

**RESOLUTION NO. 20-12**

**A RESOLUTION AUTHORIZING THE LEASE OF SIDEWALK  
RIGHT-OF-WAY TO FINS GRILL, LLC, DBA FINS GRILL**

Recitals:

The City has negotiated an agreement for Fins Grill, LLC to lease a portion of the sidewalk right-of-way located in front of 420 Main Street from the City for use as outdoor dining; and

The City Council deems it necessary and appropriate that the City lease said property to Fins Grill, LLC.


NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF GRAND JUNCTION, COLORADO:

The City Manager is hereby authorized and directed to sign the Lease Agreement leasing the city-owned sidewalk right-of-way for an initial term commencing June 7, 2012, and terminating March 8, 2013, for the rental sum of \$123.94, to Fins Grill, LLC.

PASSED and ADOPTED this 6<sup>th</sup> day of June, 2012.

  
President of the Council Pro Tem

Attest:

  
\_\_\_\_\_  
City Clerk

## **DOWNTOWN OUTDOOR DINING LEASE AGREEMENT**

THIS LEASE AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by and between THE CITY OF GRAND JUNCTION, COLORADO, a municipal corporation, as Lessor, (hereinafter "City") and, Fins Grill, LLC, dba Fins Grill, as Lessee, (hereinafter "Lessee"), and the Grand Junction Downtown Development Authority as Lessor's Administrative Agent, (hereinafter "DDA").

### **RECITALS:**

The City by Ordinance No. 3650 and subsequently amended by Ordinance No. 4120 established a Sidewalk Restaurant commercial activity permit for restaurants in the Downtown Shopping Park (DSP) on Main Street, Seventh Street and Colorado Avenue.

In accordance with that authority, the City Council and the DDA desire to make certain areas of the sidewalk in the DSP and at other locations as authorized available by lease to proximate land owners and/or lessees that want to make use of a portion of the public way for outdoor dining with or without alcohol service.

NOW THEREFORE, in consideration of the mutual covenants, terms and conditions contained herein, it is agreed as follows:

### **1. Demise of Premises.**

Option B: The City does hereby lease to Lessee the Premises (hereinafter "Premises") comprising approximately 164.50 square feet of the public way located in front of and immediately abutting the Lessee's business. The Premises and the location of Lessee's primary business facility are more particularly described in the attached Exhibit A.

A brief description of the Lessee's business is attached as Exhibit B.

### **2. Term.**

The initial term of this Agreement shall be for the period commencing on June 7, 2012. Upon signature by all parties this Agreement supersedes all prior leases, and terminates on March 8, 2013.

### **3. Rental.**

Lessee shall pay rent to Lessor at the rate of \$1.00 per square foot per year pro rated for the initial term, and in the total sum of \$ 123.94, which sum shall be payable in advance at the offices of the City Clerk, Grand Junction City Hall, 250 North 5th Street, Grand Junction, Colorado 81501. If the rent payment is not paid in full when due, a Lease shall not issue.

### **4. Permitted Uses and Hours of Operation.**

Lessee agrees to use the Premises for the purpose of selling and dispensing food and/or beverages to the public. The Premises may be open to the public during Lessee's normal business hours, but in no event shall food and/or beverage service extend beyond 1:00 A.M. Service of alcoholic beverages shall be permitted provided Lessee holds a valid State and City liquor license. Tableside preparation of food shall be permitted pursuant to applicable health and safety regulations; however, fuel-based cooking or food preparation is expressly prohibited in the Premises. Live acoustic music performance is permitted on the Premises, provided any

monitoring of potential encroachments beyond the Premises. If alcohol service is permitted in the Premises, the perimeter of the Premises shall be enclosed by a fixed perimeter enclosure no less than thirty (30) inches in height, the material, design and installation of which shall be approved by the DDA. Openings in the enclosure shall not be less than 44 inches wide. If there is a gate it must swing inward to prevent obstruction of the sidewalk.

