



CITY OF VALDEZ
TEMPORARY LAND USE PERMIT AGREEMENT

Permit No. 26-11

This Temporary Land Use Permit Agreement (hereinafter referred to as Permit) is entered into this 15th day of May, 2026 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 Potato Too LLC**, (hereinafter referred to as "Permittee"), whose address is P. O. Box 2842 Valdez, AK 99686-2924.

WITNESSETH:

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

- 369 square foot portion of public right-of-way immediately adjacent to Lot 12, Block 40, Harbor Subdivision (See Exhibit "A")

2. Term and Termination. Permittee may use the Property for the purposes set forth herein beginning on the 1st of May, 2026 through September 15th, 2026. 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 reasonable written notice to Permittee.

3. Use. Permittee shall use the Property for temporary outdoor seating, live music events, and art classes for the customers or patrons of The Roadside Potatohead 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 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.**

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 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. Pursuant to resolution #23-43 fees for this Temporary Land Use Permit will be \$311.00 per month, or a pro-rated daily rate of \$11.00 per day for those periods less than one month in duration.

6. Insurance Requirement. Insurance Requirement. Permittee represents that it is entirely self-insured and sufficiently financially secure to respond to any claim arising out of any activity undertaken in connection with this Permit. The City is relying on this representation in forgoing the City's imposition upon the Permittee of the obligation to obtain an insurance policy issued to the Permittee and covering the City as an additional insured. The Permittee acknowledges its obligation to defend, indemnify, and hold harmless the City as required in paragraph 11 of this Permit. Permittee further acknowledges that its conduct in connection with responding to any claim against the City shall, at a minimum, conform with the obligations of an insurance carrier to its insured.

Waiver of Subrogation. For the purpose of waiver of subrogation, Permittee releases and waives all rights to claim or recover damages, costs or expenses against Valdez for any casualty of any type whatsoever in, on or about the Premises if the amount of such damage, cost or expense has been paid to such damaged party under the terms of any policy of insurance required herein.

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. Except for claims arising solely out of acts or omissions of Valdez, its agents, authorized representatives, employees or contractors, Permittee agrees to protect, defend, indemnify and hold Valdez, its agents, authorized representatives and employees (collectively

“Valdez’s Indemnities”) harmless from and against any and all liability arising from acts or omissions of any person and of any nature whatsoever occurring on or relating to Permittee’s use of the Property, causing injury to, or death of persons, or loss of, or damage to, property, and from any expense, including attorney’s fees, incident to the defense of and by Valdez’s Indemnities therefrom. If any action or proceeding is brought against Valdez’s Indemnities by reason of any such occurrences, Valdez’s Indemnities shall promptly notify Permittee in writing of such action or proceeding.

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;

(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’s 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.

21. Environmental Contamination. All fuel petroleum and other toxic products maintained, stored or used at the Property shall be stored no less than 100 feet away from the nearest surface waterbody, and contained and confined in a manner which prevents any spillage from entering the Property, including without limitation any surface waters. In the event of a fuel or other toxic product spill, Permittee shall immediately notify the Valdez office of the Department of Environmental Conservation of the same. Permittee shall be responsible for all costs associated with remediation in the event of spillage of toxic product on the Property.

22. Hazardous Material Defined. Hazardous Material/Substance is any substance which is toxic, ignitable, reactive, or corrosive and which is regulated by any local government, the State of Alaska, or the United States government. Hazardous Material includes any and all material or substances which are defined as “hazardous waste”, “extremely hazardous waste”, “hazardous material” or a “hazardous substance” pursuant to local, state or federal law, including without limitation, the Resource Conservation and Recovery Act of 1976, as amended from time to time, and regulations promulgated thereunder, and the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time, and regulations promulgated thereunder. “Hazardous Material” includes but is not restricted to asbestos, polychlorobiphenyls (“PCB’s”) and petroleum and petroleum products.

23. Condition of Property. Permittee has had full opportunity to visually examine the Property for the presence of any Hazardous Material. Valdez states that it is unaware of any current or past problems with the Property. Permittee acknowledges that Valdez, its agents, authorized representatives or employees have made no representations as to the physical conditions of the Property, including but not limited to the subsurface and soil conditions. Permittee accepts the Property in an “as is” condition. Permittee does not accept or assume responsibility or liability for pre-existing subsurface and/or soil conditions, including, but not limited to Hazardous Materials and/or Environmental contamination that is unknown and/or undisclosed to Permittee at the time of execution of this Permit.

24. Release of Valdez. Any other provision of this Permit to the contrary notwithstanding, Permittee releases Valdez from any and all claims, demands, penalties, fines, judgements, liabilities, settlements, damages, costs or expenses (including, without limitation, a decrease in the value of the Property, damages due to loss or restriction of usable space, and attorney’s fees, court costs, litigation expenses, and consultant and expert fees) arising, during or after the term of this Permit, and resulting from Permittee’s use, keeping, storage or disposal of Hazardous Materials on the Property. This release includes, without limitation, any and all costs incurred due to any investigation of the site or any cleanup, removal or restoration mandated by a federal, state or local agency or policy subdivision or by law, relating to Permittee’s use, keeping, storage or disposal of Hazardous Materials on the Property.

25. Use of Hazardous Materials on the Property.

(a) Permittee shall not cause or permit any Hazardous Material to be brought upon, kept or used in or about the Property by Permittee or its authorized representatives or invitees, except for such Hazardous Material as is necessary or useful to Permittee’s use of the Property.

