

September 27, 2013

TO: Board of Finance
FROM: Church Street Marketplace
RE: AUTHORIZE CITY OF BURLINGTON TO EXECUTE CONTRACT
WITH NIKA, 83 CHURCH STREET AND RED SQUARE, 136 CHURCH
STREET FOR TEMPORARY, FREE STANDING DOUBLE-SIDED
RETRACTABLE AWNINGS ON THE CHURCH STREET MARKETPLACE
THROUGH APRIL 30, 2017.

The Church Street Marketplace Commission has unanimously approved the establishment of Temporary, Free Standing, Double-Sided, Retractable Awnings in designated outdoor café spaces of two eating/drinking establishments located in the Church Street Marketplace District – Nika, 83 Church Street and Red Square, 136 Church Street.

Church Street's outdoor cafes help restaurateurs maximize revenues during high season, to compensate for the historically slower sales period of November through March. The Marketplace Commission recognizes that awning technology exists that can help extend the revenue potential of an outdoor café during inclement weather.

License agreements for temporary awnings placed in approved outdoor café spaces have been prepared for both establishments, pending approval by the Board of Finance and Burlington City Council.

INSTALLATION, DESCRIPTION, and MAINTENANCE

- awnings may be up only between April 15 and November 1 of each year. Licensee is responsible for all costs associated with the installation and removal of the awning and must maintain the awning in the same or comparable appearance and condition approved by the Commission.

The awning is to include:

- Two retractable awnings, with two posts mounted into the ground.
- Awning posts are to be installed approximately 20ft from the building's edge.
- Drip edge that faces Church Street's center line may not extend more than 6 feet from that center line.
- No solid walls for the temporary awning so as not to block storefronts.
- Width Range 11' - 24' (*2' increments*)
- Projection Range 10'2" (x2 max)
- Height Maximum 10'
- Frame made of heavy duty powder coated steel frame.
- Mounting: Steel Base Plates on Suitable Concrete Footings
- Installation and removal of the awning must be done only by a contractor approved by the Marketplace Commission.

TERMS AND FEE:

Three-year license agreement through April 30, 201. Annual fee for the awnings are calculated by charging 25% of the establishments annual sidewalk café fee. Nika of 83 Church Street: \$551.04; Red Square of 136 Church Street: \$1,007.37

AUTHORIZE CITY OF BURLINGTON TO EXECUTE CONTRACT WITH NIKA, 83 CHURCH STREET AND RED SQUARE, 136 CHURCH STREET FOR TEMPORARY, FREE STANDING DOUBLE-SIDED RETRACTABLE AWNINGS ON THE CHURCH STREET MARKETPLACE THROUGH APRIL 30, 2017.

WHEREAS, the Church Street Marketplace Department is a City of Burlington department that manages the public right of way in the Church Street Marketplace District. The Church Street Marketplace Department is funded entirely through user fees;

WHEREAS, the City recognizes that Church Street's outdoor cafes help restaurateurs maximize revenues during high season, to compensate for the historically slower sales period of November through March; and

WHEREAS, awning technology exists that can help extend the revenue potential of an outdoor café during inclement weather; and

WHEREAS, the City wishes to foster dining at establishments located on the Church Street public right-of-way even during inclement weather and assist establishments in doing so by authorizing the safe use of temporary, free standing, double-sided retractable awnings that are appropriately positioned, designed, managed, and maintained so as to be complementary to the appearance and operation of the Church Street Marketplace.

WHEREAS, Nika of 83 Church Street and Red Square of 136 Church Street, desire to install a temporary awning on the public right of way within their designated and approved areas for an outdoor café on Church Street; and

NOW, THEREFORE, BE IT RESOLVED, that the Burlington City Council authorizes the City of Burlington to execute a three-year agreement through April 30, 2017, with Nika of 83 Church Street for \$551.04, and Red Square of 136 Church Street for \$1,007.37

**LICENSE AGREEMENT FOR
NIKA'S USE OF TEMPORARY FREE STANDING,
DOUBLE-SIDED RETRACTABLE AWNING**

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), by and through the Church Street Marketplace, a Department of the City, organized and validly existing under the Burlington City Charter (hereinafter MARKETPLACE) and, NIKA, the lessee of the property located at 83 Church Street, Burlington, Vermont, and the operator of the business located at said address (hereinafter LICENSEE).