c. No gas lighting shall be permitted in the Premises. Battery powered lights, candles in wind-protected enclosures, and low wattage electric lights, such as Christmas lights, shall be allowed. Under no circumstances shall electrical wires, extension cords or similar wiring, cables or conduit extend beyond the Premises into the public way, (easement area or otherwise) nor cross pedestrian paths, nor be placed so as to create a tripping hazard. Any suspended lighting must be securely installed to prevent dislodgement, sagging, or other hazard.

d. Signs are expressly prohibited on the Premises, except for the following: i) menu signs in compliance with the City sign code, and ii) umbrellas that display the Lessees business logo, and/or the logo of only one business product that is featured and representative of the theme of the business. Signs shall be subject to approval by the DDA and City. Third party business signs and/or identification are expressly prohibited on the Premises.

e. Lessee shall not utilize sidewalk trash and/or recycling receptacles for refuse generated within the Premises. Lessee may provide a private trash and/or recycling receptacle within the Premises provided that it is emptied and maintained on a regular basis.

f. Lessee shall remove any personal property, including but not limited to improvements, enclosures, furniture, fixtures, equipment or structures installed by it or at its direction on the Premises promptly upon expiration without renewal of this Agreement. Failure to remove said property within ten (10) days of expiration shall be deemed an abandonment of said property, and result in ownership thereof transferring to the DDA which shall have the right to dispose of said property as its own.

#### **10. Safe and Sanitary Condition.**

Lessee shall at all time keep the Premises in good repair and free from all litter, dirt, debris, snow, and ice, and in a clean and sanitary condition. Lessee shall not permit nor suffer any disorderly conduct or nuisance whatsoever, which would annoy or damage other persons or property by any alteration to the Premises or by any injury or accident occurring thereon. Lessee shall be responsible, subject to applicable law regulating the discharge of contaminants to the sewer for power-washing or steam cleaning the sidewalk surface of the Premises twice yearly.

#### **11. Lessor and Agent not Liable for Damages or Injuries.**

Lessor and its Administrative Agent shall not be responsible to Lessee or to any other person or entity for damages or injuries arising out of the Lessee's use of the Premises. Lessor and/or its Administrative Agent are not an insurer for Lessee's activities and Lessee shall obtain appropriate insurance against potential damages, injury, lost profit or advantage and any and all other claims as determined in the Lessees sole and absolute discretion. Lessee shall indemnify and hold harmless the City of Grand Junction and the DDA and its employees, elected and appointed officials, against any and all claims for damages or personal injuries arising from the use of the Premises.

**18. Waiver.**

No failure by Lessor to exercise any rights hereunder to which Lessor may be entitled shall be deemed a waiver of Lessor's right to subsequently exercise same. Lessee shall gain no rights nor become vested with any power to remain in default under the terms hereof by virtue of Lessor's failure to timely assert his rights. It is further agreed that no assent, expressed or implied, to any breach of any one or more of the covenants or agreements herein shall be deemed or taken to be a waiver of any succeeding or any other breach.

**19. Default.**

a. Each and every one and all of the following events shall constitute an Event of Default:

i) If Lessee files a petition in bankruptcy or insolvency or for reorganization under any bankruptcy act or voluntarily takes advantage of any such act or makes an assignment for the benefit of creditors;

ii) if involuntary proceedings under any bankruptcy law, insolvency or receivership action shall be instituted against Lessee, or if a receiver or trustee shall be appointed for all or substantially all of the property of Lessee and such proceedings are not dismissed, or the receivership or trusteeship vacated, within ten (10) days after the institution or appointment;

iii) if Lessee fails to pay any sum due from it in strict accordance with the provisions of this Lease, and/or fails to pay any tax or assessment of the State, City or DDA and does not make the payment within ten (10) days after written notice thereof. For the purposes hereof, all sums due from Lessee shall constitute rentals whether denominated as rentals or otherwise elsewhere herein and Lessee has absolutely no right of offset;

iv) if Lessee fails to fully perform and comply with each and every condition and covenant of this Lease Agreement, and such failure or performance continues for a period of thirty (30) days after notice thereof;

v) if Lessee vacates or abandons the Premises;

vi) if the interest of Lessee is transferred, levied upon or assigned to any other person, firm or corporation whether voluntarily or involuntarily except as herein permitted;

vii) if Lessor, in any four month period during the Term, or spanning consecutive Terms, gives any notice to Lessee pursuant to subparagraphs iii) or iv) above, notwithstanding Lessee's cure of default within the allowable period or periods.

