etc.). You must also provide a sketch, photo or blueprint of what you are proposing. Attach an additional sheet if needed for description.

Description: 27 X 14 42  
~~20 FT X 31 FT~~ 17 Tables + 48 chairs

Total square feet used outdoors: (\$1.00 per square foot) ~~620 Sq Ft~~  
378 Sq. Ft

### PLEASE ATTACH:

1. Certificate of Liability Insurance with certificate 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. Check for the square feet fees: \$ ~~620.00~~ 378.00
3. Check for application fee: \$25.00

For clerk office use only: Amount received \$ ~~487.00~~ 487.00 on 6/7/11

Check # 1333

Sent to Attorney:

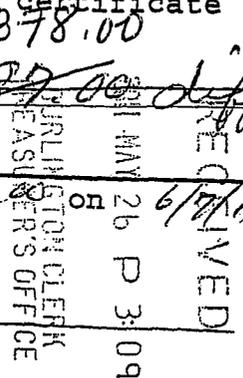


EXHIBIT A



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: SKY BURGER  
 COMPANY: SAINT MICHAEL'S, LLS  
 LOCATION: 161 CHURCH ST  
 MAILING ADDRESS: BURLINGTON, VT

DATE: 06-15-11  
 PHONE: 802-881-0675  
 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: 378 SQ. FT TOTAL PER DRAWING ATTACHED  
10 TABLES & CURB AREA

4. TABLES & BUILDING UNDER CANOPY  
7' ROW FOR PEDESTRIAN WALKWAY  
 DEPARTMENT OF PUBLIC WORKS

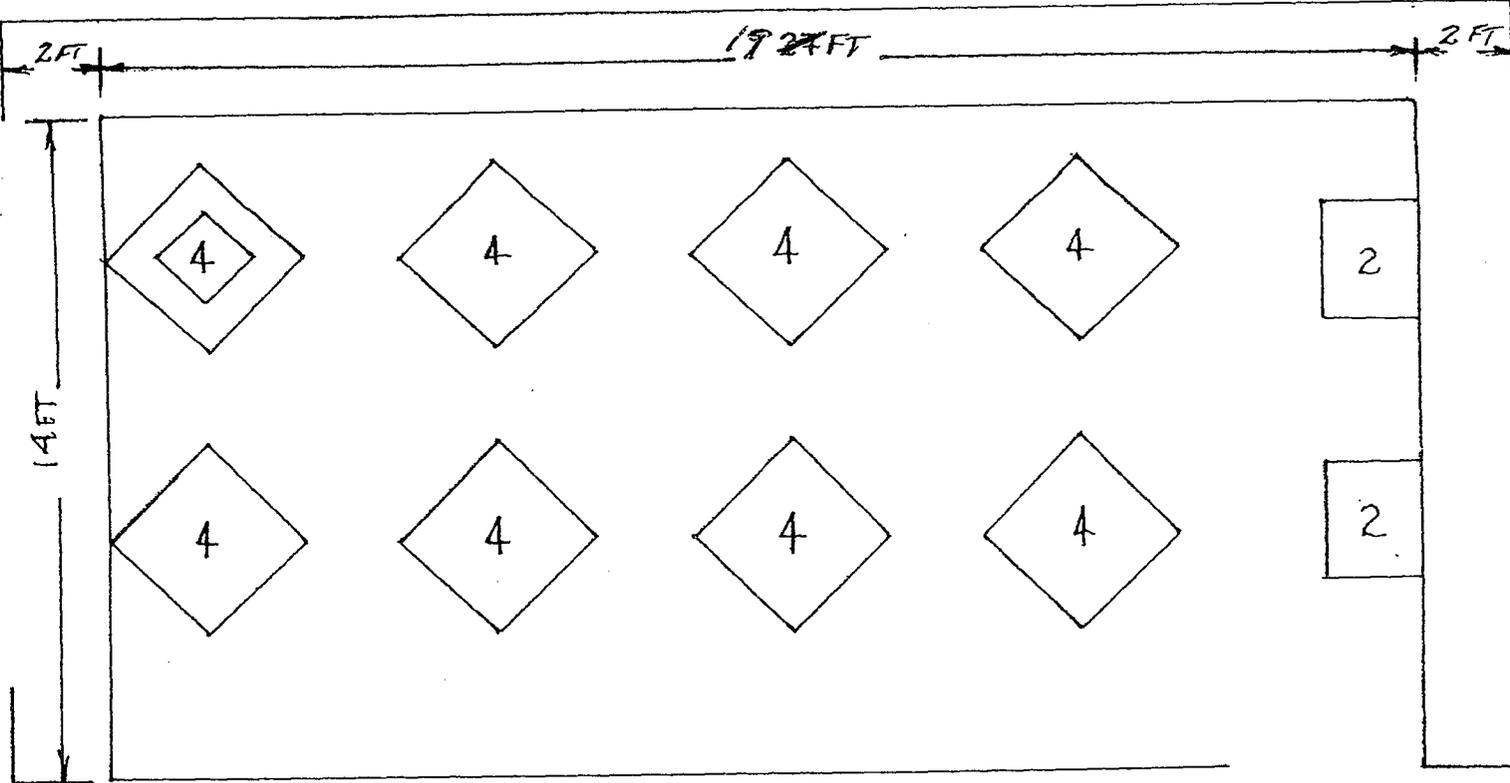
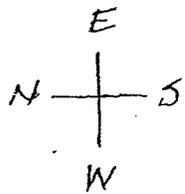
Approved? Yes   
 No

