

1  
2 **Resolution Relating to**

**RESOLUTION**  
Sponsor(s): Councilors Blais,  
Tracy, Ayres: License Com.  
Introduced: \_\_\_\_\_  
Referred to: \_\_\_\_\_  
Action: \_\_\_\_\_  
Date: \_\_\_\_\_  
Signed by Mayor: \_\_\_\_\_

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5  
6 AUTHORIZATION TO ENTER INTO LICENSE AGREEMENT WITH  
7 RED SQUARE, LOCATED AT 136 CHURCH STREET. FOR THE USE OF  
8 A TEMPORARY, FREE STANDING DOUBLE-SIDED RETRACTABLE  
9 AWNING ON THE CHURCH STREET MARKETPLACE THROUGH  
10 APRIL 30, 2017

11  
12 **CITY OF BURLINGTON**

13  
14 In the year Two Thousand Fourteen.....  
15 Resolved by the City Council of the City of Burlington, as follows:

16  
17 That WHEREAS, the Church Street Marketplace Department is a City of Burlington Department that  
18 manages the public right-of-way in the Church Street Marketplace District; and

19 WHEREAS the Church Street Marketplace Department is funded entirely through user fees;

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

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

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

30 WHEREAS, the owners of Red Square, located at of 136 Church Street, desire to install a temporary  
31 awning on the public right-of-way within their designated and approved areas for an outdoor café on Church  
32 Street; and

33 WHEREAS, the Church Street Marketplace Commission has determined that the annual fee for Red  
34 Square to use the public right of way for the temporary awning shall be 25% of the annual sidewalk café fee.  
35 For FY 14, the fee shall be \$1,007.37;

36 NOW, THEREFORE, BE IT RESOLVED that the Burlington City Council hereby authorizes the City  
37 of Burlington, by and through the Church Street Marketplace Department, to execute a three-year license  
38 agreement with the owners of Red Square, for a period commencing upon the full execution of the  
39 License Agreement attached hereto and running through April 30, 2017, under the terms therein including  
40 payment to the City in the amount of \$1,007.37 for FY 14.

**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, VEDIA, INC. d/b/a 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:

**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 136 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 June 1 and September 1 of each year.

- a. Annual Fee: 25% of annual sidewalk fee. FY 14 = \$1,007.37

#### **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 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 B.
- 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 \_\_\_\_\_, 2014.