b. Upon the occurrence of any Event of Default as set forth above, Lessor shall have the right, at its option, to utilize any one or more of the following rights:

i) to cancel and terminate this Lease Agreement and all interests of the Lessee hereunder by giving notice of such cancellation and termination not less than ten (10) days prior to the effective date of such termination. Upon the expiration of said ten (10) day period, the Lessee shall have no further rights under this Lease Agreement (but such cancellation shall not serve to release or discharge the damages Lessee owes to Lessor); and/or

ii) to make any payment required of Lessee herein or correct any condition required to be corrected by Lessee, and Lessor shall have the right to enter the Premises for the purpose of correcting any such condition and to remain on the Premises until the complete correction of such condition. However, no expenditure by Lessor on behalf of Lessee shall be deemed to waive or release Lessee's breach hereof and Lessor shall retain all rights to proceed against Lessee as set forth herein; and/or

iii) to reenter the Premises immediately with or without order of court and without claim of trespass, remove the property of Lessee and store such property in a public warehouse or such other location selected by Lessor, all at the expense of Lessee. After such reentry, Lessor shall have the right to terminate this Lease Agreement by giving ten (10) days notice of termination to

**24. Authorization of Parties.**

Each individual executing this Lease as director, officer, partner, member, or agent of a corporation, limited liability company, or partnership represents and warrants that he or she is duly authorized to execute and deliver this Lease on behalf of such corporation, limited liability company, or partnership and that reasonable evidence of such authorization will be provided to the other party upon request.

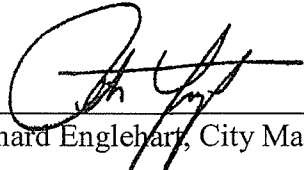
**25. Administrative Agent.**

In conformance with the City's delegation of management responsibilities and authority concerning the Downtown Shopping Park and others areas of the public way in downtown Grand Junction, the City designates the DDA to serve as its Agent for the administration and enforcement of this Agreement.

IN WITNESS WHEREOF, the parties have signed and sealed this Lease Agreement, this day and year first above written.

Lessor: City of Grand Junction

Lessee:

  
\_\_\_\_\_  
By: Richard Englehart, City Manager

  
\_\_\_\_\_  
Fins Grill, LLC  
By: Ronald Hegge, Member-Mgr

Agent: Downtown Development Authority

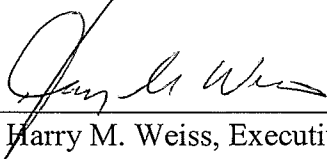
  
\_\_\_\_\_  
By: Harry M. Weiss, Executive Director

Exhibit A: Proposed Lease Area (include dimensions and a sketch)

The area of sidewalk immediately in front of and abutting  
420 Main Street, Grand Junction, CO (Mesa County Parcel Number 2945-143-16-010)  
more particularly described in the dimensioned sketch below:

