

REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT OF WAY OR PUBLIC PLACE

THIS REVOCABLE LICENSE FOR USE OF PUBLIC RIGHT OF WAY OR PUBLIC is granted this ____ day of _____, 2024, (the "Effective Date") by the Town of Frisco, a home rule municipal corporation, ("Town"), whose address is 1 Main Street, Frisco, Colorado 80443, to Vine Street Social, LLC, a Colorado limited liability company, ("Licensee") whose address is 156 fourth Avenue Unit #C1, Frisco, Colorado, 80443.

A. The Town owns the right-of-way/public place which is commonly known as 4th Avenue (the "Town ROW").

B. Licensee desires to engage in the sale of food and beverages, including alcoholic beverages, and the use of patio furniture, fencing, and other improvements related to the sale of food and beverages, in the Town ROW (the "Private Activities/Improvements"). The Private Activities/Improvements and their locations within the Town ROW are depicted on Exhibit A attached hereto and incorporated herein by this reference.

C. Pursuant to Town Charter, the Code of the Town of Frisco ("Town Code") and the laws of the State of Colorado, the Town is vested with power and authority over the use of municipally owned streets, rights-of-way and other public places.

D. The Town is willing to grant a revocable license to Licensee to allow Licensee to install and operate the Private Activities/Improvements as depicted in Exhibit A, which Exhibit is incorporated herein by this reference, under certain circumstances and with certain conditions and stipulations.

E. The intent of this License is to authorize, on a revocable basis, the installation and operation of the Private Activities/Improvements within the Town ROW without cost or liability to the Town.

LICENSE

1. Grant of Revocable License.

The Town hereby grants to Licensee a non-exclusive and revocable authorization (the "License") to install and operate the Private Activities/Improvements in the Town ROW, provided, however, that as conditions to the License, the Licensee shall:

- (i) install and maintain the Private Activities/Improvements only within the boundaries of the area depicted on Exhibit A as being within the Town ROW/Public Place; and
- (ii) operate the Private Activities/Improvements only in accordance with this Agreement and as may be required by law.

The rights granted under this License are expressly subject to the rights of the public and any rights granted previously by the Town to any person. The Town may enforce this License either by seeking damages or by specific performance or through any other legal or equitable remedy available to the Town.

2. Design, Installation, Operation and Maintenance.

a. The Licensee shall pay all costs of design, installation, operation and maintenance of the Private Activities/Improvements. Upon revocation of the License as provided herein and upon the Town's demand, Licensee shall pay all costs and perform all removal of the Private Activities/Improvements from the Town ROW and, as applicable, shall pay all costs of and be responsible for returning the land surface to substantially the same condition that it is on the Effective Date.

b. This License shall not operate or be construed to abridge, limit or restrict the Town in exercising its right to make full use of the Town ROW encroached upon as public thoroughfares or public places, nor shall it operate to restrict utility companies or any other Licensees in exercising their rights to construct, remove, operate and maintain their installations within the Town ROW/Public Place.

c. Licensee hereby assumes full responsibility for any and all damages incurred to public facilities, utilities or other private activities and/or improvements located within the Town ROW due to activities authorized by this License.

d. Licensee shall cooperate with Town officials in the installation, removal, replacement or alteration the Private Activities/Improvements and shall maintain the Private Activities/Improvements in a good and attractive condition during the term of the License.

e. Licensee acknowledges that it is installing, removing, replacing or altering the Private Activities/Improvements at its own peril. Licensee is solely responsible for any damage to the Private Activities/Improvements caused by Town personnel, or the Town's Licensees or sub-licensees, in connection with conducting maintenance or emergency operations in the Public ROW.

3. Repair of Damages

Licensee shall promptly repair all damage to the Town ROW caused by its activities. If such damage poses a threat to health, safety or welfare of the public or individuals, the Town may cause repairs to be made at Licensees' expense unless the Licensee makes such repairs upon the Town's request.

4. Term.

This License shall commence on the Effective Date and shall terminate on the date set forth above or on such date as the Town may revoke this License. This License may also terminate upon Licensee's request so long as Licensee removes all Private Activities/Improvements and returns the Town ROW/Public Place to substantially similar condition as that prior to installation and operation of the Private Activities/Improvements.

