

**LICENSE AGREEMENT FOR USE OF SIDEWALK ADJACENT TO
HANDICAP ACCESS RAMP WITH LUCKY NEXT DOOR
2013 -2014 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 PENNY CLUSE CAFÉ, INC. d/b/a LUCKY NEXT DOOR, a business located in Burlington, Vermont which owns property located 163 Cherry Street (hereinafter LUCKY NEXT DOOR or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 163 Cherry Street; and

WHEREAS, LUCKY NEXT DOOR stated on its application (attached hereto as Exhibit A) that it wishes to use a portion of the sidewalk as the "landing" area for its handicap access ramp on the front of the building, and this landing area rests in the public right-of-way directly in front of 163 Cherry Street; and

WHEREAS, LUCKY NEXT DOOR has stated in its license application that there are no physical barriers around the landing area which will cover a 20 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;

W I T N E S S E T H :

The CITY and LUCKY NEXT DOOR enter into the following License Agreement:

1. TERM

The CITY grants to LUCKY NEXT DOOR (hereinafter LICENSEE) a license to use a portion of the sidewalk as the "landing" area for its handicap access ramp on the front

of the building, and this landing area will rest in the public right-of-way directly in front of 163 Cherry Street and cover a 20 sq. ft. area as indicated above commencing as of the date of execution of this Agreement and terminating on April 30, 2014 or sooner as provided herein.

2. LOCATION

LICENSEE may use and maintain the landing area on the public right-of-way (hereinafter referred to as the premises) for safety purposes. The landing area 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 landing area in proper condition.
- b. LICENSEE shall be responsible for the maintenance and upkeep of the landing area and any damage to the landing area is solely the responsibility of LICENSEE. Should LICENSEE fail to maintain the landing area, 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 landing area 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, or greenbelt, if any.
- d. The landing area shall not cause 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 and remove snow and ice from the landing area within 12 hours after snow ceases to fall.

4. LICENSE FEE

The CITY agrees to waive all Encumbrance Application fees for this license agreement.

5. REVOCATION

This License Agreement is immediately revocable should LICENSEE discontinue use of the landing area. 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 landing area 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 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 any 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 and endorsement are on file with the CITY at all times. **Failure to furnish a current certificate of insurance and endorsement shall 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, if required.

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 _____,

2013.

CITY OF BURLINGTON

Witness

By: _____
Miro Weinberger, Mayor
Duly Authorized

PENNY CLUSE CAFÉ, INC.
LUCKY NEXT DOOR

Witness

By: _____
Duly Authorized

lb/c: GM 2013/License Agree for Encumbrance – LUCKY NEXT DOOR, 163 Cherry St. (Sidewalk below Ramp) 2013
5/1/13



CITY ATTORNEY'S OFFICE
APR 26 2013
RECEIVED

OFFICE OF THE CLERK AND TREASURER
149 CHURCH STREET
BURLINGTON, VT 05401
Voice (802)865-7000
FAX (802)865-7014
TTY (802)865-7142
Amy Bovee (802)865-7019
Ron Gore (802)865-7562

Encumbrance Application / Renewal

DBA NAME: Lucky Next Door DATE: 4.3.13
CONTACT NAME: Charles Reeves PHONE: 802 238-6114
MAILING ADDRESS: Po Box 8422 FAX: 802 651 8756
Burlington, VT 05402 EMAIL: Charles.R.Denny@lsc.com

DBA NAME: Lucky Next Door
COMPANY: Jenny Close Lake, inc
LOCATION OF ENCUMBRANCE: 163 Cherry 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):

Description: Use of a 19.74 Sq. Foot area of Side-walk for the Flat area below our ADA Ramp Entrance plus the NAW storefront along the front of the building.

Total Square Feet (\$1.00 per SF): 20

PLEASE ATTACH:

1. 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.
2. Sketch, Photo, or Blueprint of what you are proposing.
3. Check for the square feet fees (\$1 per square foot) + \$25 Application fee: _____

Signature: [Handwritten Signature] Date: 4.3.13

For office use only: Amount received \$ 45 on 4/3 Check # 6418
Sent to DPW: 4/3 Sent to Attorney: 4/26

