



**CITY OF VALDEZ**  
**TEMPORARY LAND USE PERMIT AGREEMENT**

**Permit No. 19-02**

This Temporary Land Use Permit Agreement (hereinafter referred to as Permit) is entered into this \_\_\_ day of \_\_\_, 20\_\_ by and between the **CITY OF VALDEZ**, an Alaska municipal corporation (hereinafter referred to as "Valdez"), whose address is P.O. Box 307, Valdez, Alaska, 99686, and **THE FAT MERMAID**, (hereinafter referred to as "Permittee"), whose address is **P.O. Box 1999, Valdez AK 99686**. This Permit was approved by the Valdez Planning and Zoning Commission on the \_\_\_ day of \_\_\_, 20\_\_ and was reported to the Valdez City Council with no objection on the \_\_\_<sup>th</sup> day of \_\_\_, 20\_\_.

W I T N E S S E T H:

1. Permit. Valdez hereby grants to Permittee the right and privilege to be present upon the following described real property belonging to Valdez pursuant to the terms of this Permit Agreement:

**600 square feet of Public Right of Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision (See Exhibit "A")**

2. Term and Termination. Permittee may use the Property for the purposes set forth herein beginning on the \_\_\_<sup>th</sup> day of \_\_\_, 2018 and continuing until the \_\_\_<sup>th</sup> day of \_\_\_\_\_, 20\_\_. In no circumstance shall this Permit exceed six months in duration. The City of Valdez, may at its sole discretion terminate this Permit at any time for any reason with 30 days' written notice to Permittee. Permittee shall vacate the property within thirty days from receiving written notification from the City of Valdez.

3. Use. Permittee shall use the Property to erect an outdoor awning and restaurant seating, for the purpose of serving customers or patrons of Fat Mermaid Restaurant and for no other purpose whatsoever without the prior written consent of the City of Valdez. Use of the Property

under this Permit shall conform with existing City of Valdez zoning requirements and the City of Valdez comprehensive plan. Use of the Property under this Permit shall not adversely impact public access or Valdez operations. **No permanent structures shall be erected on the property; and no permanent alteration of the land shall occur.** This permit is subject to the conditions set forth in Exhibit B.

4. Permittee Not a Lessee. No legal title or leasehold interest in the Property shall be deemed or construed to have been created or vested in Permittee by anything contained herein. The purpose of this permit is to convey a non-possession interest by the City of Valdez to Permittee in that certain property (not to exceed two acres) described in paragraph 1 above. The City of Valdez shall maintain all right, title, and interest in that Property as fee simple owner thereof, and Permittee by virtue of this Permit has only the right and privilege to be present upon the Property and to make use of it for the purpose set forth in paragraph 3 above.

5. Fee. In consideration for use of land owned by the City of Valdez, Permittee agrees to pay in advance a lump sum equal to a flat monthly fee of two hundred fifty dollars (\$250.00) per month of occupancy plus a pro-rated daily rate of nine dollars (\$9.00) per day for the number of days this permit is in effect other than a full month.

6. Insurance Requirement. The Permittee shall, at its own expense, maintain and keep in force during the terms of this Permit adequate insurance to protect both the City of Valdez and Permittee against comprehensive public liability claims arising from the use of the property in the minimum limit of ONE MILLION DOLLARS (\$1,000,000) combined single limit to protect against liability for personal injury, death, or property damage. The Permittee shall deposit with the City of Valdez a copy or copies of such insurance coverage together with appropriate evidence that the premiums thereupon have been paid. All such insurance of the Permittee shall name the City of Valdez as an additional insured party and contain a waiver of subrogation endorsement and provide that the City of Valdez shall be notified at least thirty (30) days prior to any termination, cancellation, or material change in such insurance coverage. Such requirement for insurance coverage shall not relieve the Permittee of any of its other obligations under this Permit.

7. Maintenance. Permittee agrees to maintain the property in a neat and orderly fashion. Upon termination of this Permit, Permittee agrees to leave the premises in a neat and clean condition.

8. Mechanic's Liens. Permittee shall pay all costs for construction done by it or caused to be done by it on the Property as permitted by this Permit. Permittee agrees not to construct any permanent structures on the property.

9. Utilities. Permittee shall be solely liable for and shall timely pay when due all expenses and fees for all utilities used or consumed with respect to the Property. The Permittee shall be required to provide and maintain sanitary facilities to include, but not be limited to, port-a-potties and garbage dumpsters.

10. Exculpation of Valdez. Valdez shall not be liable to Permittee for any damage to Permittee or Permittee's property from any cause. Permittee waives all claims against Valdez for damage to persons or property arising from any reason.

