

**TOWN OF FRISCO
RECREATION CENTER BUILDING LEASE AGREEMENT**

This Town of Frisco Recreation Center Building Lease Agreement (this “**Agreement**” or “**Lease**”) is made to be effective as of the 28th day of October, 2020, by and between the Town of Frisco, a Colorado home rule municipal corporation, with an address at PO Box 4100, Frisco, Colorado 80443 (the “**Town**” or “**Landlord**”) and Vail Clinic, Inc. d/b/a Vail Health, a Colorado nonprofit corporation with an address at PO Box 40,000, Vail, Colorado 81658_ (“**Tenant**”).

RECITALS

WHEREAS, the Town is the owner of the improvement known as the Frisco Recreation Center Building (hereinafter the “**Building**” or the “**Premises**”), located on real property also owned by the Town; and

WHEREAS, Tenant has determined that the Building is a suitable location for a drive-up COVID-19 testing center; and

WHEREAS, the Town desires to enter into this Agreement in order to efficiently utilize the Frisco Recreation Center Building as a drive-up COVID-19 testing center for the benefit of the Town’s citizens and the general public; and

WHEREAS, the Tenant desires to enter into this Agreement to utilize the Frisco Recreation Center Building in accordance with the provisions and requirements set forth in Exhibit A attached hereto and made a part hereof.

NOW THEREFOR, in consideration of the Premises (as further defined below), the mutual covenants contained in this Agreement and each and every act to be performed hereunder by the parties, the Town and the Tenant agree as follows:

AGREEMENT

1. Premises. Town, by this Agreement, leases and demises to Tenant, and Tenant takes and hires from Town, the improvement known as the Frisco Recreation Center building together with all fixtures now or hereafter located thereon or therein (the “**Premises**”), which building is situated on real property also owned by the Town located at 110 Third Street, in the Town of Frisco, Summit County, Colorado.
2. Use and Occupancy.
 - (a) Tenant covenants and agrees to occupy the Premises in accordance with the conditions, provisions and requirements outlined in Exhibit A, attached hereto and made a part hereof, as well as all other conditions and provisions contained herein.
 - (b) Tenant shall not use or permit the Premises to be used in any manner other than as provided in Exhibit A, or for any purpose prohibited by the laws, codes, rules and regulations of the United States, the State of Colorado, or the Town of Frisco.
 - (c) Tenant shall not cause or allow the Premises to be used in any manner that would cause it to be considered a hazard or public nuisance. In the event Town, a court of competent jurisdiction, or any other competent authority determines that the Premises are being so improperly used

and maintained, Town may in its sole discretion immediately terminate this Agreement. If the Agreement is terminated pursuant to this Paragraph 2(c), Tenant shall have ten (10) days to surrender the Premises to the Town.

- (d) Tenant shall not commit waste or suffer or permit waste to be committed on or in the Premises. For purposes of this Agreement, “waste” shall mean, in addition to all common law definitions of the term, such use of the Premises that fails to efficiently utilize electrical and other utilities paid for by the Town for the Premises. Without limiting the generality of the foregoing, the Tenant shall efficiently utilize the electricity and gas provided to the Premises by turning down the thermostat and turning off lights when the Premises is not in active use. The use and occupation by Tenant of the Premises shall be subject to the terms and conditions of this Agreement and to reasonable rules and regulations for the use of the Premises prescribed from time to time in writing by the Town.
- (e) This Agreement does not grant Tenant exclusive use of the entirety of the Premises. Tenant agrees to lease the Premises subject to the use by the Town of certain portions of the Premises, at all times or from time to time as described in Exhibit A hereto; provided, however, that the use by Town shall not unduly interfere with the rights of Tenant under this Agreement.

3. Term, Possession and Termination.

The term of this Agreement shall begin on October 29, 2020, and shall end on April 30, 2021 unless terminated by either party upon written notice provided to the other party not less than thirty (30) days prior to termination. Tenant’s taking possession of the Premises shall be conclusive evidence against Tenant that the Premises as of the date of taking possession were in good order and repair.

4. Release from Liability for Contents. Tenant unconditionally releases and discharges the Town, in all its representative capacities, its predecessors, and successors, agents, employees and assigns, and all other persons, corporate or natural, affiliated with the Town and Tenant covenants not to sue or assert against the Town any claims, demands, actions and causes of action, covenants, contracts, security arrangements, promises, agreements, liabilities, controversies, costs, expenses, attorneys’ fees, whether known or unknown, whether at law or in equity, which are based in whole or in part on, any act or omission involving personal property contained in or on the Premises which is owned by persons other than the Town.

5. Rent. Rent for the term of this Agreement shall consist of Tenant’s undertaking to use the Premises as COVID-19 testing center in accordance with the terms of this Agreement.