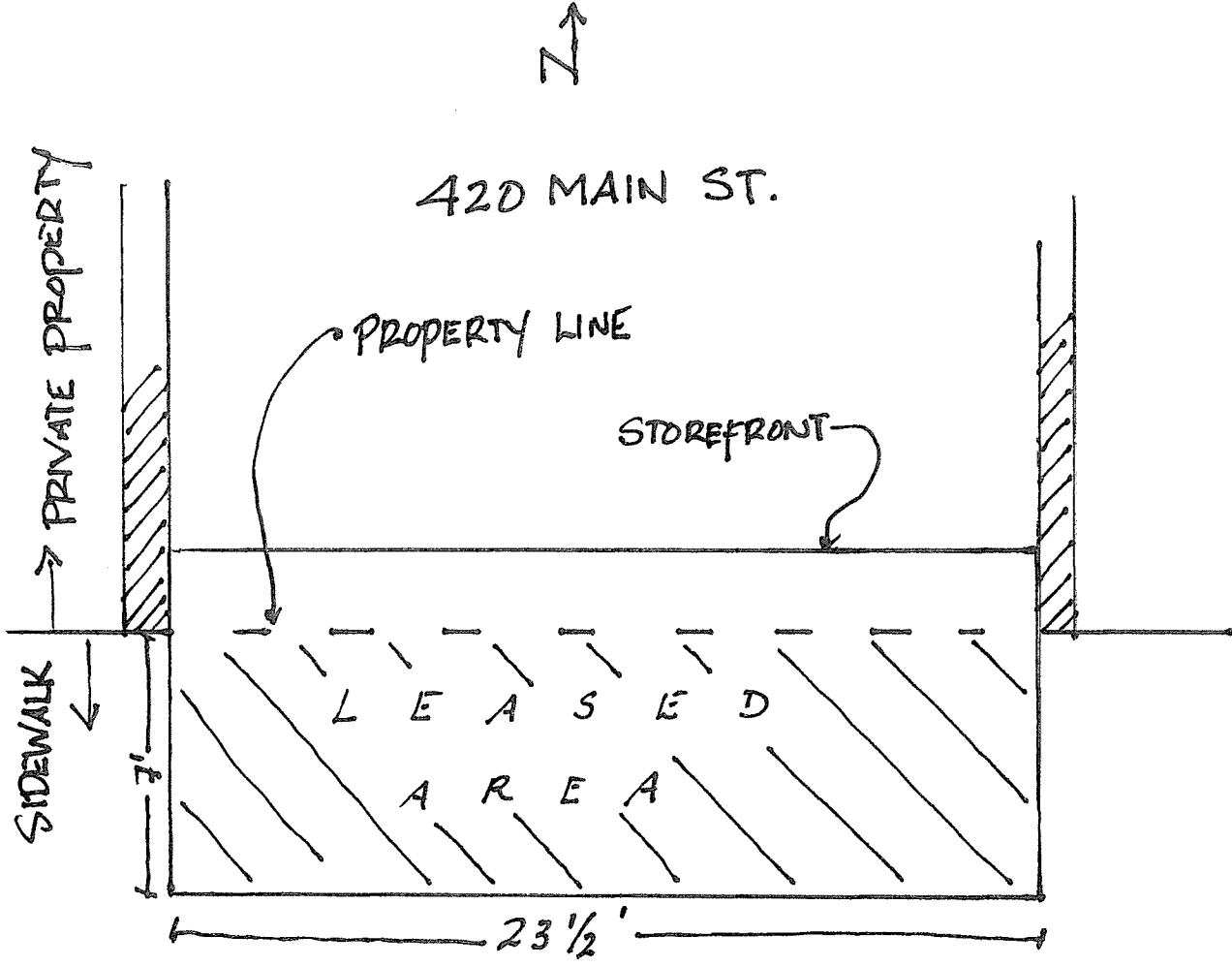


Exhibit B: Brief Description of Business / DDA Certification: include date, who prepared and lessee signature or initials

Business Name (name of insured): Fins Grill, LLC

DBA (if needed): Fins Grill

Applicant / Relationship to Business: Ronald Hegge, Member-Manager

Contact Phone and Email: (970) 986-9765 cell; reh601@aol.com

Type of Food/Beverage to be served in leased area: Food and Alcohol

Days of Operation / Operating Hours: 7 days 11AM-9PM

How this operation will benefit Downtown Grand Junction:

Additional outdoor dining option for downtown patrons

Number of tables to be used in the leased area: 5-10

Number of chairs to be used in the leased area: 10-20

Semi-permanent or movable structures including carts, stands, signs, etc: NA

Describe any musical or vocal presentations or effects to be used in the leased area:

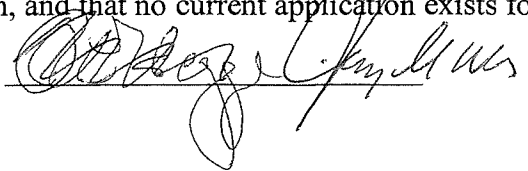
NA

Copies of Current

Permits & Licenses Obtained:	State Sales Tax	<u>✓</u>
	City Sales Tax	<u>✓</u>
	Liquor License	<u>✓</u>
	Restaurant/Food Service	<u>✓</u>

Proof of Liability Insurance Coverage Provided?

