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Resolution Relating to

RESOLUTION
Sponsor(s): Councilors Dober,
Blais, Berezniak, : License Com.
Introduced: 06/27/11
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
DAS BIERHAUS

CITY OF BURLINGTON

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

That WHEREAS, NICK'S HAUS, INC. d/b/a DAS BIERHAUS of Burlington, Vermont
(hereinafter DAS BIERHAUS) is an establishment doing business in a commercial building
located at 175 Church Street in the City of Burlington, Vermont; and

WHEREAS, DAS BIERHAUS desires to place 8 picnic tables with seating for 6 persons
per table, properly roped off on all sides, in the public right-of-way in front of its establishment
at 175 Church St.; and

WHEREAS, DAS BIERHAUS wishes to enter into a License Agreement with the City
for such picnic tables; and

WHEREAS, the placement of the respective picnic tables has been reviewed and
approved by the Department of Public Works with conditions to address public safety concerns;
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 DAS
BIERHAUS to 8 picnic tables with seating for 6 persons per table on a portion of the public
right-of-way adjacent to its establishment on Church Street as indicated in and pursuant to its

34 **Resolution Relating to**

AUTHORIZATION TO ENTER INTO LICENSE
35 AGREEMENT TO MAINTAIN TABLES AND CHAIRS
36 ON A PORTION OF THE CITY'S RIGHT-OF-WAY
37 WITH DAS BIERHAUS

38
39 License Agreement for a period in excess of thirty (30) days upon entering into the License
40 Agreement in substantially the form attached hereto; and

41 BE IT FURTHER RESOLVED that Mayor Bob Kiss be and hereby is authorized to
42 execute a License Agreement, in substantially the form attached, on behalf of the City of
43 Burlington for a term commencing on the date of execution of the License Agreement and
44 terminating on April 30, 2012.

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47
48 lb/naf/c: Resolutions 2011/License Agree for Encumbrance – DAS BIERHAUS, 175 Church St. (Tables & Chairs) 2011
49 6/22/11

LICENSE AGREEMENT FOR TABLES AND CHAIRS
DAS BIERHAUS
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 NICK'S HAUS, INC, d/b/a DAS BIERHAUS, a commercial establishment located at 175 Church Street, Burlington, Vermont (hereinafter DAS BIERHAUS or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 175 Church Street; and

WHEREAS, DAS BIERHAUS stated on its application, attached hereto as Exhibit A, that it wishes to place 8 picnic tables with seating for 6 persons per table on the sidewalk area in front of the building at 175 Church Street; and

WHEREAS, DAS BIERHAUS as required Department of Liquor Control General Regulation No.42 agrees that a physical barrier shall be placed around the picnic tables and chairs and they will cover a 392 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 DAS BIERHAUS enter into the following License Agreement:

1. TERM

The CITY grants to DAS BIERHAUS (hereinafter LICENSEE) a license to place 8 picnic tables with seating for 6 persons per table on the public right-of-way for a term

commencing as of the date of execution of this Agreement and terminating on April 30, 2012 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain the picnic tables on the public right-of-way not to exceed 392 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. A copy of the approved plan is attached hereto as Exhibit C.

3. MAINTENANCE

a. LICENSEE shall maintain the picnic tables in proper condition.

b. LICENSEE shall be responsible for the maintenance and upkeep of the picnic tables and any damage to the picnic tables is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the picnic tables, 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 picnic tables shall be placed in an area totaling 392 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 picnic tables 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 picnic tables 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.

f. **LICENSEE will clear the picnic tables from the sidewalk by 9:00 p.m.**

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 picnic tables. 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 picnic tables 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 picnic tables.