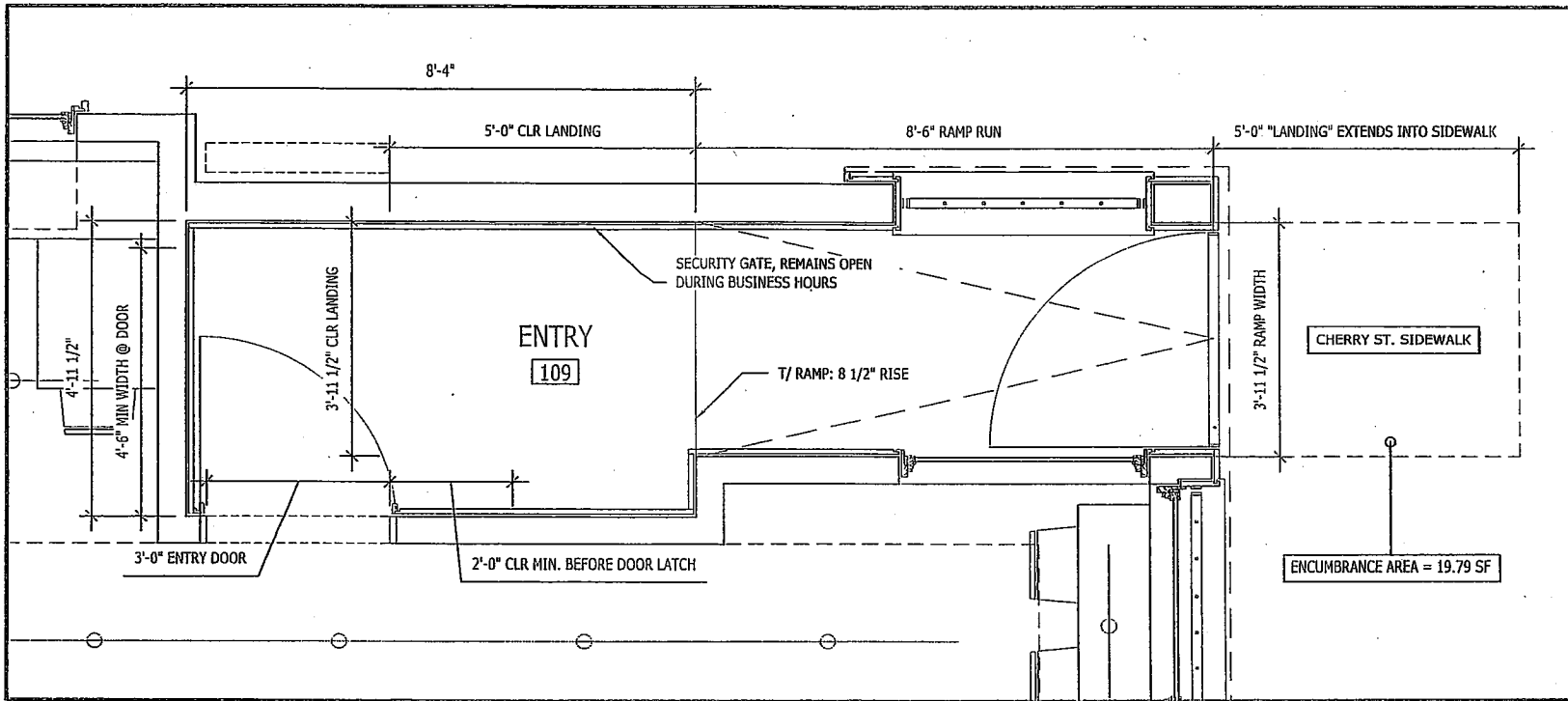
Exhibit A

Exhibit C

ARCHITECT:
BIRDSEYE
DESIGN
2004 Huntington Road
Rochester, Vermont
Phone: 802-241-2141
Fax: 802-241-0355

