

LICENSE AGREEMENT FOR TABLES AND CHAIRS
WITH MADERA'S RESTAURANTE MEXICANO & CANTINA
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 ROQUE'S VERMONT CORPORATION d/b/a MADERA'S RESTAURANTE MEXICANO & CANTINA, a commercial establishment located at 3 Main Street, Suite #130, Burlington, Vermont (hereinafter MADERA'S or LICENSEE).

WHEREAS, the CITY owns property, including the street and sidewalk right-of-way adjacent to 3 Main Street, Suite #130; and

WHEREAS, MADERA'S stated on its application (attached hereto as Exhibit A) that it wishes to place 6 tables and 22 chairs on the sidewalk area in front of the building at 3 Main Street, #130; and

WHEREAS, MADERA'S has stated in its permit application that there will be chain fencing surrounding the tables and chairs and they will cover a 213 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 MADERA'S enter into the following License Agreement:

1. TERM

The CITY grants to MADERA'S (hereinafter LICENSEE) a license to place 6 tables and 22 chairs covering an area of 213 sq. ft. on the public right-of-way at 3 Main Street, #130

for a term 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 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 the sidewalk area is kept clear and at all times there is a 5 ft. right-of-way for pedestrian traffic. The tables and chairs are to be 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 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 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 shall be attached as Exhibit E.

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.

12. This License Agreement supersedes all other License Agreements executed for this location.

DATED at Burlington, Vermont this _____ day of _____,

2014.

CITY OF BURLINGTON

By: _____
Miro Weinberger, Mayor
Duly Authorized

Witness

ROQUE'S VERMONT CORPORATION
d/b/a MADERA'S RESTAURANTE
MEXICANO & CANTINA

By: _____
Duly Authorized

Witness



MMG INSURANCE COMPANY

44 Maysville Road
Presque Isle, Maine 04769

SPECIAL BUSINESS OWNERS POLICY

Policy No.	BP10995415	DECLARATIONS	Policy Type
Policy Period (ANNUAL)		9-Pay Bill	AMENDED EFFECTIVE
6/09/2012 To	6/09/2013	12:01 A.M. Eastern Standard Time	3/04/2013

Named Insured 0537974
 ROQUES VERMONT CORP
 DBA AND AS PER IL T8 00
 180 BATTERY ST STE 130
 BURLINGTON VT 05401-5212

Agent 636 44 802-658-4600
 SMITH BELL & THOMPSON INC
 40 MAIN STREET SUITE 500
 PO BOX 730
 BURLINGTON VT 05402-0730

SCHEDULE OF ENDORSEMENT ADDITIONAL INFORMATION

BP0448 (07-02) Additional Insured - Designated Person or Organization

Name of Person or Organization:
 CITY OF BURLINGTON
 49 CHURCH ST BURLINGTON, VT 05401

b. We may, without the insured's consent, continue litigation after a judgment has been rendered with respect to the insured's legal liability under this policy for damages in particular instance. In that event, no limitation of our liability will be valid where the matter of that litigation is concerned.

c. Under Coverage Forms to which this endorsement applies any legal action against us to recover for loss under this policy must be brought within one year after amount of loss is finally established. The amount of loss can be established only by:

- (1) Judicial judgment; or
- (2) An agreement between the parties involved with our written consent.

d. In the event of the insured's bankruptcy or insolvency, an injured person or claimant who has obtained a judgment against the insured may bring suit against us, provided:

- (1) The judgment was for damages covered by this policy; and
- (2) The suit is for damages in amounts no greater than the applicable Limits of Insurance of this policy.

e. Payment by the insured of any judicial judgment or claim for any of our liability under this policy will not deprive the insured of the right to bring action against us.

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.
2. Paragraph C. Concealment, Misrepresentation Or Fraud is replaced by the following:

C. Concealment, Misrepresentation Or Fraud

We will not pay for any loss or damage in any case of:

1. Concealment or misrepresentation of a material fact; or
2. Fraud;

committed by you at any time and relating to coverage under this policy.

3. The following paragraphs are added:

M. When We Do Not Renew

1. 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:
 - a. Expiration of the policy; or
 - b. Anniversary date of this policy if this policy has been written for a term of more than one year.

