

PARKLET(S) USE AGREEMENT

This Parklet(s) Use Agreement (“Agreement”) is made and entered into this _____ day of _____, 20____, by and between _____ (hereinafter referred to as "Permittee") and the City of Pueblo, a Municipal Corporation, (hereinafter referred to as “City”). Permittee and City are sometimes each referred to as a “Party” and collectively “Parties.”

WHEREAS, City has obtained portable event patios (“Parklets”) which are available for use in outdoor service areas of bars and restaurants located in the City; and

WHEREAS, Permittee has applied for use of the Parklets and would not otherwise have an outdoor service area if parklet(s) were not provided by City; and

WHEREAS, City is willing to provide the Parklets for use of the Permittee subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants contained herein, City and Permittee agree as follows:

1. Permittee may use and the City shall provide the following Parklet(s) for the purpose of Permittee operating an outdoor service area subject to all the terms and conditions of this Agreement:

_____.

2. The provision and use of the Parklet(s) will be conditioned upon Permittee obtaining and maintaining a sidewalk café permit and related revocable permit, if necessary, as well as any necessary liquor license modifications, from the City for an area approved by City (“Permitted Area”).

3. Permittee shall keep Parklet(s) and Permitted Area in good, clean and safe condition and repair, free from graffiti, litter, waste and debris. Permittee shall comply at all times with all applicable codes, ordinances, rules and regulations of City and this Agreement. Permittee shall strictly comply with the following requirements:

- (a) No amplified, excessive or unusually loud noise, or a noise which is unreasonable and objectionable because it is impulsive, continuous, rhythmic, periodic or shrill shall be allowed within the Permitted Area.
- (b) No utility connections shall be installed on the Parklet(s) or Permitted Area. Utility connections shall not include string lights approved by City.
- (c) Permittee shall not place or permit any hazardous materials in or about the Parklet(s) or Permitted Area.

4. Permittee shall be responsible for and liable to the City for any damage to the Parklet(s) during any period of time the Parklet(s) has been provided to Permittee. The City shall at all times have the right to enter the Permitted Area to inspect, improve, maintain, alter or utilize the Permitted Area in any manner authorized to the City. In the exercise of its rights pursuant to this Agreement, Permittee shall avoid any damage or interference with any City installations, structures, utilities, or improvements on, under, or adjacent to the Permitted Area.

5. Permittee shall keep and maintain commercial general liability insurance covering the Permitted Area and Parklet(s) in amounts not less than \$500,000.00 combined single limits per occurrence and aggregate, naming the City as an additional insured and contain a waiver of rights of subrogation against City. A certificate for such insurance and each renewal thereof shall be delivered to the City.

6. Permittee shall indemnify, defend and hold City, its officers, agents and employees harmless from and against any and all suits, claims, liabilities, loss, damages and expenses, including reasonable attorney fees and cost of defense, arising, directly or indirectly, from or caused by the rights and obligations of Permittee under this Agreement or the conditions hereof, or the existence, installation or maintenance of the Parklet(s) in the Permitted Area, or the use of the Permitted Area or Parklet(s) by Permittee, its officers, agents, employees, invitees or general public.

7. Permittee acknowledges that its use hereunder is of the Parklet(s) in its present, as-is condition with all faults, whether patent or latent, and without warranties or covenants, express or implied.

8. The City is relying on and does 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 from time to time amended, or otherwise available to the City, and its officers and employees.

9. The City may in its sole and absolute discretion and at any time terminate this Agreement. Upon termination, Permittee shall immediately deliver up to City the Parklet(s) in as good a condition as when Permittee took possession, excepting only ordinary wear and tear, and the City shall have the right to take immediate possession of and remove the Parklet(s).

10. Any notice or other document required or permitted herein shall be in writing and delivered personally or by first class mail, postage prepaid, as follows:

(a) If to Permittee, at the following address

(b) If to City, 1 City Hall Place, Pueblo, Colorado, 81003, Attention: Mayor with a copy to City Attorney at the same address.

11. Waiver by the City of any breach of any term of this Agreement shall not be deemed a waiver of any subsequent breach of the same or any other term or provision thereof.

12. This Agreement is personal to the parties hereto. Permittee shall not transfer or assign any rights hereunder without the prior written approval of the City, which approval shall be at the City's sole option and discretion.

13. This Agreement is the entire agreement between the City and Permittee and may be amended only by written instrument subsequently executed by the City and Permittee. The undersigned signatory of Permittee represents that he or she has been duly authorized to execute this Agreement on behalf of Permittee and has full power and authority to bind Permittee to the terms and conditions hereof.

14. All of the terms and conditions of this Agreement concerning release, indemnification, termination, remedies and liability shall survive termination of this Agreement.

15. The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

16. Upon execution of this Agreement, Permittee shall pay City, in advance, an annual parklet rental fee equal to \$5.00 per square foot of each parklet rented. On the succeeding anniversary dates of this Agreement, Permittee shall pay City, in advance, an annual parklet rental fee equal to \$5.00 per square foot of each parklet rented.

17. In the event of any litigation arising under this Agreement, the court shall award to the prevailing Party its costs and reasonable attorney fees. Exclusive venue for any such litigation shall be Pueblo County, Colorado. All such litigation shall be filed in the District Court, County of Pueblo, State of Colorado, and each Party submits to the personal and subject matter jurisdiction of such District Court. To the fullest extent permitted by law, the Parties hereby waive their right to a trial by jury.

18. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect.

19. The Parties acknowledge that the Parties and their counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

20. In consideration of City entering into the Agreement, Permittee waives and discharges City, its officers, agents and employees from any and all claims for any monetary damages whether such claims arise under tort, contract, statutory or any other law.

21. This Agreement may be executed in two (2) or more counterparts and each such counterpart shall be deemed for all purposes to be an original and all such counterparts shall together constitute but one and the same original.

Executed at Pueblo, Colorado, the day and year first above written.

PERMITTEE

CITY OF PUEBLO,
A MUNICIPAL CORPORATION

By _____

By _____

Mayor

Name: _____

ATTEST:

Title: _____

City Clerk