BURLINGTON, VT

163 CHERRY STREET

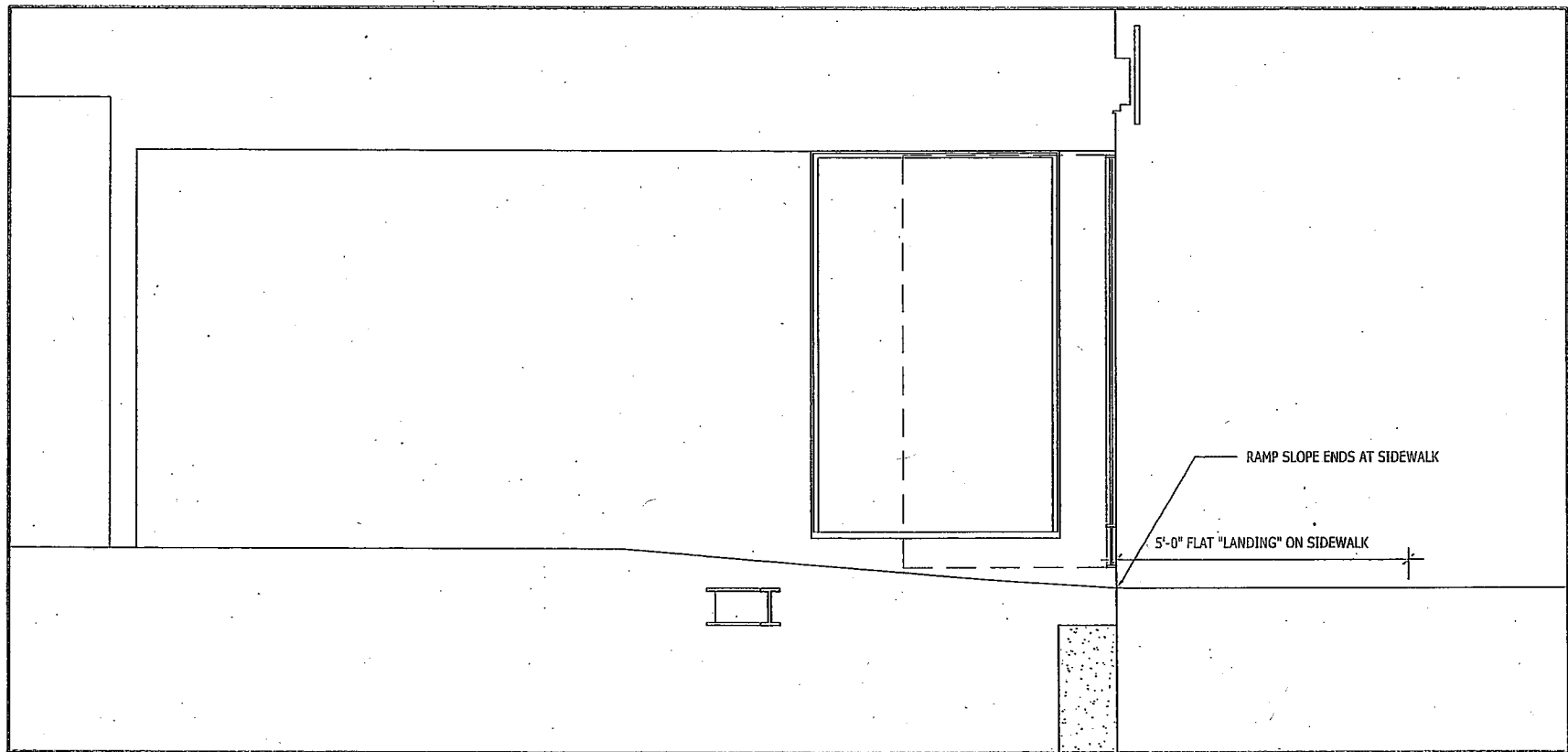


1 ENTRYWAY PLAN
SCALE: 1/2"=1'-0"

ISSUE/REVISION LOG:
04.25.13

TITLE:
ENTRYWAY
PLAN

SHEET NUMBER:
SK.02



1 ENTRYWAY SECTION
SCALE: 1/2"=1'-0"

ARCHITECT:
BIRDSEY
MCKENNA

3004 South Street, Suite 100
Richmond, Vermont
Phone: 802-234-2100
Fax: 802-234-2700

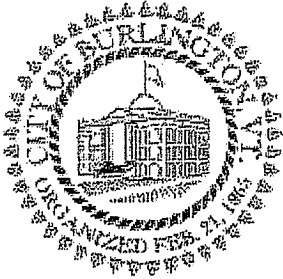
BURLINGTON, VT

163 CHERRY STREET

REVISIONS:
DATE: 04.25.13

TITLE:
ENTRYWAY
SECTION

SHEET NUMBER:
SK.0



OFFICE OF THE CLERK AND TREASURER
 149 CHURCH STREET
 BURLINGTON, VT 05401
 Voice (802)865-7000
 FAX (802)865-7014
 TTY (802)865-7142
 Amy Bovee (802)865-7019
 Ron Gore (802)865-7562

Encumbrance DPW Approval Form

Effective 05/01/2013 - 04/30/2014

ATTENTION: RON GORE, BURLINGTON DEPARTMENT OF PUBLIC WORKS

DBA NAME: LUCKY NEXT DOOR

DATE: Friday, April 26, 2013

COMPANY: PENNY CLUSE CAFE INC

PHONE: 238-6114

LOCATION: 163 CHERRY ST.