6. Town’s Responsibilities.

a. Operating Expenses.

The Town shall pay all of the costs of all utilities and services, including electric, gas/propane, sewage and other utilities furnished to the Premises, for the term of this Agreement.

b. Premises Services.

i. So long as Tenant is not in default, and subject to limitations and restrictions imposed by applicable laws and governmental and utility company regulations, Landlord shall furnish or cause to be furnished: (1) heat to the Premises as Landlord determines is reasonably necessary for the comfortable use and occupancy of the Premises; (2) domestic water; and (3) electric energy to the Premises for building-standard office lighting and ordinary office equipment that operates on standard 120 voltage.

ii. Tenant shall not install any equipment in the Premises, except for ordinary office equipment, without Landlord's prior written approval, and any such installation shall be made in accordance with all the other terms and provisions of this Lease regarding installation of equipment or improvements by Tenant. If Tenant uses any other equipment in the Premises, with or without Landlord's consent, Tenant shall pay Landlord monthly, immediately upon billing, for such services used by such equipment or during such times. Tenant shall pay to Landlord, promptly upon billing, all additional costs for cleaning Tenant's floor coverings and other improvements that are not building-standard. Landlord may, in its absolute discretion, provide security personnel or equipment for the Center; however, Landlord shall not be responsible to prevent, or liable for, and Tenant shall indemnify Landlord, its agents and employees against, all liability or loss to Tenant, its agents, employees, contractors, invitees and visitors arising from theft, burglary or damage or injury to persons or property caused by persons gaining access to the Center or the Premises.

iii. Landlord shall not be liable to Tenant or any other person, for direct or consequential damage, or otherwise, for any failure to supply any heat, lighting or other service Landlord has agreed to supply during any period when Landlord uses reasonable diligence to supply such services. Landlord reserves the right temporarily to discontinue such services, or any of them, as may be necessary by reason of those events or conditions described in Section 14 or Landlord's compliance with any voluntary or mandatory energy conservation or environmental protection program. Landlord shall not be liable for damages to person or property or for injury to, or interruption of, business for any discontinuance permitted under this Section 6(b)(iii), nor shall such discontinuance in any way be construed as an eviction of Tenant or cause an abatement of rent or operate to release Tenant from any of Tenant's obligations hereunder.

7. Tenant's Responsibilities.

i. It is understood and agreed that as a part of the consideration for this Agreement, Tenant shall, at Tenant's expense, maintain the Premises in a clean and orderly condition, free of trash, debris, papers and other hazards or obstructions; provided, however, that it shall be the Town's responsibility to clean the Premises and remove trash from the Premises when necessitated by the Town's use of the Premises as described in Exhibit A hereto

ii. Tenant shall pay before delinquency any and all taxes, license taxes, assessments, fees and other charges levied, assessed or imposed that become payable during the term of this Agreement, or that arise thereafter, upon Tenant's operations, occupancy of or conduct of business at the Premises or upon Tenant's leasehold improvements, equipment, furniture, appliances, trade fixtures and any other personal property of any kind installed by Tenant and located at the Premises.

8. Maintenance and Repairs.

a. The Town shall maintain in good order and condition the foundations, exterior walls and roof of the Premises and the Premises' heating, plumbing, mechanical and electrical systems, and all other portions of the Premises that are not the obligation of Tenant or any other tenant. The cost of any maintenance, repairs, replacements or restorations necessitated by the act or neglect of Tenant, its agents, employees, licensees, invitees or contractors, or by any of Tenant's leasehold improvements or otherwise attributable to Tenant, together with fifteen percent (15%) of such costs for overhead, shall be paid by Tenant to the Town immediately upon billing. Tenant shall not be entitled to any allowance, abatement, compensation or damages from the Town for diminution of rental value or for loss or interruption of business, or otherwise, arising from the Town, Tenant or others making any repairs, restorations, replacements, alterations, additions or improvements in or to any portion of the Premises, or in or to fixtures, appurtenances or equipment thereof or other tenants failing to make repairs.