**DDA Certification:** The Downtown Development Authority hereby finds that this application is proper, that all applicable permits have been obtained or will be obtained, that it is in compliance and will further the goals and objectives of the Plan of Development for Downtown Grand Junction, and that no current application exists for this location.

Signed:  Date: 5-25-12

If denied, state reason:  
\_\_\_\_\_

Exhibit C: Assurances, Hold Harmless and Indemnity Agreement

The Applicant assures the Downtown Development Authority and the City of Grand Junction that if a lease is issued, s/he will comply with all of the requirements and provisions of Grand Junction City Ordinance 3609, all other applicable ordinances and laws, and the Plan of Development for Downtown Grand Junction. The applicant further assures that s/he has obtained or will obtain all of the necessary and required permits or licenses to engage in the business or activity proposed.

I, RONALD HEGGE, applicant for a Lease to conduct activities in the Downtown Shopping Park area, agree that I shall:

- (a) Hold harmless the City of Grand Junction, its officers and employees, and the Downtown Development Authority of Grand Junction, its officers and employees, from any claims for damage to property or injury to persons which may arise from or be occasioned by any activity carried on by me within the Downtown Shopping Park, and
- (b) Indemnify the City of Grand Junction, its officers and employees, and the Downtown Development Authority, its officers and employees, against any claim, loss, judgment, or action, or any nature whatsoever, including reasonable attorney fees, that may arise from or be occasioned by any activity carried on by me within the Downtown Shopping Park.

I realize that consideration for this release is the granting of a lease to me by the City of Grand Junction, and I realize and agree that this Hold Harmless/ Indemnity Agreement shall take effect whenever I begin to conduct the type of activities for which the lease has been applied or when the permit is issued, whichever is earlier. I also understand and agree that this agreement shall apply to any activities which I carry on which are done in violation of the terms of this lease.

Executed this 24 day of May, 2012.

Signed: 



No. 4021212

License Fee \$48.75

STATE OF COLORADO  
**CITY OF GRAND JUNCTION**

BY AUTHORITY OF THE CITY COUNCIL

**RETAIL LIQUOR LICENSE**

**FOR BEER AND WINE  
TO SELL AT RETAIL MALT AND VINOUS LIQUOR**

This is to Certify that \_\_\_\_\_ of the State of Colorado, having applied for a License to sell malt and vinous liquors and fermented malt beverages, and having paid to the City Treasurer the sum of Forty Eight Dollars and Seventy-five One Hundredths (\$48.75) dollars therefor, the above applicant is hereby licensed to sell malt and vinous liquors and fermented malt beverages by the drink for consumption on the premises as a restaurant at \_\_\_\_\_ in the City of Grand Junction, Colorado, for a period being on the \_\_\_\_\_ and ending on the \_\_\_\_\_ unless this License is revoked sooner as provided by law.

This License is issued subject to the Laws of the State of Colorado and especially under the provisions of Article 46 and 47 of Title 12, Colorado Revised Statutes, as amended and the Ordinances of the City aforesaid, insofar as the same may be applicable.

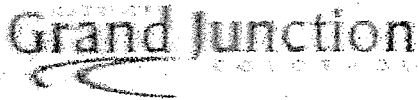
IN TESTIMONY WHEREOF, The City Council has hereunto subscribed its name by its officers duly authorized this 23<sup>RD</sup> day of March, 2012.

ATTEST:

*Stephanie Tinn*  
CITY CLERK

THE CITY COUNCIL OF THE CITY OF  
Grand Junction, Colorado

*Marked [Signature]*  
CITY MANAGER



DO NOT WRITE IN THESE SPACES  
THIS LICENSE IS NOT TRANSFERABLE

**SALES/USE TAX LICENSE-ACCOUNT NO. 8966**

**FINS GRILL  
683 HORIZON DR # 112  
GRAND JUNCTION**

*Licensee must not engage and shall ensure that no long or license holder or agent or employee with all City of Grand Junction laws and regulations*