FAX:

MAILING ADDRESS: CHARLES REEVES
 PO BOX 8422
 BURLINGTON, VT 05402

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: RAMP TO BE WITHIN BUILDING ENTRY
WILL NOT EXTEND ONTO SIDEWALK AREA

4. A 20 square foot placement of USE OF A 19.79 SQ FOOT AREA OF SIDEWALK FOR THE FLAT AREA BEFORE OUR ADA RAMP ENTRANCE PLUS THE NEW STOREFRONT ALONG THE

DEPARTMENT OF PUBLIC WORKS

Approved? Yes
 No

Explain: PEDESTRIAN ROW TO REMAIN OPEN
FROM BUILDING TO CURB

Signature Ron Gore

Date: 04/25/13

Exhibit B



CERTIFICATE OF LIABILITY INSURANCE

OP ID: CR

DATE (MM/DD/YYYY)

04/03/13

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 T.S. Peck Insurance 41 IDX Drive Suite 135 So. Burlington, VT 05403 T.S. Peck Ins. Agency	802-865-8000	CONTACT NAME:	
	802-863-7889	PHONE (A/C No, Ext):	FAX (A/C, No):
		E-MAIL ADDRESS:	
		PRODUCER CUSTOMER ID #:	PENNY-2
		INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED Penny Clause Cafe, Inc & Penny Clause Real Estate PO Box 8422 Burlington, VT 05402	INSURER A:		Acadia
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

COVERAGES

CERTIFICATE NUMBER:

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 SUBR INSR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	GENERAL LIABILITY		CPA0391968-11	05/06/12	05/06/13	EACH OCCURRENCE \$ 1,000,000
	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 250,000
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR		CPA0391968-12	05/06/13	05/06/14	MED EXP (Any one person) \$ 5,000
	<input checked="" type="checkbox"/> Liq Liab incl					PERSONAL & ADY INJURY \$ 1,000,000
GEN'L AGGREGATE LIMIT APPLIES PER:						GENERAL AGGREGATE \$ 2,000,000
<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						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						BODILY INJURY (Per accident) \$
<input type="checkbox"/> SCHEDULED AUTOS						PROPERTY DAMAGE (Per accident) \$
<input type="checkbox"/> HIRED AUTOS						\$
<input type="checkbox"/> NON-OWNED AUTOS						\$
A	UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR		CUA0391972-12	05/06/12	05/06/14	EACH OCCURRENCE \$ 1,000,000
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$ 1,000,000
	DEDUCTIBLE <input checked="" type="checkbox"/> RETENTION \$					\$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	Y/N	WCA0392232-11	05/06/12	05/06/13	WC STATUTORY LIMITS: OTH-ER
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y				WCA0392232-12
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A	E.L. DISEASE - EA EMPLOYEE \$ 500,000			

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

The City of Burlington is named as additional insured with regard to general liability. Property location: 163 Cherry Street, Burlington, VT 05401

CERTIFICATE HOLDER

CANCELLATION

CITYBUR City of Burlington Office of the Clerk/Treasurer City Hall, Room 20 149 Church St Burlington, VT 05401	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 T.S. Peck Ins. Agency

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Exhibit D

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

POLICY CHANGES

Policy No.: CPA 0391968 - 11

NAMED INSURED AND ADDRESS Penny Cluse Cafe, Inc. Penny Cluse Real Estate, LLC and Charles Reaves PO Box 8422 Burlington, VT 05402	AGENCY NAME AND ADDRESS (802) 865-8000 T. S. Peck Insurance 41 IDX Drive, Suite 135 South Burlington, VT 05403	05152
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POLICY CHANGES EFFECTIVE Feb 13, 2013

ENDORSEMENT # 2

Premium For Endorsement	\$	0.00
ADJUSTED Annual Premium	\$	10,769.00

COVERAGE PARTS AFFECTED

Coverage		Additional / Return
Commercial Property Subtotal	\$	0.00
General Liability Subtotal	\$	0.00
Total	\$	0.00