9. Alterations and Modification.

a. Tenant covenants and agrees not to make any alterations, changes or additions in and to the Premises ("**Modifications**") without the prior written consent of the Town in each instance. All Modifications approved by the Town shall be at Tenant's expense. Tenant acknowledges that the Town's consent will be conditioned upon, at the Town's option, among other things, the Town's approval of plans, specifications, contractors, insurance and hours of construction. Tenant's compliance with Town ordinances and regulations relative to the issuance of building permits shall not satisfy the requirement that written approval from the Town be obtained before installation or construction of Modifications is begun, and the Town hereby reserves to itself the contractual right, as landlord, to review and evaluate Tenant's plans for all Modifications and that this reserved contractual right is in addition to, independent of and distinct from the Town of Frisco's authority as a home rule town to review plans prior to issuance of a building permit. The Town's consent to Tenant's Modifications shall not be unreasonably withheld, but any approval or denial shall be based on the Town's best judgment as a landlord, not on the standards by which building permits are issued or denied.

b. All Modifications installed by Tenant shall become and remain the property of the Town, unless otherwise agreed in writing prior to installation. All trade fixtures installed by Tenant and removable without structural injury to the building may be removed by Tenant before or at (but not after) the expiration of this Agreement, provided that Tenant shall repair, and shall remain responsible for repairing, any damage done to the Premises in removing such trade fixtures. Tenant agrees to protect, indemnify and save harmless the Town on account of any injury to persons or property by reason of any Modification by Tenant, and to protect, indemnify and save harmless the Town from the payment of any claim of any kind or character on account of bills for labor or materials in connection with any Modification by Tenant.

10. Liability and Insurance. Town shall not be liable to Tenant, Tenant's employees, sublessees, customers, guests, visitors or trespassers for any damage to person or property caused by an act, omission or neglect of Tenant and Tenant shall hold Town harmless from all claims for any such damage. Tenant shall, at its own expense, carry public liability and property damage insurance covering the Premises insuring Tenant and Town against any and all loss or claims arising out of Tenant's use of the Premises, or from any act or omission of Tenant, its agents, servants, employees, or permittees. This insurance shall be appropriately endorsed for contractual liability under this paragraph, with minimum limits of \$1,000,000.00 for each death or injury to one person,

\$1,000,000.00 for property damage. Tenant shall furnish Town with a certificate from its insurer evidencing insurance coverage throughout the term of this Agreement. Said policy shall name Town as a co-insured party.

11. Default. The following events shall be deemed to be events of default by Tenant under this Agreement:
 - (a) Tenant's failure to comply with any term, provision or covenant of this Agreement, or with any reasonable rule or regulation established by Town with respect to the Premises, and failure to cure or demonstrate due diligence in curing said failure within thirty (30) days after written notice thereof to Tenant.
 - (b) Tenant becoming insolvent, or making a transfer to defraud or create a preference to a creditor, or making an assignment for the benefit of creditors.
 - (c) Tenant's filing of a petition under any section or chapter of the National Bankruptcy Act, as amended, or under any similar law or statute of the law of the United States of any state thereof; or Tenant's adjudged bankruptcy or insolvency in proceedings filed against Tenant thereunder.
 - (d) A receiver or trustee being appointed for all or substantially all of the assets of Tenant.
 - (e) Tenant's terminating or substantially modifying its purposes, or its nature as a non-profit hospital.
 - (f) Tenant's desertion, abandonment, or vacation of the Premises.
 - (g) Tenant's failure to comply with any provision of the Code of Ordinances of the Town of Frisco presently in force or its failure to maintain reasonable compliance with future amendments to the Code upon the Town's notification of such changes.
 - (h) Tenant's maintaining the Premises in such disrepair that Town determines it constitutes a hazard to the Town and its inhabitants.
12. Town's Remedies. Upon the occurrence of any event of default, Town shall have the option to pursue any one or more of the following remedies without notice or demand whatsoever:
 - (a) Terminate this Agreement, in which event Tenant shall immediately surrender the Premises to Town, and if Tenant fails to do so, Town may, without prejudice to any other remedy which it may have for possession, enter upon and take possession of the Premises. Town may relet premises and receive rent therefore, when in the sole discretion of Town such action is warranted.
 - (b) Enter upon the Premises, without liability in law or equity for any claim for damages of any kind, to do whatever Tenant is obligated to do under the terms of this Agreement, and Tenant agrees to reimburse Town on demand for any expense including but not limited to repairs or alterations which Town may incur in thus effecting compliance with Tenant's obligations under this Agreement, and Tenant further agrees that Town shall not be liable for any damages resulting to Tenant or third party from such action, whether caused by the negligence of Town or otherwise.

Pursuit of any of the foregoing remedies shall not preclude the pursuit of any other remedies herein provided or any other remedies provided by law, nor shall pursuit of any remedy herein provided constitute a forfeiture or waiver of any damages accruing to Town by reason of the violation of any of the terms, provisions and covenants herein contained.