2. This provision does not apply:
 - a. If we have indicated a willingness to renew;
 - b. In case of nonpayment of premium;
 - c. If you do not pay any advance premium required by us for renewal; or
 - d. If any property covered in this policy is insured under any other insurance policy.

N. Renewal

1. If we:
 - a. Elect to renew this policy; and
 - b. 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.
2. If we do not comply with the provisions of Paragraph 1., you will have renewal coverage. The renewal coverage will be at the rates:
 - a. In effect under the expiring or expired policy; or
 - b. 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 2. does not apply.

- C. The following paragraph is added to the Businessowners Coverage Form:

1. Statutory Liability

- a. In addition to paying and satisfying judicial judgments rendered against the insured in consequence of claims to which this policy applies, we will protect the insured against the levy of executions issued on such judgments or claims against the insured.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VERMONT CHANGES

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

A. Section I – Property is amended as follows:

1. The following is added to Paragraph E.4. **Legal Action Against Us Property Loss Condition**:

However, your right to bring legal action against us is not conditioned upon your compliance with the provisions of the Appraisal Property Loss Condition, if any.

2. The following is added to Paragraph E.6. **Loss Payment Property Loss Condition** and replaces any provision to the contrary:

We will pay for covered loss or damage within 10 working days after we reach agreement with you on the amount of loss, provided all other terms of the Loss Payment Property Loss Condition are satisfied.

B. Section III – Common Policy Conditions is amended as follows:

1. Paragraph A. **Cancellation** is replaced by the following:

A. 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:

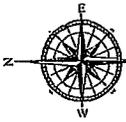
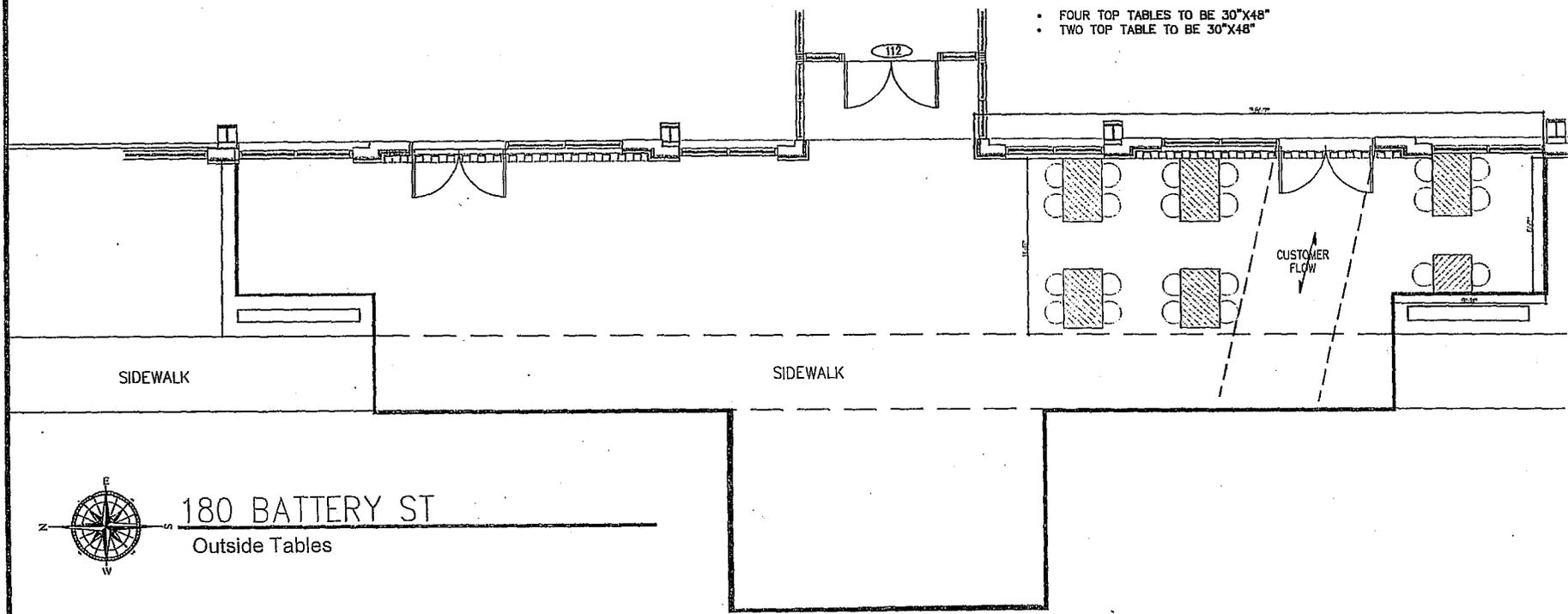
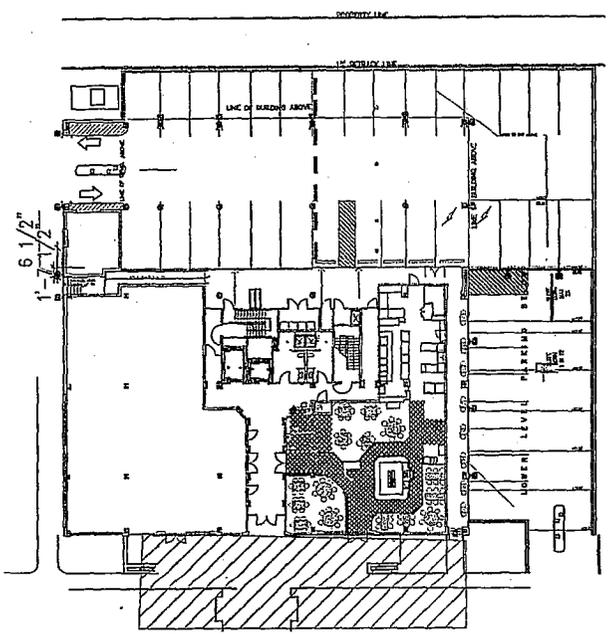
- a. Nonpayment of premium;
- b. Fraud or material misrepresentation affecting this policy or in the presentation of claims under this policy;
- c. Violation of any provisions of this policy; or
- d. Substantial increase in hazard, provided we have secured approval for the cancellation from the commissioner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