WHEREAS, NIKA desires to install a temporary awning on the public right of way within its designated and approved area for an outdoor café on Church Street; and

WHEREAS, the City recognizes that Church Street's outdoor cafes help restaurateurs maximize revenues during high season, to compensate for the historically slower sales period of November through March; and

WHEREAS, awning technology exists that can help extend the revenue potential of an outdoor café during inclement weather; and

WHEREAS, the City wishes to foster dining at establishments located on the Church Street public right-of-way even during inclement weather and assist establishments in doing so by authorizing the safe use of temporary, free standing, double-sided retractable awnings that are appropriately positioned, designed, managed, and maintained so as to be complementary to the appearance and operation of the Church Street Marketplace.

WITNESSETH:

NOW THEREFORE, in consideration of the above and the mutual covenants the CITY and NIKA enter into the following License Agreement:

1. TERM

The term of this License Agreement shall commence upon full execution of this License Agreement and shall continue until April 30, 2017.

2. LOCATION

LICENSEE may use and encumber its designated and approved outdoor café space at ___ Church Street by installing a temporary free standing, double-sided retractable awning, anchored into the ground, as approved by the Church Street Marketplace Commission at its January 18, 2011 meeting.

3. INSTALLATION, DESCRIPTION, and MAINTENANCE

LICENSEE may install the awning no earlier than April 15 of each year and remove it no later than November 1 of each year.

The awning is to include:

- two retractable awnings, with two posts mounted into the ground.
- awning posts are to be installed approximately 20ft from the building's edge.
- The drip edge that faces Church Street's center line may not extend more than 6 feet from that center line.
- There are to be no solid walls for the temporary awning so as not to block storefronts.
- Width Range 11' - 24' (*2' increments*)
- Projection Range 10'2" (x2 max)
- Height Maximum 10'
- Frame made of heavy duty powder coated steel frame.
- Mounting: Steel Base Plates on Suitable Concrete Footings

Installation and removal of the awning must be done only by a contractor approved by the Marketplace Commission. LICENSEE is responsible for all costs associated with the installation and removal of the awning. LICENSEE shall, during the entire period that the awning exists on the public right-of-way, maintain the awning in the same or comparable appearance and condition approved by the Commission. No change to the approved condition shall be made without prior written approval (with the new plan attached) by the Commission. A copy of the approved plan is attached to this Agreement as Exhibit A.

4. LICENSE FEE

For the rights granted pursuant to this License Agreement, Licensee shall pay the City a license fee to be paid in two equal payments on July 1 and September 1 of each year.

- a. Annual Fee: \$ 551.04. The annual fee is calculated at 25% of the total annual sidewalk café fee.
- b. Annual Adjustment. The fee shall be adjusted by 5% as of May 1 of each year during the term of this Agreement.

5. NONPAYMENT.

Nonpayment of any amounts due the CITY pursuant to this License Agreement shall immediately subject LICENSEE to payment of all amounts owed plus a 5% penalty and an additional 1% penalty for each month the total amount(s) remain unpaid. In addition, fees for the next season must be prepaid by April 30 or LICENSEE will be considered in default as defined below. In addition, LICENSEE must be in good standing with respect to, or in full compliance with, a plan to pay any and all taxes and fees due the City of Burlington, and with the Marketplace-approved contractor who installs and removes the awning.

6. ASSIGNMENT OF RIGHTS:

Licensee shall not sell or assign its rights under this License Agreement without the express and prior written consent of the CITY. Any unauthorized action in violation of this provision shall be void and shall terminate, at the Commission's option, LICENSEE's rights pursuant to this Agreement.

7. NUISANCES PROHIBITED:

Licensee shall not, during the term hereof, on or in the area that is the subject of this License Agreement, 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 License Agreement or enacted, amended, or otherwise put into effect during the term of this License Agreement.

8. 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 and endorsement which shall include the provision that the CITY is named as an additional insured and shall be given 15 days written notification prior to cancellation of such insurance for nonpayment of premium and 45 days' notice for any other reason. The certificate shall be attached to this Agreement as Exhibit D and the endorsement as Exhibit E.
- 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 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.**

9. 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 public right of way that is the subject of this License Agreement, 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.