Changes

The following Additional Insured is added:
 City of Burlington
 Office of the Clerk/Treasurer
 City Hall, Room 20
 149 Church Street
 Burlington, VT 05401
 CG2026 is applicable and attached.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)
City of Burlington
Office of the Clerk/Treasurer City Hall, Room 20 Burlington, Vermont 05401
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II - Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

- A. In the performance of your ongoing operations; or
- B. In connection with your premises owned by or rented to you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VERMONT CHANGES - CANCELLATION AND NONRENEWAL

This endorsement modifies insurance provided under the following:

CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART
 COMMERCIAL AUTOMOBILE COVERAGE PART
 COMMERCIAL GENERAL LIABILITY COVERAGE PART
 COMMERCIAL INLAND MARINE COVERAGE PART
 COMMERCIAL LIABILITY UMBRELLA COVERAGE PART
 COMMERCIAL PROPERTY COVERAGE PART
 CRIME AND FIDELITY COVERAGE PART
 EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART
 EQUIPMENT BREAKDOWN COVERAGE PART
 FARM UMBRELLA LIABILITY PART
 LIQUOR LIABILITY COVERAGE PART
 MEDICAL PROFESSIONAL LIABILITY COVERAGE PART
 POLLUTION LIABILITY COVERAGE PART
 PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

A. The Cancellation Common Policy Condition is replaced by the following:

CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

2. Cancellation Of Policies In Effect For Less Than 60 Days.

If this policy has been in effect for less than 60 days and this policy is not a renewal of a policy we issued, we may cancel this policy by:

- a. Giving the first Named Insured at least 15 days' notice prior to the cancellation date for nonpayment of premium or substantial increase in hazard; or
- b. Mailing or delivering the first Named Insured at least 45 days' notice prior to the cancellation date for any other reason.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.

3. Cancellation Of Policies In Effect For 60 Days Or More.

If this policy has been in effect for 60 days or more, or if this is a renewal of a policy we issued, we may cancel this policy only for one or more of the following reasons:

- a. Nonpayment of premium;
- b. Fraud or material misrepresentation affecting this policy or in the presentation of claims under this policy;
- c. Violation of any provisions of this policy; or
- d. Substantial increase in hazard, provided we have secured approval for the cancellation from the commissioner of insurance.

If we cancel this policy for one of the reasons specified in Paragraph 3., we will cancel only in the following manner:

- a. By giving at least 15 days' notice before the effective date of cancellation if we cancel for nonpayment of premium; or
- b. By mailing or delivering at least 45 days' notice before the effective date of cancellation if we cancel for any other reason.

Exhibit E

Written notice of cancellation, including the reason for cancellation, will be mailed or delivered to the first Named Insured at the first Named Insured's last mailing address known to us.

If cancellation is for nonpayment of premium, written notice may be sent by certificate of mailing or certified mail. If cancellation is for any reason other than nonpayment of premium, written notice must be sent by certified mail.

4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
 5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
 6. If notice is mailed, proof of mailing will be sufficient proof of notice.
- B. Any When We Do Not Renew Condition is deleted.

The following Conditions are added:

1. WHEN WE DO NOT RENEW

a. We may elect not to renew this policy by mailing, by certified mail, or delivering written notice of nonrenewal to the first Named Insured's last mailing address known to us. We will mail or deliver this notice at least 45 days before the:

- (1) Expiration of the policy; or

- (2) Anniversary date of this policy if this policy has been written for a term of more than one year.

b. This provision does not apply:

- (1) If we have indicated a willingness to renew;
- (2) In case of nonpayment of premium;
- (3) If you do not pay any advance premium required by us for renewal; or
- (4) If any property covered in this policy is insured under any other insurance policy.

2. RENEWAL

a. If we:

- (1) Elect to renew this policy; and
- (2) Have the necessary information to issue a renewal policy,

we will confirm in writing at least 45 days before it expires our intention to renew this policy; and the premium at which this policy will be renewed.

b. If we do not comply with the provisions of Paragraph a., you will have renewal coverage. The renewal coverage will be at the rates:

- (1) In effect under the expiring or expired policy; or
- (2) In effect on the expiration date, that have been approved by the Commissioner,

whichever are lower.

This renewal coverage will be on a pro rata basis and will continue for 45 days after we confirm renewal coverage and premium. If you accept this renewal policy, this Paragraph b. does not apply.

