

1  
2 **Resolution Relating to**

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

3  
4  
5 Introduced: 08/08/11

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

7 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT  
8 TO MAINTAIN OUTDOOR FURNITURE ON A  
9 PORTION OF THE CITY'S RIGHT-OF-WAY WITH  
10 SAM'S UNFINISHED FURNITURE

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

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

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

11  
12 **CITY OF BURLINGTON**

13  
14 In the year Two Thousand Eleven.....

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

16  
17 That WHEREAS, BRENDA HUTCHINS, INC. d/b/a SAM'S UNFINISHED FURNITURE of  
18 Burlington, Vermont (hereinafter SAM'S) is an establishment doing business in a commercial  
19 building located at 372 No. Winooski Ave. in the City of Burlington, Vermont; and.

20 WHEREAS, SAM'S desires to place outdoor furniture (such as rockers and benches) in  
21 the public right-of-way near the front of its establishment at 372 No. Winooski Ave.; and

22 WHEREAS, SAM'S wishes to enter into a License Agreement with the City for the  
23 display of such outdoor furniture; and

24 WHEREAS, the placement of the outdoor furniture display has been reviewed and  
25 approved by the Department of Public Works with conditions to address public safety concerns;  
26 and

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

30 NOW, THEREFORE, BE IT RESOLVED that this City Council hereby authorizes  
31 SAM'S to place an outdoor furniture display (such as rockers and benches) on a portion of the  
32 public right-of-way adjacent to its establishment at 372 No. Winooski Ave. as indicated in and  
33 pursuant to its License Agreement upon entering into the License Agreement in substantially

36 **Resolution Relating to**  
37

AUTHORIZATION TO ENTER INTO LICENSE  
TO MAINTAIN OUTDOOR FURNITURE ON A  
PORTION OF THE CITY'S RIGHT-OF-WAY WITH  
SAM'S UNFINISHED FURNITURE

38  
39  
40  
41 the form attached hereto; and

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

46

47 lb/naf/c: Resolutions 2011/License Agree for Encumbrance – Sam's Unfinished Furniture, 372 No. Winooski Ave (Display)2011  
48 8/2/11  
49

**LICENSE AGREEMENT FOR OUTDOOR FURNITURE**  
**WITH SAM'S UNFINISHED FURNITURE**  
**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 BRENDA HUTCHINS, INC. d/b/a SAM'S UNFINISHED FURNITURE, a commercial establishment located at 372 No. Winooski Ave., Burlington, Vermont (hereinafter SAM'S or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way in front of the property occupied by SAM'S at 372 No. Winooski Ave.; and

WHEREAS, SAM'S stated on its application (attached hereto as Exhibit A) that it wishes to place outdoor furniture (such as rockers and benches) on the sidewalk area in front of the windows near the front of the building located at 372 No. Winooski Ave.; and

WHEREAS, SAM'S has stated in its permit application that there are no physical barriers around the outdoor furniture and they will cover a 100 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 SAM'S enter into the following License Agreement:

1. TERM

The CITY grants to SAM'S (hereinafter LICENSEE) a license to place outdoor

furniture (such as rockers and benches) 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 outdoor furniture on the public right-of-way (hereinafter referred to as the premises) for advertising purposes. Licensee must ensure that at all times there is a 5 ft. right-of-way for pedestrian traffic and the furniture is kept next to the building. The outdoor furniture must be exactly as described and 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 outdoor furniture in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the outdoor furniture and any damage to the outdoor furniture is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the outdoor furniture, 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 outdoor furniture 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 outdoor furniture 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 on or before May 1 of each year 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 outdoor furniture. 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 outdoor furniture 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. 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 and endorsement are on file with the CITY at all times. **Failure to furnish a current certificate of insurance and endorsement 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 outdoor furniture.

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

BRENDA HUTCHINS, INC.  
d/b/a SAM'S UNFINISHED FURNITURE

\_\_\_\_\_  
Witness

By: \_\_\_\_\_  
Brenda Hutchins,  
Duly Authorized

lb/c: NAF 2011/License Agree for Encumbrance – Sam's Unfinished Furniture, 372 No. Winooski Ave (Furniture Display)  
2011  
7/26/11

*Handwritten initials*



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

BRENDA HUTCHINS  
SAM'S UNFINISHED FURNITURE  
BURLINGTON, VT 0541

DATE: Thursday, January 13, 2011  
PHONE: 802-862-6013 802-598-9231

FAX: 802-862-1137

EMAIL:

DBA NAME: SAM'S UNFINISHED FURNITURE  
COMPANY: BRENDA HUTCHINS, INC.  
LOCATION: 372 NORTH WINOOSKI AVENUE



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: some outdoor furniture in front of windows near front of 372 No. Winooski Ave.