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

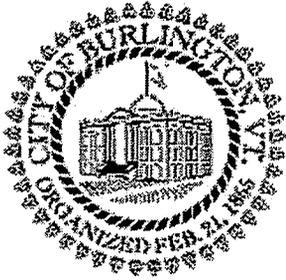
Witness

NICK'S HAUS, INC. d/b/a
DAS BIERHAUS

By: _____
Duly Authorized

Witness

lb/c: NAF 2011/License Agree for Encumbrance – DAS BIERHAUS, 175 Church St. (Tables & Chairs) 2011
6/28/11



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 Application / Renewal

Effective 05/01/2011 - 04/30/2012

Nick Karabelas
 Das Bierhaus

DATE: Wednesday, June 22, 2011
 PHONE: 207641-3497

FAX:

EMAIL:

DBA NAME: Das Bierhaus

COMPANY: Nick's Haus, Inc.

LOCATION: 175 Church Street

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):

Placement of Encumbrance: Outdoor seating in front of 175 Church Street.

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 392

PLEASE ATTACH:

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.

Encumbrance Fee \$392.00

Application Fee \$25.00

Total \$417.00

Signature Nick Karabelas Date _____

For office use only: Amount received \$ _____ on _____ Check # _____

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 05/01/2011 - 04/30/2012

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: Das Bierhaus

DATE: Tuesday, June 7, 2011

COMPANY: Nick's Haus, Inc.

PHONE: 207641-3497

LOCATION: 175 Church Street

FAX:

MAILING ADDRESS: Nick Karabelas

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: 7' OFF BLOG FOR PEDESTRIAN WALKWAY

4. A 608 square foot placement of Outdoor seating in front of 175 Church Street. at 175 Church Street

DEPARTMENT OF PUBLIC WORKS

Approved? Yes

No

Explain: NEW SEATING AREA 19' x 28' = 392 SF

Signature Ron Gore

Date: 06-22-11

Exhibit B

Das Bierhaus *revised* Outdoor Front Seating — 06.08.2011

Recommended for approval @ 6/21/11 meeting

9pm end time everyday

- A: Standard Picnic Table — 5'x 6'
- B: Public Traffic
- C: Front Door
- D: Alley Entrance