5. Revocation.

a. Town may revoke this License upon five (5) calendar days' written notice to Licensee and upon the occurrence of any one or more of the following events:

(i) Breach of this License by Licensee including, without limitation, the failure to maintain the Private Activities/Improvements in a good and attractive condition, after Licensee has failed to cure such breach for a period of two (2) calendar days from receipt of written notice of such breach by Licensee from Town.

(ii) A unilateral decision by the Town Council of the Town that the Town ROW is desired or beneficial for any purpose; or

(iii) A failure by the Licensee to operate the Private Activities/Improvements in the manner required by law, including but not limited to laws concerning the sale of alcoholic beverages.

b. Upon revocation, Licensee shall, at Licensee's sole cost, remove the Private Activities/Improvements and restore the Town ROW/Public Place to substantially the same condition that it is in on the Effective Date.

c. Upon revocation, this License shall terminate, be deemed null and void and of no further force and effect.

d. In the event that Licensee fails to remove the Private Activities/Improvements by the 5th day after the Town delivers notice of revocation to the Licensee, the Town may remove or cause the Private Activities/Improvements to be removed. The Town may collect the cost of removal from the Licensee and the Licensee agrees to pay such cost promptly upon written demand therefore. Licensees further agree that, upon the failure to pay such costs within thirty (30) days after written demand therefore, the Town shall have the right to file a lien, in the dollar amount of such cost, against any and all real property owned by the Licensee, which lien may be foreclosed upon in the manner provided in Colorado Statutes for the judicial foreclosure of liens.

6. Notice.

Every notice required or permitted hereunder shall be in writing and shall be deemed to have been fully given when delivered by hand or upon delivery when sent by overnight mail, to the party's address set forth in the introductory paragraph of this License or at such other address as a party may designate, in writing, to the other party.

7. **Indemnification and Insurance.**

- (i) **Indemnification.** The Licensee expressly agrees to, and shall, indemnify and hold harmless the Town and any of its officers, agents, or employees from any and all claims, demands, damages, liability, or court awards, including costs and attorneys' fees that are incurred by the Town or that may be awarded as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, partnership, or corporation, in connection with or arising out of any act, omission, error, mistake, negligence, or other fault of the Licensee or any of such Licensee's agents, partners, Licensees, sublicensees, or lessees, in the installation, construction, use, operation or maintenance of the Private Activities/Improvements. In particular and without limiting the scope of the foregoing agreement to indemnify and hold harmless, the Licensee shall indemnify the Town for all claims, damages, liability, or court awards, including costs and attorneys' fees that are incurred by the Town or that may be awarded against the Town as a result of any loss, injury or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any claim that, in whole or in part, all or any portion of the Private Activities/Improvements and/or the Town ROW constitutes a dangerous, hazardous, and/or unsafe condition. Licensee further agrees that should it fail to indemnify the Town as required in this section, the Town shall have the right to file a lien, in the dollar amount for which the Licensee has failed to indemnify the Town, against any and all real property owned by the Licensee, which lien may be foreclosed upon in the manner provided in Colorado Statutes for the judicial foreclosure of liens.

- (ii) **Insurance.** Licensee shall procure and maintain, at its own cost, the following policy or policies of insurance sufficient to insure against all liability, claims, demands, and other obligations assumed by Licensee under this Agreement or arising as a result of this Agreement. Such insurance shall be in addition to any other insurance requirements imposed by this Agreement or by law:
 - (a) Commercial General Liability insurance **and Liquor Sales Liability Insurance** with minimum combined single limits of ONE MILLION DOLLARS (\$1,000,000) each occurrence and ONE MILLION DOLLARS (\$1,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage (including completed operations), personal injury (including coverage for contractual and employee acts), blanket contractual, independent Licensees, products, and completed operations. The policies shall name TOWN, its employees and agents as additional insureds and shall include the following provisions: (i) severability of interest; (ii) waiver of subrogation; and (iii) cross liability endorsement.