STATE OF COLORADO  
DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT  
**LICENSE TO OPERATE A RETAIL FOOD ESTABLISHMENT**

**Fee  
\$255.00**

LISE ACCOUNT NUMBER (SEE 2011 FORMS)	LIABILITY INFORMATION				ISSUE DATE	LICENSE VALID TO DECEMBER 31
	Class	Code	Exemption	Rate		
42-85028-0000	08	18	03	B	3/15/2011	12/30/2011

THIS LICENSE MUST BE POSTED AT THE FOLLOWING LOCATION:

This certifies that licensee and all persons authorized and licensed to engage in business in accordance with the provisions of the law and regulations of the Colorado Department of Public Health and Environment. Any alterations made on this license will automatically make it null and void.

**Fins Grill  
Fins Grill LLC  
683 Horizon Dr. Ste 112  
Grand Junction CO 81506**

**POST IN A  
CONSPICUOUS  
PLACE**

STATE: COLORADO COUNTY: MESA

**SALES TAX  
LICENSE**

LISE ACCOUNT NUMBER	LIABILITY INFORMATION	ISSUE DATE	LICENSE VALID TO
42-85028-0000	08-18-03-B	3/15/2011	12/30/2011

THIS LICENSE MUST BE POSTED AT THE FOLLOWING LOCATION  
IN A CONSPICUOUS PLACE: FINS GRILL LLC  
683 HORIZON DR STE 112 GRAND JUNCTION CO 81506-5276

**THIS LICENSE IS NOT  
TRANSFERABLE**

**FINS GRILL LLC  
2524 DANIELA CT  
GRAND JCT CO 81506-5404**

*[Signature]*  
Executive Director  
Department of Revenue



# CERTIFICATE OF LIABILITY INSURANCE

FINSG-1

OP ID: CW

DATE (MM/DD/YYYY)

05/23/12

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).

<b>PRODUCER</b> <b>KNODE &amp; ASSOCIATES, LLC</b> <b>INSURANCE</b> 311 W. 3RD STREET, PO BOX 40 PALISADE, CO 81526 David A Woll	<b>CONTACT NAME:</b> _____	
	<b>PHONE (A/C, No, Ext):</b> _____	<b>FAX (A/C, No):</b> _____
<b>E-MAIL ADDRESS:</b> _____		
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURER A : Pinnacol Work Comp</b>		
<b>INSURER B :</b> _____		
<b>INSURER C :</b> _____		
<b>INSURER D :</b> _____		
<b>INSURER E :</b> _____		
<b>INSURER F :</b> _____		

**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 INSR	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS																
	<b>GENERAL LIABILITY</b> <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR _____ GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ _____ \$																
	<b>AUTOMOBILE LIABILITY</b> <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) \$ _____ \$																
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <b>EXCESS LIAB</b> <input type="checkbox"/> CLAIMS-MADE DED    _____    RETENTION \$ _____						EACH OCCURRENCE \$ AGGREGATE \$ _____ \$																
<b>A</b>	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below			<b>4155975</b>	<b>05/17/12</b>	<b>06/01/13</b>	<table border="0"> <tr> <td></td> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> <td></td> </tr> <tr> <td></td> <td>E.L. EACH ACCIDENT</td> <td></td> <td>\$ 100,000</td> </tr> <tr> <td></td> <td>E.L. DISEASE - EA EMPLOYEE</td> <td></td> <td>\$ 100,000</td> </tr> <tr> <td></td> <td>E.L. DISEASE - POLICY LIMIT</td> <td></td> <td>\$ 500,000</td> </tr> </table>		WC STATUTORY LIMITS	OTHER			E.L. EACH ACCIDENT		\$ 100,000		E.L. DISEASE - EA EMPLOYEE		\$ 100,000		E.L. DISEASE - POLICY LIMIT		\$ 500,000
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	E.L. DISEASE - POLICY LIMIT		\$ 500,000																				

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

<b>CERTIFICATE HOLDER</b>  <b>FINS GRILL, LLC</b> <b>RON</b> <b>420 MAIN STREET</b> <b>GRAND JUNCTION, CO 81501</b>	<b>CANCELLATION</b>  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 <b>David A Woll</b>
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