10. DEFAULT

- a. This License Agreement is made on the express condition that if LICENSEE shall default in the performance of any terms and conditions of this Agreement, and the default shall continue for forty-eight (48) hours after written notice of any default in meeting its obligations hereunder is given by the CITY to LICENSEE, then the CITY shall have the option to declare this License Agreement ended and to require action as described in Paragraph 13 below. In the event that the CITY gives written notice of its option to declare this License Agreement ended, LICENSEE shall cease commercial use of the premises immediately upon receipt of such written notice.
- b. In the event that the CITY terminates the rights of LICENSEE pursuant to this License Agreement for default in the performance of any terms and conditions of this License Agreement, then LICENSEE shall be responsible to reimburse the CITY for all of the CITY'S costs including the removal and other cost including attorney's fees, litigation fees, sheriff's fees, etc. arising from the CITY availing itself of its rights pursuant to this License Agreement.
- c. Failure of the CITY to declare any default immediately upon occurrence thereof, or delay in taking action in connection therewith, shall not waive such default, but the CITY shall have the right to declare any such default(s), at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

11. REVOCATION

This License Agreement is immediately revocable should LICENSEE discontinue use of the public right of way that is the subject of this License Agreement. In any event, this License 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 awning that is the subject of this License Agreement. If LICENSEE refuses to promptly remove said awning, it may be removed by the CITY and LICENSEE shall be liable for all expenses of such removal.

12. TERMINATION OF AGREEMENT

LICENSEE shall at its own expense remove all elements from the premises immediately upon expiration or sooner termination of this License Agreement. If LICENSEE fails to remove all elements of the premises immediately upon expiration or sooner termination of this License Agreement, the CITY may, at its sole option, take possession and ownership of any elements remaining on the public right-of-way and LICENSEE shall pay to the CITY the cost(s) of their removal and storage.

13. LIMITATION OF RIGHTS

LICENSEE acknowledges that no property or other right in the maintenance of the premises subject to this License Agreement is created other than as specifically defined and limited herein.

AGREED to at Burlington, Vermont this _____ day of _____.

CITY OF BURLINGTON

Witness

By: _____
Ron Redmond, Executive Director
Church Street Marketplace District
Commission

NIKA

Witness

By: _____
, Duly Authorized

lb/GM 2013/Church St. Marketplace License Agreement with Nika for Temporary Awnings

**LICENSE AGREEMENT FOR
RED SQUARE USE OF TEMPORARY FREE STANDING,
DOUBLE-SIDED RETRACTABLE AWNING**

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), by and through the Church Street Marketplace, a Department of the City, organized and validly existing under the Burlington City Charter (hereinafter MARKETPLACE) and, RED SQUARE, the lessee of the property located at 136 Church Street, Burlington, Vermont, and the operator of the business located at said address (hereinafter LICENSEE).

WHEREAS, RED SQUARE desires to install a temporary awning on the public right of way within its designated and approved area for an outdoor café on Church Street; and

WHEREAS, the City recognizes that Church Street's outdoor cafes help restaurateurs maximize revenues during high season, to compensate for the historically slower sales period of November through March; and

WHEREAS, awning technology exists that can help extend the revenue potential of an outdoor café during inclement weather; and

WHEREAS, the City wishes to foster dining at establishments located on the Church Street public right-of-way even during inclement weather and assist establishments in doing so by authorizing the safe use of temporary, free standing, double-sided retractable awnings that are appropriately positioned, designed, managed, and maintained so as to be complementary to the appearance and operation of the Church Street Marketplace.

WITNESSETH:

NOW THEREFORE, in consideration of the above and the mutual covenants the CITY and RED SQUARE enter into the following License Agreement:

14. TERM

The term of this License Agreement shall commence upon full execution of this License Agreement and shall continue until April 30, 2017

15. LOCATION

LICENSEE may use and encumber its designated and approved outdoor café space at ___ Church Street by installing a temporary free standing, double-sided retractable awning, anchored into the ground, as approved by the Church Street Marketplace Commission at its January 18, 2011 meeting.

16. INSTALLATION, DESCRIPTION, and MAINTENANCE

LICENSEE may install the awning no earlier than April 15 of each year and remove it no later than November 1 of each year.

The awning is to include:

- two retractable awnings, with two posts mounted into the ground.
- awning posts are to be installed approximately 20ft from the building's edge.
- The drip edge that faces Church Street's center line may not extend more than 6 feet from that center line.
- There are to be no solid walls for the temporary awning so as not to block storefronts.
- Width Range 11' - 24' (*2' increments*)
- Projection Range 10'2" (x2 max)
- Height Maximum 10'
- Frame made of heavy duty powder coated steel frame.
- Mounting: Steel Base Plates on Suitable Concrete Footings

Installation and removal of the awning must be done only by a contractor approved by the Marketplace Commission. LICENSEE is responsible for all costs associated with the installation and removal of the awning. LICENSEE shall, during the entire period that the awning exists on the public right-of-way, maintain the awning in the same or comparable appearance and condition approved by the Commission. No change to the approved condition shall be made without prior written approval (with the new plan attached) by the Commission. A copy of the approved plan is attached to this Agreement as Exhibit A.