(b) Workers' Compensation insurance to cover obligations imposed by applicable laws for any employee engaged in the performance of work under this Agreement, and Employers' Liability insurance with minimum limits of SIX HUNDRED THOUSAND DOLLARS (\$600,000) each accident, SIX HUNDRED THOUSAND DOLLARS (\$600,000) disease - policy limit, and SIX HUNDRED THOUSAND DOLLARS (\$600,000) disease - each employee. Evidence of qualified self-insured status may be substituted for the Workers' Compensation requirements of this Subsection.

(c) The insurance policies required by subsections (a) and (b) above shall name Town, its employees and agents as additional insureds. No additional insured endorsement to a policy shall contain any exclusion for bodily injury or property damage arising from completed operations.

(d) Every policy required under this Subsection (ii) shall be primary insurance, and any insurance carried by Town, its officers, or its employees, or carried by or provided through any insurance pool of Town, shall be excess and not contributory insurance to that provided by Licensee. Licensee shall be solely responsible for any deductible losses under any policy required above. Any insurance policy required under this Agreement shall be written by a responsible company.

(e) Prior to commencement of this License, Licensee shall provide Town with a certificate of insurance completed by Licensee's insurer as evidence that policies providing the required coverage, conditions and minimum limits are in full force and effect. The certificate shall identify this Agreement and shall provide that the coverage afforded under the policies shall not be canceled, terminated or materially changed until at least thirty (30) days' prior written notice has been given to Town. The completed certificate of insurance shall be sent to:

Town of Frisco
P.O. Box 4100
Frisco, Colorado 80443
Attn: Finance Director

(h) License shall not be relieved of any liability, claims, demands, or other obligations assumed pursuant to this Agreement by reason of Licensee's failure to procure or maintain insurance, or by reason of its failure to procure or maintain insurance in sufficient amount, duration or type. Failure on the part of Licensee to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which Town may immediately terminate this Agreement, or at its discretion Town may procure or renew any such policy or any extended reporting period thereto and may pay any and all premiums in connection therewith, and all monies so paid by TOWN shall be repaid by Licensee to Town upon demand, or Town may withhold the cost of the premiums from any monies due to Licensee from Town.

(i) The parties hereto understand and agree that Town is relying on, and does not waive or intend to waive by any provision of this Agreement, the monetary limitations (present or future) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, §§ 24-10-101 et seq., C.R.S., as from time to time amended, or otherwise available to Town, its officers, or its employees.

8. Competing Uses.

The Private Activities/Improvements and the Licensee's activities within the Town ROW shall not interfere with water facilities, sanitary or storm sewer facilities or other public use of the Town ROW. Licensee's Private Activities/Improvements shall be maintained and altered from time to time, if necessary in the reasonable determination of the Town, so as to avoid interference with other property, uses and improvements.

9. Miscellaneous Provisions

a. Waiver of Breach. A waiver by any party to this License of the breach of any term or provision of this License shall not operate or be construed as a waiver of any subsequent breach by any party.

b. Binding Effect. This License shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided, however, that nothing in this paragraph shall be construed to permit the assignment of this License except as otherwise expressly authorized herein.

c. Underlying Intent and Scope. It is the intent of this License that the Town shall incur no cost or expense attributable to or arising from the installation, construction, maintenance, or operation of the Private Activities/Improvements authorized by this License and that, in all instances, the risk of loss, liability, obligation, damages, and claims associated with the Private Activities/Improvements shall be borne by the Licensee. This License does not confer upon the Licensee any other right, permit, license, approval, or consent other than that expressly provided for herein and this License shall not be construed to waive, modify, amend, or alter the application of any other federal, state, or local laws, including laws governing zoning, land use, property maintenance, or nuisance.

d. No Third Party Beneficiaries. Nothing contained in this License is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party. Absolutely no third-party beneficiaries are intended by this License. Any third party receiving a benefit from this License is an incidental and unintended beneficiary only.

e. Governing Law, Venue, And Enforcement. This License shall be governed by and interpreted according to the law of the State of Colorado. Venue for any action arising under this License shall be in the appropriate court for Summit County, Colorado.

f. No Waiver of Immunity. Nothing in this License is intended to waive any protection afforded to the Town by the Colorado Governmental Immunity Act, C.R.S. § 24-10-

7

EXHIBIT A

**TOWN ROW AREA BOUNDARIES AND SITE PLAN FOR PRIVATE
ACTIVITIES/IMPROVEMENTS**