Conditions: Keeping public ways clear

Total Square Feet (\$1.00 per SF): 100

**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 \$100.00

Application Fee \$25.00

Total **\$125.00**

Signature Brenda Hutchins Date 4-5-11  
BRENDA HUTCHINS

For office use only: Amount received \$ 125.00 on 4/2/11 Check # 12209  
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: SAM'S UNFINISHED FURNITURE

DATE: Thursday, January 13, 2011

COMPANY: BRENDA HUTCHINS, INC.

PHONE: 802-862-6013 802-598-9231

LOCATION: 372 NORTH WINOOSKI AVENUE

FAX: 802-862-1137

MAILING ADDRESS: BRENDA HUTCHINS  
 BURLINGTON, VT 0541

**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: FURNITURE (ROLLING CHAIRS) ON SIDE OF  
BLOG. - SIDEWALK AREA IS OPEN

4. A 100 square foot placement of some outdoor furniture in front of windows near front of 372 No. Winooski Ave. at 372 NORTH WINOOSKI AVENUE

**DEPARTMENT OF PUBLIC WORKS**

Approved? Yes

No

Explain: RENEWAL - SAME AS PREVIOUS YEAR

Signature Ron Gore

Date: 04-20-11

*Exhibit B*

Riverside Ave

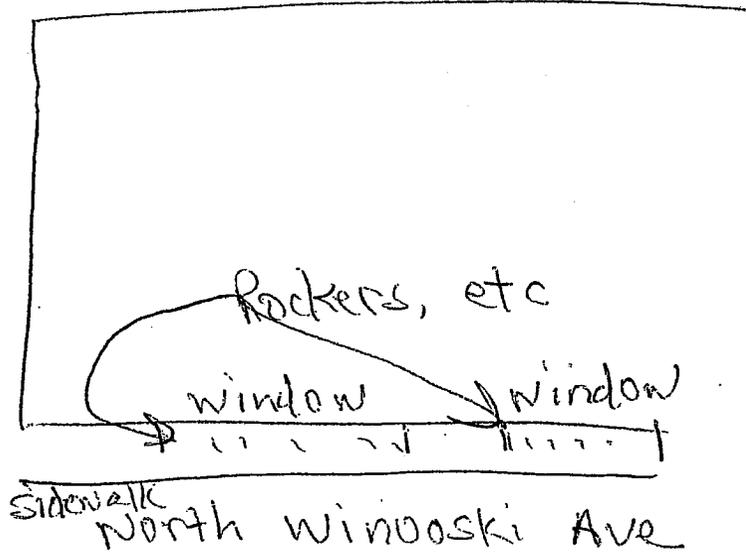


Exhibit C

Attn: Susan Meehan.



**CERTIFICATE OF LIABILITY INSURANCE**

DATE (MM/DD/YYYY)  
09/07/2010

PRODUCER THOMAS G HEINS 140 S MAIN ST SUITE 2 ST. ALBANS, VT 05478	THIS CERTIFICATION 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.
INSURED BRENDA HUTCHINS INC DBA SAM'S UNFINISHED FURNITURE 372 N WINDOOSKI AVE BURLINGTON, VT 05401 - 2615	INSURERS AFFORDING COVERAGE INSURER A: NATIONWIDE PROPERTY AND CASUALTY INSURANCE COMPANY INSURER B: INSURER C: INSURER D: INSURER E:
	NAIC # 37877

**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.

INSURED / ENDORSEMENT	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
A X	GENERAL LIABILITY	AOP BPRK 6414079613	09/21/2010	09/21/2011	EACH OCCURRENCE \$ 1,000,000
	COMMERCIAL GENERAL LIABILITY CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GENL AGGREGATE LIMIT APPLIES PER: POLICY <input type="checkbox"/> PROJ <input type="checkbox"/> LOS <input checked="" type="checkbox"/>				DAMAGE TO RENTED PREMISES (See occurrence) \$ 200,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPROM AGG \$ 2,000,000
A	AUTOMOBILE LIABILITY	AOP BAK 6414079513	09/21/2010	09/21/2011	COMBINED SINGLE LIMIT (Per accident) \$ 1,000,000
	ANY AUTO ALL OWNED AUTOS <input checked="" type="checkbox"/> SCHEDULED AUTOS HIRING AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per person) BODILY INJURY (Per accident) PROPERTY DAMAGE (Per accident)
	GARAGE LIABILITY				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ ACC \$
	EXCESS UMBRELLA LIABILITY				EACH OCCURRENCE \$ AGGREGATE \$ DEDUCTIBLE \$ RETENTION \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY				EL EACH ACCIDENT \$ EL DISEASE - EA EMPLOYEE \$ EL DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

City of Burlington is named as additional insured

**CERTIFICATE HOLDER**

City of Burlington  
 City Clerk's Office  
 148 Church Street  
 Burlington, VT 05401

**CANCELLATION**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 30 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

Robin Blevin

Exhibit D