— One Foot

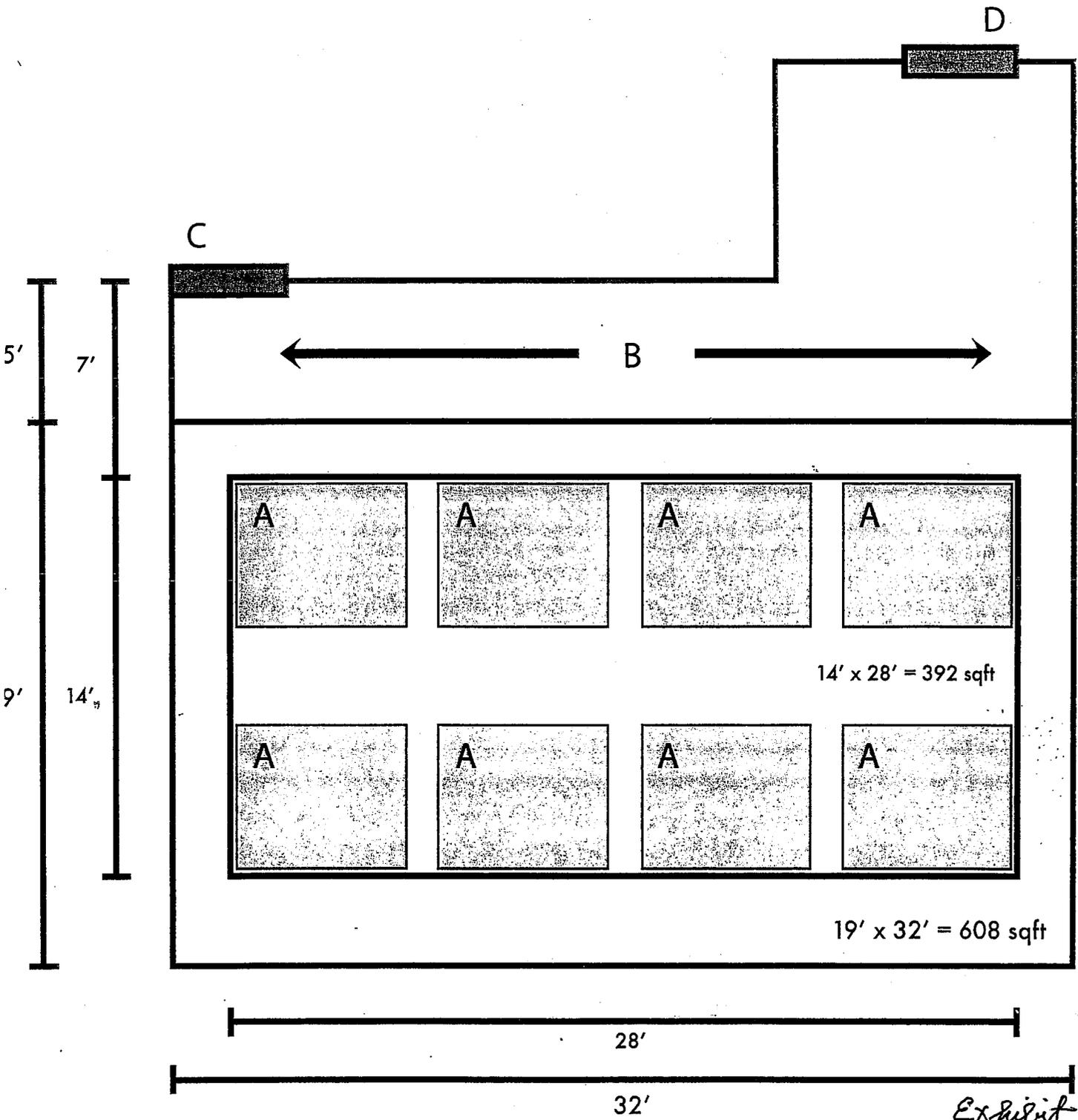


Exhibit C



CERTIFICATE OF LIABILITY INSURANCE

HJB

DATE (MM/DD/YYYY)
6/1/2011

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 Hickok & Boardman, Inc. 346 Shelburne Road PO Box 1064 Burlington, VT 05402-1064	(802) 658-3500	CONTACT NAME: Heidi J Blondin	PHONE (A/C, No, Ext): (802) 383-1646 1646	FAX (A/C, No): (802) 658-0541
		E-MAIL ADDRESS: hblondin@hbinsurance.com		
		PRODUCER CUSTOMER ID #: DASBIER-01		
		INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED Nick's Haus dba Das Bierhaus PO Box 327 Burlington, VT 05402		INSURER A : Acceptance Indemnity Ins Co		
		INSURER B :		
		INSURER C :		
		INSURER D :		
		INSURER E :		
		INSURER F :		

COVERAGES **CERTIFICATE NUMBER:** **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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY	X		CL00148157	11/9/2010	11/9/2011	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY						DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 300,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000
							PERSONAL & ADV INJURY \$ 1,000,000
							GENERAL AGGREGATE \$ 2,000,000
	GENL AGGREGATE LIMIT APPLIES PER.						PRODUCTS - COM/POP AGG \$ 2,000,000
	<input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						\$
	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						EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB						AGGREGATE \$
	<input type="checkbox"/> OCCUR						\$
	<input type="checkbox"/> CLAIMS-MADE						\$
	DEDUCTIBLE						\$
	RETENTION \$						\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						WC STATUTORY LIMITS
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)						OTHER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L EACH ACCIDENT \$
							E.L DISEASE - EA EMPLOYEE \$
							E.L DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

Certificate Holder shown below is named additional insured on the General Liability per form CG2010 for outside front seating on newly constructed sidewalk located at 175 Church Street, Burlington, Vt to include, but not limited to, Benches, Picnic Tables and Chairs, Planters and Dividers. Dimensions to be 32 X24 ft., less a 5ft Pedestrian Egress.

CERTIFICATE HOLDER	CANCELLATION
City of Burlington City Clerk's Office / Encumbrance Application Division 149 Church Street Burlington, VT 05401-	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 <i>Heidi J. Boardman</i>