17. LICENSE FEE

For the rights granted pursuant to this License Agreement, Licensee shall pay the City a license fee to be paid in two equal payments on July 1 and September 1 of each year.

- a. Annual Fee: \$ 1,007.37. The annual fee is calculated at 25% of the total annual sidewalk café fee.
- b. Annual Adjustment. The fee shall be adjusted by 5% as of May 1 of each year during the term of this Agreement.

18. NONPAYMENT.

Nonpayment of any amounts due the CITY pursuant to this License Agreement shall immediately subject LICENSEE to payment of all amounts owed plus a 5% penalty and an additional 1% penalty for each month the total amount(s) remain unpaid. In addition, fees for the next season must be prepaid by April 30 or LICENSEE will be considered in default as defined below. In addition, LICENSEE must be in good standing with respect to, or in full compliance with, a plan to pay any and all taxes and fees due the City of Burlington, and with the Marketplace-approved contractor who installs and removes the awning.

19. ASSIGNMENT OF RIGHTS:

Licensee shall not sell or assign its rights under this License Agreement without the express and prior written consent of the CITY. Any unauthorized action in violation of this provision shall be void and shall terminate, at the Commission's option, LICENSEE's rights pursuant to this Agreement.

20. NUISANCES PROHIBITED:

Licensee shall not, during the term hereof, on or in the area that is the subject of this License Agreement, 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 License Agreement or enacted, amended, or otherwise put into effect during the term of this License Agreement.

21. INSURANCE

- d. 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.
- e. Prior to execution of this Agreement, LICENSEE shall furnish the CITY with a certificate of insurance and endorsement which shall include the provision that the CITY is named as an additional insured and shall be given 15 days written notification prior to cancellation of such insurance for nonpayment of premium and 45 days' notice for any other reason. The certificate shall be attached to this Agreement as Exhibit D and the endorsement as Exhibit E.
- f. 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 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.**

22. 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 public right of way that is the subject of this License Agreement, 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.

23. DEFAULT

- d. This License Agreement is made on the express condition that if LICENSEE shall default in the performance of any terms and conditions of this Agreement, and the default shall continue for forty-eight (48) hours after written notice of any default in meeting its obligations hereunder is given by the CITY to LICENSEE, then the CITY shall have the option to declare this License Agreement ended and to require action as described in Paragraph 13 below. In the event that the CITY gives written notice of its option to declare this License Agreement ended, LICENSEE shall cease commercial use of the premises immediately upon receipt of such written notice.
- e. In the event that the CITY terminates the rights of LICENSEE pursuant to this License Agreement for default in the performance of any terms and conditions of this License Agreement, then LICENSEE shall be responsible to reimburse the CITY for all of the CITY'S costs including the removal and other cost including attorney's fees, litigation fees, sheriff's fees, etc. arising from the CITY availing itself of its rights pursuant to this License Agreement.
- f. Failure of the CITY to declare any default immediately upon occurrence thereof, or delay in taking action in connection therewith, shall not waive such default, but the CITY shall have the right to declare any such default(s), at any time and take such action as might be lawful or authorized hereunder, either in law or in equity.

24. REVOCATION

This License Agreement is immediately revocable should LICENSEE discontinue use of the public right of way that is the subject of this License Agreement. In any event, this License 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 awning that is the subject of this License Agreement. If LICENSEE refuses to promptly remove said awning, it may be removed by the CITY and LICENSEE shall be liable for all expenses of such removal.

25. TERMINATION OF AGREEMENT

LICENSEE shall at its own expense remove all elements from the premises immediately upon expiration or sooner termination of this License Agreement. If LICENSEE fails to remove all elements of the premises immediately upon expiration or sooner termination of this License Agreement, the CITY may, at its sole option, take possession and ownership of any elements remaining on the public right-of-way and LICENSEE shall pay to the CITY the cost(s) of their removal and storage.

26. LIMITATION OF RIGHTS

LICENSEE acknowledges that no property or other right in the maintenance of the premises subject to this License Agreement is created other than as specifically defined and limited herein.

AGREED to at Burlington, Vermont this ____ day of _____, 2013.

CITY OF BURLINGTON

Witness

By: _____
Ron Redmond, Executive Director
Church Street Marketplace District
Commission

RED SQUARE

Witness

By: _____
, Duly Authorized

lb/GM 2013/Church St. Marketplace License Agreement with Red Square for Temporary Awnings