11. Indemnity. Permittee shall hold the City of Valdez harmless from and against any and all damages arising out of any damage to any persons or property occurring in, on, or about the Property.

12. Condemnation. If during the term of this Permit there is any taking by condemnation of the Property or any interest in this Permit, this Permit shall terminate on the date of taking. Any condemnation award shall belong to and be paid to The City of Valdez, and Permittee hereby assigns to the City of Valdez Permittee's interest therein.

13. No Encumbrance or Assignment Permitted. Permittee shall not voluntarily encumber its interest in this Permit or in the Property or attempt to assign all or any part of the Property, or allow any other person or entity, except its authorized representatives, to occupy or use all or any part of the Property.

14. Default. The occurrence of any of the following shall constitute a default under this Permit by Permittee:

(a) Failure to pay fees when due, if the failure continues for fifteen (15) days after written notice for payment;

(b) Any default in or failure to perform any term, covenant, or condition of this Permit including those set forth in Exhibit B;

(c) The cessation by Permittee of the operation of the Permittee's business located on the Property for a period of thirty (30) days;

(d) The making of any assignments for the benefit of creditors of Permittee, the appointment of a receiver for Permittee's business, the entry of an Order for Relief as to Permittee under the United States Bankruptcy Code as now in effect or hereafter amended, the insolvency of Permittee, or any similar situation.

15. Remedies. In the event of any default by Permittee under the provisions of paragraph 14 of this Permit, all of Permittee's rights hereunder shall immediately terminate; and the City of Valdez may, in addition to any rights and remedies that it may be given by statute, common law, express agreement, or otherwise, enter and take sole possession and control of the Property.

16. Valdez' Entry on Premises. The City of Valdez shall have the right to enter the Property at any time and, in view of the fact this Permit constitutes a license on real property rather than a

lease, shall at all times remain in possession of the Property.

17. Notices. Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other party or any other person shall be in writing and either served personally or sent by certified mail, return receipt requested, and shall be addressed to the other party at the address set forth in the introductory paragraph of this Permit. Either party may change its address by notifying the other party of the change of address. Such notices shall be deemed given when mailed irrespective of whether or not they are received.

18. Modification, Amendment, Waiver. No delay or omission in the exercise of any right or remedy of the City of Valdez on any default by Permittee shall impair such a right or remedy or be construed as a waiver. No modification, amendment, or waiver of any of the provisions of this Agreement shall be effective unless in writing, specifically referring hereto, and authorized by both parties.

19. Governing Law/Jurisdiction. This Permit shall be governed by, interpreted, and enforced in accordance with the laws of the State of Alaska and the laws of the United States, as applicable. The venue for all litigation arising out of or relating to this Agreement shall be Valdez, Alaska. The parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Alaska and waive any defense of *forum non conveniens*.

20. Miscellaneous. Time is of the essence with respect to each provision of the Permit, and it shall be binding upon and inure to the benefit of the parties, their heirs, assigns, and successors in interest. The enforceability, invalidity, or illegality of any provisions of this Permit shall not render the other provisions of this Permit unenforceable, invalid, or illegal.

IN WITNESS WHEREOF the parties have caused this Permit to be executed by their duly authorized officers the day and year first above written.

CITY OF VALDEZ, ALASKA

PERMITTEE: \_\_\_\_\_

By: \_\_\_\_\_  
Roxanne Murphy, Interim City Manager  
City of Valdez

By: \_\_\_\_\_  
Karen Ables, President  
North Harbor Project, DBA  
The Fat Mermaid

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:  
BRENA, BELL & CLARKSON, P.C.  
Attorneys for the City of Valdez

By: \_\_\_\_\_  
Jon S. Wakeland

STATE OF ALASKA                    )  
  ) ss.  
THIRD JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Roxanne Murphy** known to me and to me known to be the City Manager for the City of Valdez and who executed the foregoing document and acknowledged to me that being duly authorized to do so executed the foregoing document as a free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

STATE OF ALASKA                    )  
  )ss.  
THIRD JUDICIAL DISTRICT        )