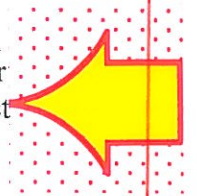
CITY OF BURLINGTON

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

VEDIA, INC.  
d/b/a RED SQUARE

\_\_\_\_\_  
Witness

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



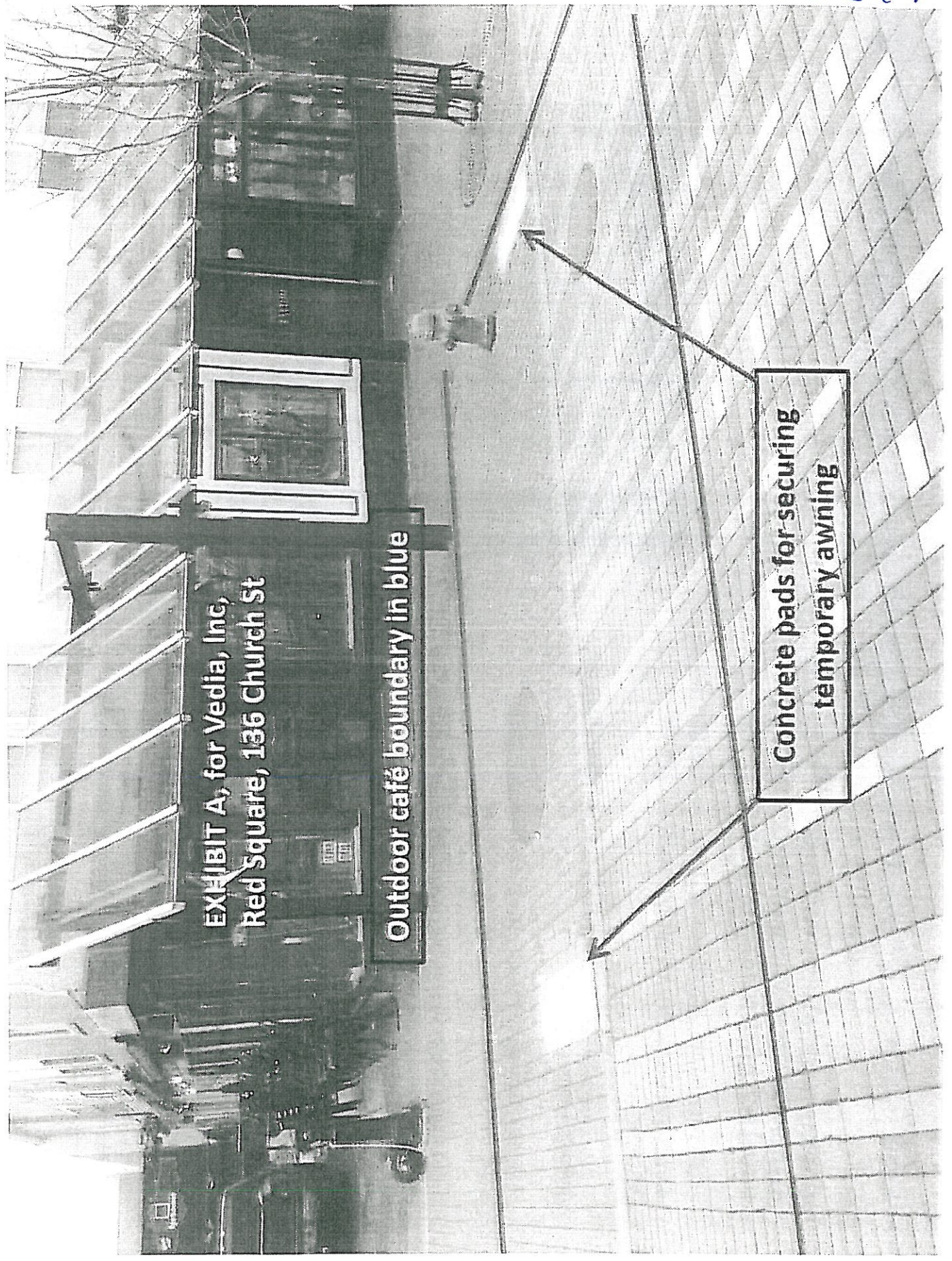


EXHIBIT A, for Vedia, Inc,  
Red Square, 136 Church St

Outdoor café boundary in blue

Concrete pads for securing  
temporary awning





# CERTIFICATE OF LIABILITY INSURANCE

Exhibit B

DATE (MM/DD/YYYY)  
12/19/2013

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 Winooski Insurance Agency 476 Main Street  Winooski VT 05404	CONTACT NAME: Melissa Herriot	
	PHONE (A/C No. Ext): (802) 655-9000 FAX (A/C No.): (802) 655-5321 E-MAIL ADDRESS: melissah@winooskiinsurance.com	
INSURED V.E.D.I.A, Inc, DBA: Red Square 136 Church Street  Burlington VT 05401	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A: Hospitality Insurance Group	
	INSURER B: The Keating Group	
	INSURER C:	
	INSURER D:	
	INSURER E:	

COVERAGES CERTIFICATE NUMBER: CL13121906863 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			44000950CP (GL)	9/24/2013	9/24/2014	EACH OCCURRENCE \$ 1,000,000			
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY									DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 100,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR						MED EXP (Any one person) \$ 5,000			
	GEN'L AGGREGATE LIMIT APPLIES PER:						PERSONAL & ADV INJURY \$ 1,000,000			
	<input checked="" type="checkbox"/> POLICY	<input type="checkbox"/> PRO-JECT	<input type="checkbox"/> LOC				GENERAL AGGREGATE \$ 2,000,000			
							PRODUCTS - COMP/OP AGG \$ 2,000,000			
	AUTOMOBILE LIABILITY						COMBINED SINGLE LIMIT (Ea accident) \$			
	<input type="checkbox"/> ANY AUTO						BODILY INJURY (Per person) \$			
	<input type="checkbox"/> ALL OWNED AUTOS	<input type="checkbox"/> SCHEDULED AUTOS	<input type="checkbox"/> NON-OWNED AUTOS				BODILY INJURY (Per accident) \$			
	<input type="checkbox"/> HIRED AUTOS						PROPERTY DAMAGE (Per accident) \$			
	UMBRELLA LIAB						EACH OCCURRENCE \$			
	<input type="checkbox"/> EXCESS LIAB	<input type="checkbox"/> OCCUR					AGGREGATE \$			
	<input type="checkbox"/> DED	<input type="checkbox"/> RETENTION \$					\$			
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY			WC 51-75-7739	9/30/2013	9/30/2014	WC STATU-TORY LIMITS			
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> Y/N	N/A							E.L. EACH ACCIDENT \$ 100,000
	If yes, describe under DESCRIPTION OF OPERATIONS below									E.L. DISEASE - EA EMPLOYEE \$ 100,000
							E.L. DISEASE - POLICY LIMIT \$ 500,000			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)  
Temporary, Free Standing Awning in Sidewalk Cafe  
  
City of Burlington is additional insured

CERTIFICATE HOLDER (802) 658-7252 ron.redmond.vt@gmail.com  City of Burlington Ron Redmond Church Street Marketplace 2 Church St, Ste 2A Burlington, VT 05401	CANCELLATION 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  Melissa Herriot/MMH <i>Melissa Herriot</i>