(b) Any Hazardous Material permitted on the Property as provided in this paragraph, and all containers therefor, shall be used, kept, stored and disposed of in a manner that complies with all laws or regulations applicable to any such Hazardous Material.

(c) Permittee shall not discharge, leak or emit, or permit to be discharged, leaked or emitted, any material into the atmosphere, ground, sewer system or any body of water, if such material (as reasonably determined by Valdez, or any governmental authority) does or may, pollute or contaminate the same, or may adversely affect (a) the health, welfare or

safety of persons, whether located on the Property or elsewhere, or (b) the condition, use or enjoyment of the Property or any other real or personal property.

(d) Permittee shall be fully liable for all costs and expenses related to the use, storage and disposal of Hazardous Material kept on the Property by the Permittee, its authorized representatives and invitees, and the Permittee shall give immediate notice to Valdez of any violation or potential violation of the provisions of subparagraphs 25 (a), (b) and (c).

26. Indemnification of Valdez. Permittee shall forever protect, defend, indemnify and hold harmless Valdez from and against any and all losses, claims, investigations, assertions, liens, demands and causes of action of every kind and character (including without limitation any assertions or claims made against Valdez, Permittee or third parties, by government agencies or third parties, alleging the release or threatened release of Hazardous Materials or environmental contamination of any kind on or in connection with the Property) and all costs thereof (including without limitation costs of removal action, remedial action other “response costs” as that term is defined under applicable federal and state law, attorney’s fees, penalties, damages, interest and administrative/court costs incurred by Valdez in response to and defense of the same) arising in favor any party, including Valdez, and arising from or connected with Permittee’s activities under this Permit or Permittee’s use of or presence on the Property, whether such activities, use or presence are those of Permittee or Permittee’s agents, subcontractors or other representatives. Permittee acknowledges that this indemnification clause shall survive termination of this Permit, and that it applies regardless of the basis of liability alleged by or against any party, including strict liability under Alaska Statute 46.03.822 or federal law. Permittee’s obligations under this paragraph may be discharged however, by performance of whatever degree of site investigation for environmental contamination (in Valdez’s sole discretion) is necessary to render the Property suitable for Valdez to release Permittee from these obligations, which release must be granted in writing by Valdez.

27. Liability for Release/Threatened Releases of Hazardous Materials. At all times while this Permit is in effect, for purposes of potential liability under Alaska Statute 46.03.822.:

1. Permittee, not Valdez, shall be deemed the owner of and person having control over any Hazardous Materials used by Permittee or on the Property for business reasons of Permittee; and

2. Permittee, not Valdez, shall be deemed the owner of the possessory interest under this Permit, and the operator of the Property as a facility under Alaska Statute 46.03.822(a)(2); and

3. Permittee, not Valdez, shall be deemed the generator, transporter, or both, of any Hazardous Materials generated or transported by Permittee in connection with the enjoyment of its right under this Permit.

For purposes of this paragraph 27, "Permittee" shall include Permittee's agents, employees, sub-contractors, subsidiaries, affiliates and representatives or any kind.

28. Compliance with Environmental Laws. Permittee covenants full compliance with any applicable federal, state or local environmental statute, regulations or ordinance presently in effect or that may be amended or effective in the future.

29. Due Diligence. At Valdez's recommendation, Permittee has investigated the Property for potential environmental contamination, which may have occurred before the date of this Permit; Permittee accepts the Property in its current environmental condition. After such investigation, Permittee agrees that the Property: (a) has not been subject to the use, generation, manufacture, storage, treatment, disposal, release, or threatened release of Hazardous Materials; and (b) has not been subject to any actual or threatened assertions, claims or litigation of any kind by government agencies or any other persons relating to such matters.

30. Access to Property. Permittee acknowledges Valdez's right to enter upon the Property to make such inspections and tests as Valdez may deem appropriate to determine compliance with this Permit; any such investigations or tests shall be for Valdez's purposes only, and shall not be construed to create any responsibility or liability on Valdez's part to Permittee or any person.

31. Release from Future Claims. Permittee hereby releases and freely waives any future claims against Valdez for contribution or indemnity (whether under AS 46.03.822, other state law, or federal law) in the event Permittee incurs or becomes liable for response costs, damages or costs of any kind because of the release, threatened release or presence of Hazardous Materials on or about the Property.

32. Report of Events. Permittee specifically agrees to report all releases, threatened releases, discharges, spills or disposal of Hazardous Materials in whatever quantity, immediately to the appropriate regulatory authorities and simultaneously to Valdez, and to keep Valdez fully informed of any communication between Permittee and any person or agency concerning potential or actual environmental contamination and Hazardous Materials.

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: THE POTATO TOO, LLC.

Signed by:
By: Kate Huber
AECC80BB12D4AF...
Kate Huber, Community Development Director

DocuSigned by:
By: Gaea Bard
DDE22D46E7874C9...
Gaea Bard, Company Representative

Date: 5/15/2026 | 3:29 PM AKDT

Date: 5/15/2026 | 4:28 PM PDT

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

By: Jon S. Wakeland Jake Stuser



ATTEST:
By: Sheri L. Pierce Sheri L. Pierce, MMC, City Clerk
deputy for

Exhibit "A"