AREA VIEW



180 BATTERY ST
Outside Tables



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: Madera's Restaurante Mexicano and

DATE: Monday, March 11, 2013

COMPANY: ROQUE'S VERMONT CORP.

PHONE: 802-657-3377/JIM CELL (318-6689)

LOCATION: 3 MAIN ST, SUITE #100

FAX:

MAILING ADDRESS: JEANETTE/JAMES WOOD
3 MAIN ST SUITE #100
BURLINGTON, VT 05401

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: TABLES / CHAIRS WITHIN CHAINED AREA

4. A 213 square foot placement of FRONT PATIO ON WALKWAY. 6 TABLES WITH CHAIN FENCING ENCLOSURE POST TO POST TO GIVE DINING BOUNDARIES. at 3 MAIN ST, SUITE

DEPARTMENT OF PUBLIC WORKS

Approved? Yes

No

Explain: PEDESTRIAN ROW TO REMAIN OPEN

Signature Ron Gore

Date: 03/26/13

Exhibit B



CITY ATTORNEY'S OFFICE
APR - 3 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: Maderas DATE: _____
CONTACT NAME: Jim or Jeanette Wood PHONE: _____
MAILING ADDRESS: 180 Battery St #130 FAX: _____
Burlington VT 05401 EMAIL: _____
3 Main St. Suite 130

DBA NAME: Maderas Restaurante Mexicano e Cantina
COMPANY: Roque's VT Corp
LOCATION OF ENCUMBRANCE: 180 Battery Street #130

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: Front patio on walkway 6 Tables w/ chain fencing enclosure post to post to give dining boundaries.

Total Square Feet (\$1.00 per SF): 213 sq ft

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"
2. Endorsement to Insurance Policy outlining the Cancellation Policy
3. Endorsement to Insurance Policy listing the City as Additional Insured
4. Sketch, Photo, or Blueprint of what you are proposing.
5. Check for the square feet fees (\$1 per square foot) + \$25 Application fee: \$ 238.00

Signature: Jeanette C Wood Date: 3/11/13

For office use only: Amount received \$ 238.00 on 3/11 Check # 7327
Sent to DPW: 3/11 Sent to Attorney: 4/3

Exhibit A