

Revocable License Agreement **(Briggs Street Outdoor Patio)**

This Revocable License Agreement (the "Agreement") is made and entered into this 11th day of May, 2023 (the "Effective Date"), by and between the Town of Erie, a Colorado municipal corporation with an address of 645 Holbrook Street, P.O. Box 750, Erie, Colorado 80516 (the "Town"), and Wapos Cantina, with an address of 524 Briggs Street, Erie, CO 80516 ("Licensee") (each a "Party" and collectively the "Parties").

Whereas, the Town owns certain public right-of-way known as Briggs Street; and

Whereas, Licensee wishes to use a portion of Briggs Street as described specifically in **Exhibit A** (the "Licensed Property") for food and beverage service on a temporary patio to be installed by the Town.

Now, therefore, for the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. Grant of License

The Town hereby grants to Licensee a revocable license to occupy the Licensed Property in accordance with this Agreement to use the temporary patio depicted in **Exhibit A** for food and beverage services. The Parties understand and agree that this Agreement is a limited grant of authority subject in all respects to applicable federal, state and local laws and regulations.

II. Term

The license herein granted shall commence on May 16, 2023, and shall continue through October 31, 2023; provided that either Party may terminate this Agreement upon written notice to the other Party specifying the date of termination, such notice to be given not less than 7 days prior to the date specified therein. In addition, the Town may terminate this Agreement immediately in the case of an emergency or unsafe condition.

III. Fee

Licensee shall pay to the Town for the license granted herein a nonrefundable fee of \$750 per outdoor dining patio, which fee shall be paid by Licensee within 15 days of the Effective Date.

IV. Use

A. The Licensed Property may be occupied and used by Licensee during the term of this Agreement for the sole purpose of food and beverage service, which may include the installation of tables, chairs, umbrellas and other facilities reasonably

necessary for such service. Except as specifically allowed by this Agreement, Licensee shall not add any other structures or items to the Licensed Property.

B. Licensee shall strictly comply with all of the following conditions:

1. Any alcohol service on the Licensed Property shall comply with all applicable liquor laws and regulations, and Licensee expressly acknowledges that Licensee must obtain approval for a temporary modification of premises from the Erie Local Licensing Authority prior to serving alcohol on the Licensed Property.
2. Licensee shall maintain a minimum of 4 feet of open sidewalk free of obstructions between the Licensed Property and the front of the building.
3. Licensee shall maintain pedestrian circulation to the building and building entrances.
4. Amplified sound is prohibited on the Licensed Property.
5. Licensee shall maintain the Licensed Property in a clean, litter-free and well-kept manner and shall take such actions as are necessary to maintain the Licensed Property in a good and safe condition at all times.
6. Smoking is prohibited on the Licensed Property.
7. Licensee shall at all times comply with all applicable law.

C. Licensee hereby acknowledges that its use and occupancy of the Licensed Property in its present, as is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied.

D. Licensee shall be responsible for all damage to the Licensed Property arising out of or resulting from the use of the Licensed Property by Licensee, its agents, employees, visitors, patrons and invitees. The Town shall notify Licensee immediately upon discovery of any damage to the Licensed Property. Licensee shall correct and repair the damage within 7 days of notification or knowledge unless otherwise directed by the Town.

E. Upon termination of this Agreement, Licensee at its sole expense shall remove from the Licensed Property all improvements and other items other than the patio itself, which shall be removed by the Town, and Licensee shall surrender the Licensed Property to the Town in the same condition as when Licensee took possession, except for ordinary wear and tear. If any improvements or items remain on the Licensed Property following termination of this Agreement, the Town may remove them at Licensee's sole expense, and Licensee shall reimburse the Town for all costs incurred.

V. Insurance

A. Licensee agrees to procure and maintain, at its own cost, a policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Licensee pursuant to this Agreement. At a minimum, Licensee shall procure and maintain, and shall cause any subcontractor to procure and maintain, the insurance coverages listed below, with forms and insurers acceptable to the Town.

1. Worker's Compensation insurance as required by law.
2. Commercial General Liability insurance with minimum combined single limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The policy shall be applicable to all premises and operations, and shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, products, and completed operations. The policy shall contain a severability of interests provision, and shall include the Town and the Town's officers, employees, and contractors as additional insureds. No additional insured endorsement shall contain any exclusion for bodily injury or property damage arising from completed operations.

B. Such insurance shall be in addition to any other insurance requirements imposed by law. The coverages afforded under the policies shall not be canceled, terminated or materially changed without at least 30 days prior written notice to the Town. In the case of any claims-made policy, the necessary retroactive dates and extended reporting periods shall be procured to maintain such continuous coverage. Any insurance carried by the Town, its officers, its employees, or its contractors shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy.

C. Licensee shall provide to the Town a certificate of insurance as evidence that the required policies are in full force and effect. The certificate shall identify this Agreement.

VI. Indemnification

Licensee agrees to indemnify, hold harmless, and defend the Town and its representatives, officers, employees, agents, and contractors from and against all liabilities, injuries, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments arising from or in any way connected with Licensee's use of the Licensed Property or any act, omission, condition, or other matter related to or occurring on or about the Licensed Property under this Agreement. Licensee agrees to bear all other costs and expenses related thereto, including court costs and attorney fees, whether or not any such liability, claims or demands alleged are groundless, false, or fraudulent.

VII. Miscellaneous

A. *Governing Law and Venue.* This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Weld County, Colorado.

B. *No Waiver.* Delays in enforcement or the waiver of any one or more defaults or breaches of this Agreement by the Town shall not constitute a waiver of any of the other terms or obligation of this Agreement.

C. *Integration.* This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. *Third Parties.* There are no intended third-party beneficiaries to this Agreement.

E. *Notice.* Any notice under this Agreement shall be in writing and shall be deemed sufficient when directly presented or sent prepaid, first-class United States mail to the Party at the address set forth on the first page of this Agreement.

F. *Severability.* If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

G. *Modification.* This Agreement may only be modified upon written agreement of the Parties.

H. *Assignment.* Neither this Agreement nor any of the rights or obligations of the Parties shall be assigned by either Party without the written consent of the other.

I. *Governmental Immunity.* The Town and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the Town and its officers, attorneys or employees.

Exhibit A

Licensed Property

The Licensed Property is an area in front of the building (on the east side) located at 524 Briggs St., Erie, CO 80516 of sufficient size to allow for the installation of an outdoor seating platform patio with rails on 3 sides.

The Town will install the patio, and the patio will resemble the following, provided that the actual design of the patio is within the Town's sole discretion.

