

1  
2 **Resolution Relating to**

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

Introduced: 09/26/11

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

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

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

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

3  
4  
5  
6  
7 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT  
8 TO MAINTAIN TABLES AND CHAIRS ON A  
9 PORTION OF THE CITY'S RIGHT-OF-WAY WITH  
10 PHO HONG RESTAURANT

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, Lan Hong, d/b/a PHO HONG RESTAURANT of Burlington, Vermont

18 (hereinafter PHO HONG) is an establishment doing business in a commercial building located at

19 325 No. Winooski Ave. in the City of Burlington, Vermont; and

20 WHEREAS, PHO HONG desires to place 2 tables with umbrellas and 6 chairs in the

21 public right-of-way in front of its establishment at 325 No. Winooski Ave.; and

22 WHEREAS, PHO HONG wishes to enter into a License Agreement with the City for

23 such tables and chairs; and

24 WHEREAS, the placement of the respective tables and chairs 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 PHO

31 HONG to place 2 tables with umbrellas and 6 chairs on a portion of the public right-of-way

32 adjacent to its establishment at 325 No. Winooski Ave. as indicated in and pursuant to its

35 **Resolution Relating to**  
36

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

37  
38  
39

40 License Agreement upon entering into the License Agreement in substantially the form attached  
41 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 – Pho Hong Restaurant, 325 No. Winooski Ave. (Tables & Chairs)  
48 2011  
49 9/19/11  
50

**LICENSE AGREEMENT FOR TABLES AND CHAIRS**  
**WITH PHO HONG RESTAURANT**  
**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 PHO HONG RESTAURANT a commercial establishment located at 325 No. Winooski Ave., Burlington, Vermont (hereinafter PHO HONG or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 325 No. Winooski Ave.; and

WHEREAS, PHO HONG stated on its application (attached hereto as Exhibit A) that it wishes to place 2 tables with umbrellas and 6 chairs on the sidewalk area in front of the building at 325 No. Winooski Ave.; and

WHEREAS, PHO HONG has stated in its permit application that there are no physical barriers around the tables and chairs and they 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;

WITNESSETH:

The CITY and PHO HONG enter into the following License Agreement:

1. TERM

The CITY grants to PHO HONG (hereinafter LICENSEE) a license to place 2 tables with umbrellas and 6 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) for the consumption of food and beverage. 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 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

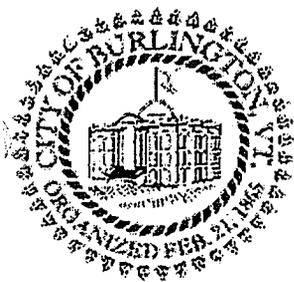
By: \_\_\_\_\_  
Bob Kiss, Mayor  
Duly Authorized

PHO HONG RESTAURANT

\_\_\_\_\_  
Witness

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

lb/c: NAF 2011/License Agree for Encumbrance – PHO HONG, 325 No. Winooski Ave. (Tables & Chairs) 2011  
9/16/11



CITY ATTORNEY'S OFFICE

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

APR -1 2011

### Encumbrance Application / Renewal

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

PHO HONG RESTAURANT  
325 NORTH WINOOSKI AVENUE  
BURLINGTON, VT 05401

DATE: Thursday, January 13, 2011  
PHONE: 802-238-9632 802-865-8031

FAX:

*Pho Hong*

EMAIL:

DBA NAME: PHO HONG RESTAURANT

COMPANY: PHO HONG RESTAURANT

LOCATION:

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: 2 tables, 6 chairs, 2 umbrellas in front of restaurant at 325 No Winooski Ave.

Conditions: Keeping public ways clear

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

**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	\$42.00
Application Fee	\$25.00

Signature *DAD* Date 3/18/11

Total **\$67.00**

For office use only: Amount received \$ 67.00 on 3/18/11 Check # 1187

Sent to Attorney:



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: PHO HONG RESTAURANT

DATE: Thursday, January 13, 2011

COMPANY: PHO HONG RESTAURANT

PHONE: 802-238-9632 802-865-8031

LOCATION:

FAX:

MAILING ADDRESS:

325 NORTH WINOOSKI AVENUE  
 BURLINGTON

*Jan Hong*

**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: \_\_\_\_\_

4. A 42 square foot placement of 2 tables, 6 chairs, 2 umbrellas in front of restaurant at 325 No Winooski Ave. at

**DEPARTMENT OF PUBLIC WORKS**

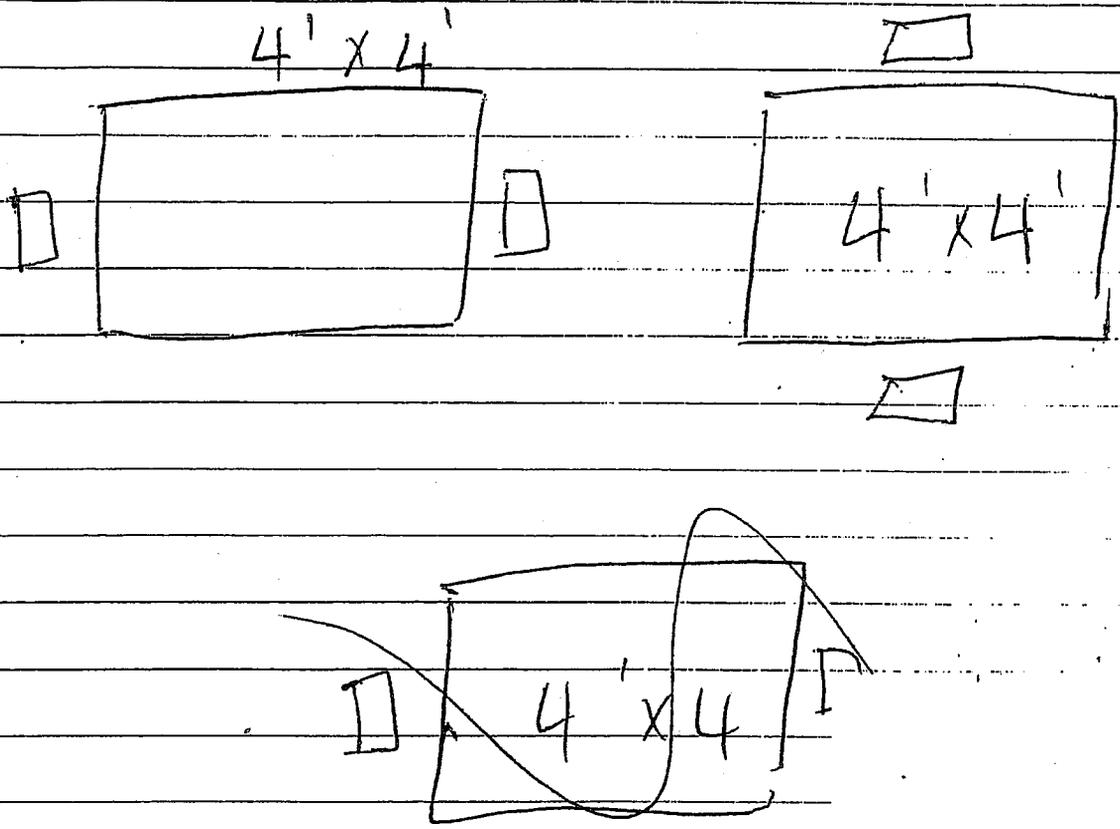
Approved? Yes

No

Explain: RENEWAL SAME AS PREVIOUS YEAR

Signature Ron Gore

Date: 03/31/11



2 3/4 tables  
 6 chairs  
 2 8 umbrellas

<http://traneCityCarkPrnHogLicense.asp?l>

enseID=32237 4.  
 201  
 2009

City of Burlington  
 140772

Date: 06/29/2009 Time: 13:34:06  
 Clerk: smohan

Name: Pho Hong Restaurant  
 Comments: encumbrance

Description	Amount
OTHER LICENSES &	47.00

CASH PAYMENT



# CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
03/24/2011

<b>PRODUCER</b> Arrowhead Mountain Insurance Agency 160 River Street Milton VT 05468 TEL 802-893-4521	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>INSURED</b> PHO HONG RESTAURANT 325 NORTH WINOOSKI AVE BURLINGTON VT 05401	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;"><b>INSURERS AFFORDING COVERAGE</b></td> <td style="width: 20%;"><b>NAIC #</b></td> </tr> <tr> <td>INSURER A: acceptance indemnity</td> <td></td> </tr> <tr> <td>INSURER B:</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>	INSURER A: acceptance indemnity		INSURER B:		INSURER C:		INSURER D:		INSURER E:	
<b>INSURERS AFFORDING COVERAGE</b>	<b>NAIC #</b>												
INSURER A: acceptance indemnity													
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	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS								
A	X	GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	cp00075474	02-05-2011	02-05-2012	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (EA occurrence) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000								
		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 AUTO ONLY: EA ACC \$ AGG \$								
		EXCESS / UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory In NH) <input type="checkbox"/> Y/N If yes, describe under SPECIAL PROVISIONS below				<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">WG STATU-TORY LIMITS</td> <td style="width: 50%;">OTH-ER</td> </tr> <tr> <td>E.L. EACH ACCIDENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WG STATU-TORY LIMITS	OTH-ER	E.L. EACH ACCIDENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WG STATU-TORY LIMITS	OTH-ER													
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**  
 CITY OF BURLINGTON CITY CLERKS OFFICE/INCUMBRANCE APPLICATION DIV 149 CHURCH STREET RM 20 BURLINGTON VT 05 IS LISTED AS ADDITIONAL INSURED HAS RENTAL OR USE OF 42 SQUARE FOOT AREA IN FRONT OF RESTURANT LOCATED AT 325 NO WINOOSKI AVE BURLINGTON VT AND HAS 2 TABLE 6 CHAIRS AND 2 UMBRELLA IN FRONT FOR CUSTOMER TO SIT DOWN AND EAT NO ALCHOLIC BEVERAGE COV ON POLICY

<b>CERTIFICATE HOLDER</b> CITY OF BURLINGTON CLERKS / TREASURE OFFICE ENCUMBRANCE DIV 149 CHURCH STREET BURLINGTON VT 05401 ATTN SUSAN MEHAN 802-865-7014	<b>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 <i>Shawn M. Jenkins</i> <SMJ>
--	--

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

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).

## **DISCLAIMER**

This Certificate of Insurance does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.