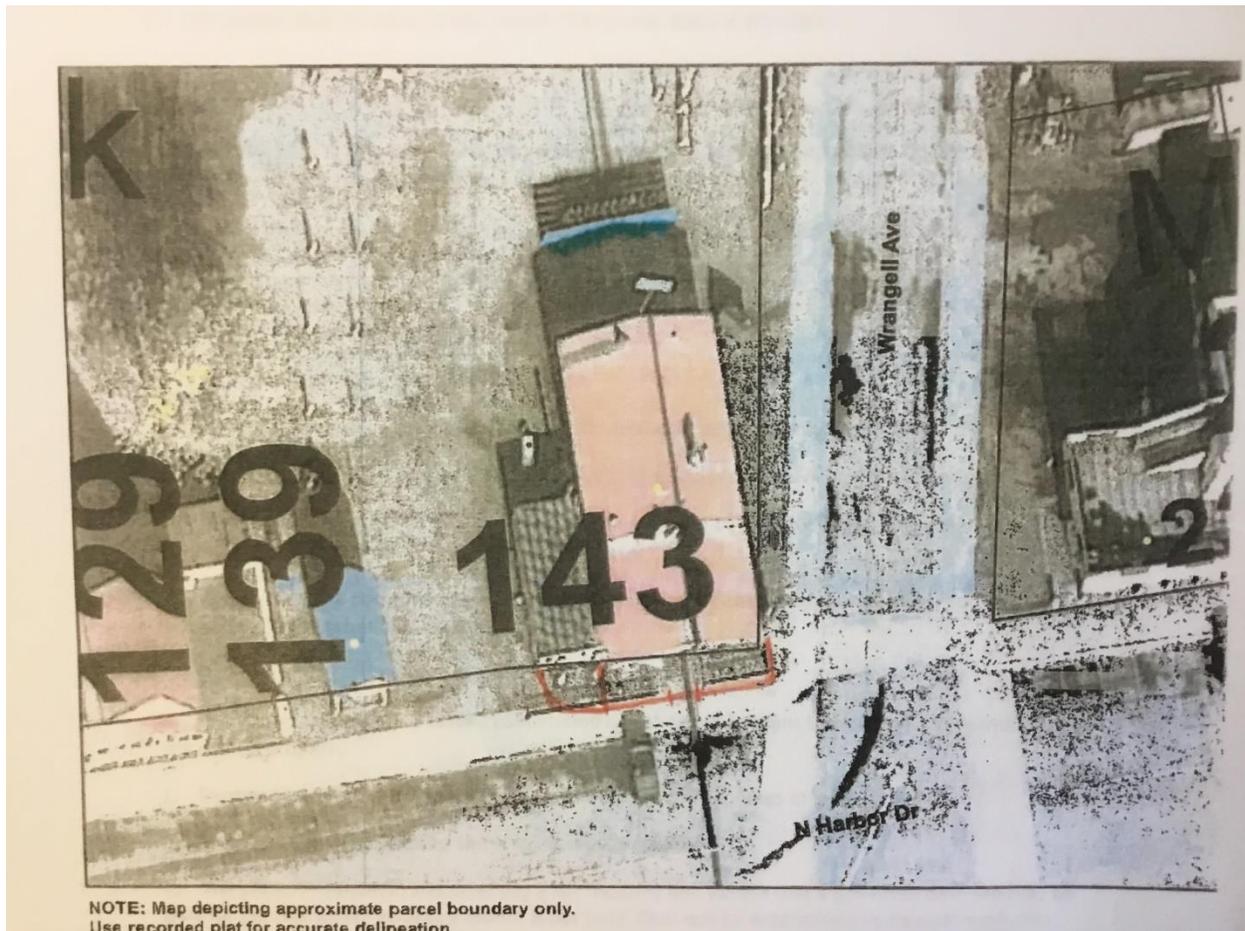
THIS IS TO CERTIFY that on this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, before me, the undersigned, a Notary Public in and for the State of Alaska, personally appeared **Karen Ables** known to me and to me known to be the individual named in and who executed the foregoing document and executed the foregoing document as free and voluntary act and deed for the uses and purposes therein set forth.

WITNESS my hand and notarial seal the day and year first hereinabove written.

\_\_\_\_\_  
Notary Public in and for Alaska  
My Commission Expires: \_\_\_\_\_

“EXHIBIT A”

600 square feet of Public Right of Way Immediately Adjacent to Lot 1A, Block 39A, Harbor Subdivision



“EXHIBIT B”

The additional conditions of this permit have been set forth by Valdez City Council on the date of \_\_\_\_, 20\_\_ and are detailed as follows:

1. The permittee shall maintain at least 36” of uninhibited access on the sidewalk between the Fat Mermaid and North Harbor Drive to comply with Federal handicap access requirements under the Americans with Disabilities Act (ADA). The permittee shall contact the Building Inspector for the Planning Department to schedule inspection to confirm the placement of the temporary awning structure under this permit does not violate ADA access requirements.