

**TOWN OF FRIDAY HARBOR
PERMIT TO USE RIGHT-OF-WAY**

THIS PERMIT (“Permit”) and agreement is issued by the Town of Friday Harbor, a Washington municipal corporation (“the Town”), to Gary Gero., d.b.a. Cask & Schooner Restaurant, (“Permittee”), pursuant to Friday Harbor Municipal Code (FHMC) chapter 12.28, after Permittee requested a temporary permit authorizing Permittee’s use of an unopened portion of the Town’s right of way, as set forth herein:

1. **PURPOSE; PROPERTY.** The Town hereby grants Permittee a license and permit (“Permit”) to use that portion of the Town’s right-of-way (“Right-of-Way”) legally described as:

That area lying between the northeasterly boundary of the Town Square Property (described herein below) and the edge of Front Street, as depicted in photos attached (Attachment “A”).

The above referenced Town Square Property is legally described as follows:

PARCEL A:

That portion of Lots 1 and 2, Block 4, Original Plat of Town of Friday Harbor, according to the plat thereof in Volume 1 of Plats, page 2, records of San Juan County, Washington (“San Juan Lodge Property”).

2. **TERM.** The term of the Permit (“Term”) shall commence on April 1, 2021 through March 31, 2022.

3. **USE.** Permittee is authorized to use the Right-of-Way for business purposes arising from Permittee’s restaurant, which is adjacent to the Right-of-Way, and no other use or purpose. Such use shall be a private use by Permittee and shall not be construed to be authorized or controlled by the Town, and shall not be construed as a municipal use or purpose. Use of the leased area shall not interfere with the public’s right to pedestrian access (6 foot wide) along the area which lies between the leased area and the Front Street roadway. All stanchions shall be pushed in toward the tables and planters during nonbusiness hours.

4. **ANNUAL FEE.** Pursuant to Resolution No. 2625, the Permittee shall pay the Town a licensing fee of \$250.00 (two hundred fifty dollars) for this period, due and payable to the Town of Friday Harbor at PO Box 219, Friday Harbor, WA, 98250, on the date of signing this agreement.

5. **RETENTION OF RIGHTS.** The Town shall retain the right for public access of the Right-of-Way during the Term of this Permit. The Town retains all other rights for the public’s right to use and enjoy the Right-of-Way, and retains the right to enter and inspect the Right-of-Way at any time.

6. **MAINTENANCE; ALTERATION.** Permittee shall at all times maintain the Right-of-Way in a state of good condition and repair and shall perform all necessary and reasonable maintenance and repairs of the Right-of-Way, including maintaining and the patio area in use; removing all garbage and debris; and otherwise keeping the Right-of-Way in a safe, orderly and neat condition. Permittee shall not build any structures other than what is currently in place without first obtaining all appropriate permits or approvals from the Town. In the event that Permittee seeks to build an additional structure within the Right-of-Way, the Town reserves the right to require

Permittee to apply for a new license pursuant to Friday Harbor's municipal code and other applicable laws. No advertising signs are allowed in the licensed area.

7. **REVOCAION.** The Town Administrator may revoke this Permit at any time, with or without cause. Upon receipt of notice from the Town of such revocation, written or oral, the Permittee shall cease all activities authorized by this Permit and this Permit shall terminate and be of no further effect. The Town shall reimburse any unused portion of the fee paid if termination is without cause.

8. **INDEMNIFICATION.** The Town, its officers, employees, elected officials, agents, and volunteers shall in no event be liable for any loss or damage suffered or incurred by Permittee, its customers, employees, or contractors, for any reason whatsoever arising from or related to Permittee's use of the Right-of-Way. Such waiver includes without limitation, waiver of liability for death, personal injury, theft, damage, loss of property, business interruption, lost profits, consequential damages, and rights of subrogation. Permittee assumes and accepts full responsibility for the care and maintenance of any and all improvements made by Permittee in the licensed area. The parties intend that Permittee and its agent(s) will be liable for the use and maintenance of the Improvements, as if Permittee owned the licensed area. To that end, Permittee agrees to defend, indemnify and hold the Town, its governing body, employees, agents and insurers harmless from and against any and all claims, suits, liabilities and expenses (including attorneys' fees, paralegal fees and related costs), including, but not limited to, environmental damage or contamination caused by Permittee or its agents (including damage or contamination caused by used oil, hazardous substances, surfactants, storm water runoff, solid waste, and other causes), that may be asserted against the Town arising out of or related to Permittee's use of the licensed area, or arising out of or related to the Town or its agent's removal of the Improvements, if notice was given to Permittee to remove such property or improvements and Permittee failed to do so.

Permittee releases the town from and agrees to defend and indemnify the Town, its elected officials, its employees, and agents against any and all liability, cost, expenses, causes of action, and claims for any loss, damage or injury including attorneys' fees to person, property or otherwise arising out of or resulting from said use by Permittee, its employees, members, guests, invitees or others connected with Permittee's use of the Right-of-Way. The Permittee agrees to defend the Town, its elected officials, employees and agents against any claims, demands, losses or liability arising from or related to the Licensee's use of the Right-of-Way.

9. **INSURANCE.** Permittee shall maintain general liability insurance in accordance with the Town minimum insurance liability requirements (Resolution No. 2252), including premises liability insurance, in the amount of \$1,000,000.00 per occurrence and \$2,000,000 aggregate, and shall name the Town as an additional insured on such insurance policy. Permittee shall give the Town a copy of Permittee's certificate of insurance on request by the Town.

10. **INTEREST.** This Permit is solely for Licensee's temporary use of the Right-of-Way. Permittee acknowledges and agrees that it shall have no right, title or interest in the Right-of-Way or in the property on which the Right-of-Way is located, except as expressly set forth in this Permit.

11. **MUNICIPAL AUTHORITY.** This Permit is issued pursuant to FHMC chapter 12.26. This Permit does not constitute a delegation of any powers of the Town and does not change or diminish any authority held by the Town in or to the Right-of-Way.

12. **ASSIGNMENT.** Permittee shall not assign this License without the express written consent of the Town Administrator.

13. **AGREEMENT; REPRESENTATIVE.** This License contains the entire agreement of the parties. By executing this License, Permittee acknowledges and agrees to its terms and conditions, and represents that they are legal owner of Cask & Schooner restaurant.

TOWN OF FRIDAY HARBOR

Farhad Ghatan, Mayor of Friday Harbor

Date (*Effective Date of Permit*)

Gary Gero, Owner of Cask & Schooner

Date

ATTACHMENT A
ILLUSTRATION OF RIGHT-OF-WAY