Explain: \_\_\_\_\_

Signature Ron Gore

Date: 06-15-11

Exhibit B

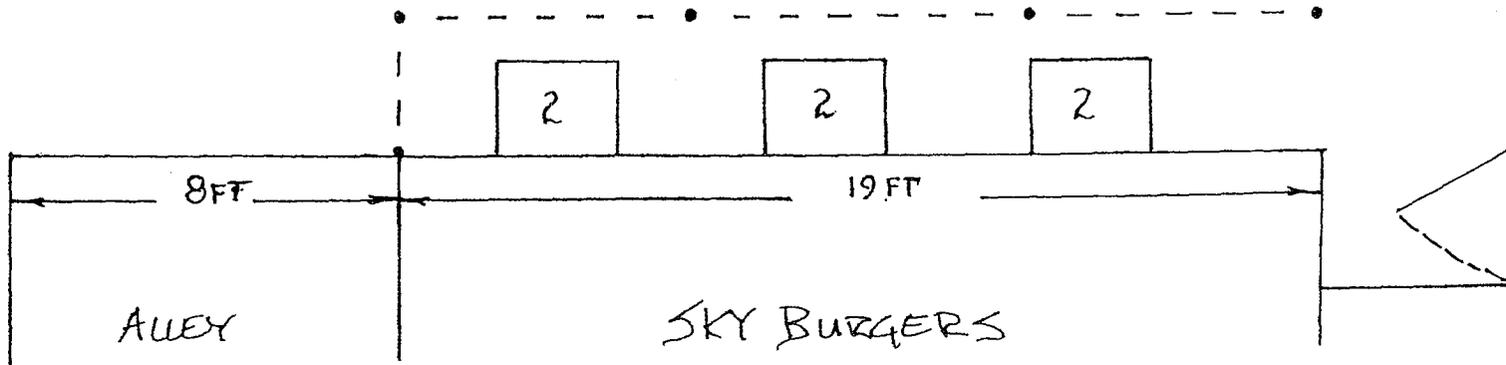


$14 \times 27 = 378 \text{ sq ft}$   
 $3 \times 19 = 57 \text{ sq ft}$   
TOTAL 435 sq ft

8 EA 4 TOPS = 32  
5 EA 2 TOPS = 10  
13 TOTAL TBL:

SEATING FOR  
~~50~~ PEOPLE  
42

EXHIBIT C





# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

1/18/2011

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Essex Agency, Inc. 2 Railroad Street P.O. Box 239 Essex Junction VT 05452-0239	CONTACT NAME: Emily Mackey PHONE (A/C No. Ext): (802) 878-5334 E-MAIL: emily@essexagency.com ADDRESS: PRODUCER ID #: 00018222 CUSTOMER ID #:	FAX (A/C No.): (802) 878-0852
INSURED  Saint Nicholas Group LLC DBA: Sky Burgers 40 College Street, #313 Burlington VT 05401	INSURER(S) AFFORDING COVERAGE NAIC # INSURER A: Peerless Insurance Co 24198 INSURER B: Technology Insurance Company INSURER C: INSURER D: INSURER E: INSURER F:	

COVERAGES CERTIFICATE NUMBER: 10-11 REVISION NUMBER:

THIS IS TO CERTIFY THAT 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. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		CBP1922879	11/4/2010	11/4/2011	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR	<input checked="" type="checkbox"/>				MED EXP (Any one person) \$ 5,000
						PERSONAL & ADV INJURY \$ 1,000,000
						GENERAL AGGREGATE \$ 2,000,000
	GEN'L AGGREGATE LIMIT APPLIES PER <input checked="" type="checkbox"/> POLICY PROJECT					PRODUCTS - COMP/OP AGG \$ 2,000,000
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS					\$
<input type="checkbox"/> NON-OWNED AUTOS		\$				
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	DEDUCTIBLE					\$
	RETENTION \$					\$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY		TWC3232876	2/12/2010	2/12/2011	<input checked="" type="checkbox"/> WC STATUTORY LIMITS OTH-ER \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A				E.L. EACH ACCIDENT \$ 100,000
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$ 100,000
	Liquor Liability		CBP1922879	11/4/2010	11/4/2011	Per Occurrence: \$1,000,000 Aggregate: \$2,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 104, Additional Remarks Schedule, if more space is required)

Re: Outside Seating, 3 Tables, 6 Chairs next to the building. *48 chairs and 13 tables*  
Certificate holder is named as Additional Insured in regards to General Liability

## CERTIFICATE HOLDER

City of Burlington  
City Hall - Encumbrance Application  
149 Church Street  
Burlington, VT 05401

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Emily Mackey/EMMACK *EMMACK*ACORD 25 (2009/09)  
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