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# Resolution Relating to

**RESOLUTION**  
Sponsor(s): Councilors Dober,  
Blais, Berezniak License Com.

AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT  
TO MAINTAIN TABLES AND CHAIRS ON A  
PORTION OF THE CITY'S RIGHT-OF-WAY WITH  
BERN GALLERY

Introduced: 08/08/11  
Referred to: \_\_\_\_\_  
Action: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signed by Mayor: \_\_\_\_\_

## CITY OF BURLINGTON

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

That WHEREAS, BERN NATION, INC. d/b/a BERN GALLERY of Burlington, Vermont  
(hereinafter BERN GALLERY) is an establishment doing business in a commercial building  
located at 135 Main St. in the City of Burlington, Vermont; and

WHEREAS, BERN GALLERY desires to place 3 table and 12 chairs in the public right-  
of-way in front of its establishment at 135 Main St.; and

WHEREAS, BERN GALLERY 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, 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  
BERN GALLERY to place 3 tables and 12 chairs on a portion of the public right-of-way  
adjacent to its establishment at 135 Main Street as indicated in and pursuant to its License

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**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 BERN GALLERY

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.

lb/naf/c: Resolutions 2011/License Agree for Encumbrance – BERN GALLERY, 135 Main St. (Tables & Chairs) 2011  
8/2/11

**LICENSE AGREEMENT FOR TABLES AND CHAIRS**  
**WITH BERN GALLERY**  
**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 BERN NATION, INC. d/b/a BERN GALLERY, a commercial establishment located at 135 Main Street, Burlington, Vermont (hereinafter BERN GALLERY or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 135 Main Street; and

WHEREAS, BERN GALLERY stated on its application (attached hereto as Exhibit A) that it wishes to place 3 tables and 12 chairs on the sidewalk area in front of the building at 135 Main Street; and

WHEREAS, BERN GALLERY has stated in its permit application that there will be a 10' x 15' roped off area for the tables and chairs covering a total area of 150 square feet; 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 BERN GALLERY enter into the following License Agreement:

1. TERM

The CITY grants to BERN GALLERY (hereinafter LICENSEE) a license to place 3

tables and 12 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, 2012 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain tables and chairs on the public right-of-way (hereinafter referred to as the premises) as an outdoor Hookah area. Licensee must ensure that at all times there is a 5 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 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 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.
- 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

\_\_\_\_\_  
Witness

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

BERN NATION, INC  
d/b/a BERN GALLERY

\_\_\_\_\_  
Witness

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

lb/c: NAF 2011/License Agree for Encumbrance – BERN GALLERY, 135 Main St. (Tables & Chairs) 2011  
7/26/11



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

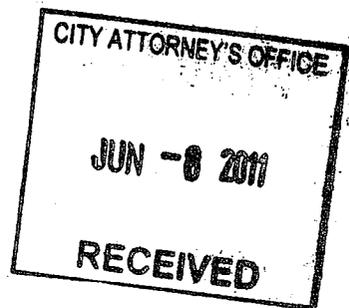
7/26  
 AK  
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**Encumbrance Application / Renewal**

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

ADAM GROSS  
 BERN NATION INC  
 PO BOX 967  
 BURLINGTON VT 05401

DATE: Thursday, January 13, 2011  
 PHONE: 802-453-2414  
 FAX: 802-453-2414  
 EMAIL:



DBA NAME: BERN NATION INC

COMPANY: BERN GALLERY

LOCATION: 135 MAIN ST

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:

Conditions: Keeping public ways clear 10 X 15 ft. roped off area with 3 tables and 12 chairs each.

Location is outside 135 Main Street

Total Square Feet (\$1.00 per SF): 150

**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	\$150.00
Application Fee	\$25.00
<b>Total</b>	<b>\$175.00</b>

Signature

*[Handwritten Signature]*  
 ADAM GROSS

Date

4/20/2011

For office use only. Amount received \$ 175.00 on 4/20/11 Check # 4317

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: BERN NATION INC

DATE: Thursday, January 13, 2011

COMPANY: BERN GALLERY

PHONE: 802-453-2414

LOCATION: 135 MAIN ST

FAX: 802-453-2414

MAILING ADDRESS: ADAM GROSS  
 PO BOX 967  
 BURLINGTON VT 05401

**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: MAINTAIN PEDESTRIAN WALKWAY 5' MIN.

4. A 150 square foot placement of at 135 MAIN ST

**DEPARTMENT OF PUBLIC WORKS**

Approved? Yes

No

Explain: RENEWAL - SAME AS PREVIOUS YEAR

Signature Ron Gore

Date: 05-24-11

*Exhibit B*

Side wall

15ft

10ft

Door

THE BERN GALLERY

Exhibit C



<b>ACORD™ CERTIFICATE OF LIABILITY INSURANCE</b>		DATE (MM/DD/YY) <b>07-29-11</b>
PRODUCER Williston Insurance Agency PO Box 107 Williston, VT 05495 (802)879-0119	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
<b>INSURERS AFFORDING COVERAGE</b>		
INURED Bern Nation, Inc. DBA The Bern Gallery & Bern Systems PO Box 967 Burlington, VT 05402	INSURER A: <b>Union Mutual Fire Insurance Company</b> INSURER B: INSURER C: INSURER D: INSURER E:	

**COVERAGES**  
 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. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR	BO 0504547	09-01-10	09-01-11	EACH OCCURRENCE \$ <b>1,000,000</b>
	GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC				FIRE DAMAGE (Any one fire) \$ <b>50,000</b> MED EXP (Any one person) \$ <b>5,000</b> PERSONAL & ADV INJURY \$ <b>1,000,000</b> GENERAL AGGREGATE \$ <b>2,000,000</b> PRODUCTS - COMP/OP AGG \$ <b>1,000,000</b>
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
	EXCESS LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY				WC STATUTORY LIMITS <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
	OTHER				

DESCRIPTION OF OPERATIONS/LOCATIONS/VEHICLES/EXCLUSIONS ADDED BY ENDORSEMENT/SPECIAL PROVISIONS  
 10x15 roped off area with 3 tables and 12 chairs  
 Retail sale of art/glass blowing located at 135 Main Street in Burlington, VT 05401  
 Additional Insured clause applies to insured premises only  
 faxed to: 865-7014

<b>CERTIFICATE HOLDER</b> City of Burlington Encumbrance Application Dept. 149 Church Street Burlington, VT 05401	<b>ADDITIONAL INSURED; INSURER LETTER: A CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE Janet Fournier - Agent <i>Janet Fournier</i>
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