13. Quiet Enjoyment. Town agrees to warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the term of this Agreement so long as Tenant complies with the provisions of this Agreement.
14. Force Majeure. Notwithstanding anything in this Agreement to the contrary and providing such cause is not due to the willful act or neglect of Town and Tenant, neither Town nor Tenant shall be deemed in default with respect to the performance of any of the terms, covenants and conditions of this Agreement if the same shall be due to any strike, lockout, civil commotion, riot, invasion, rebellion, sabotage, governmental regulations or controls, inability to obtain any material, service or financing, through the Act of God or other cause beyond the control of Town and Tenant.
15. Relationship of Parties. Town and Tenant agree that nothing in this Agreement shall be deemed, held or construed as creating any relationship between them other than that of landlord and tenant.
16. Assignment. This Agreement may be assigned or subleased only with the prior written consent of Town, which consent may be withheld in the Town's sole and absolute discretion. Any assignment shall in all respects be subject to and governed by the terms of this Agreement, and Tenant shall remain liable for the full performance of all conditions of this Agreement. Further, no part of said Premises shall be occupied for any business or purpose deemed to be extra hazardous on account of fire or other reasons.
17. Casualty. If, during the term of this Agreement, the Premises shall be damaged by fire, explosion, windstorm or other casualty, Tenant shall give Town prompt notice in writing of such damage. If it reasonably appears to Town that such damage can be repaired with reasonable diligence, and at reasonable expense within ninety (90) days from the date of notice, Town shall proceed promptly to repair such damage, so as to restore the Premises to their condition prior to such damage. However, if it reasonably appears that such damage cannot be so repaired, and the Premises so restored within a period of ninety (90) days from the date of notice, the Agreement shall terminate as of the date of notice. Unless Town notifies Tenant in writing within thirty (30) days of the date of notice of damage that it has elected to terminate this Agreement, it will be presumed that Town has elected to make the required repairs.
18. Delivery of Premises and Holding Over. Upon expiration or termination of this Agreement, Tenant will deliver up the Premises in good repair and in its natural conditions. Ordinary deterioration and damage by fire or other casualty and the elements only are excepted. Should Tenant holdover after the expiration or termination of this Agreement, such holding over shall cause Town to utilize any legal mechanism available and reasonable to cause Tenant to surrender Premises to Town. Tenant agrees to pay for all costs, including reasonable attorney fees, incurred by Town by such action.
19. Binding Effect. This Agreement shall bind and inure to the benefit of the legal representatives, successors and permitted assigns of the respective parties hereto.
20. Right of Town. Town has the right to inspect the Premises at any time and from time to time without notice to Tenant.

21. Representatives. On the date of execution of this Agreement, Town and Tenant shall each designate, in writing, a representative who shall have authority to act on its behalf with respect to this Agreement.
22. Notice Provision. Unless specifically stated otherwise in this Agreement, all notice requirements under this Agreement shall be satisfied by written notice delivered by registered mail to the following addresses:
- TOWN: Town of Frisco,
PO Box 4100
Frisco, CO 80443
Attn: Finance Director
- Tenant: Vail Clinic, Inc. d/b/a Vail Health
PO Box 40,000
Vail, Colorado 81658
Attn: President & Chief Executive Officer
23. Severability. In the event any covenant, phrase, clause, paragraph, section, condition, or provision herein contained is held to be invalid by any court of competent jurisdiction, the invalidity of any such covenant, phrase, clause, paragraph, section, condition, or provision shall in no way affect any other covenant, phrase, clause, paragraph, section, condition, or provision herein contained.
24. Nondiscrimination Clause. Tenant does hereby covenant and agree; 1) no person, on the ground of race, color, sex, marital status, sexual orientation, political ideology, age, creed, religion, ancestry, national origin, or physical or mental handicap, shall be excluded from participating in the use of said Premises, 2) in connection with the construction of any improvements in the Premises, and its furnishing of services thereon, no discrimination shall be practiced in the selection of employees and contractors; 3) such discrimination shall not be practiced against the public in their access to and use of the Premises and related services, and; 4) in the event of breach of any of the above non-discrimination covenants, Town shall have the right to terminate this Agreement, and to re-enter Premises and hold the same as if said Agreement had never been made or issued.
25. Colorado Law. This Agreement is to be governed by the laws of the State of Colorado.
26. Amendments. This Agreement may only be amended, supplemented or modified in a written document signed by both parties.
27. Regulatory Matters
- (a) The Town represents that the Town (i) is not currently excluded, debarred, or otherwise ineligible to participate in Medicare or any federal health care program under section 1128 and 1128A of the Social Security Act or as defined in 42 U.S.C. 1320a 7b(f) (the “**Federal Health Care Programs**”); (ii) has not been convicted of a criminal offense related to the provision of healthcare items or services and has not been excluded, debarred, or otherwise declared ineligible to participate in any Federal Health Care Program; and (iii) is not under investigation or otherwise aware of any circumstances which may result in the Town being excluded from participation in any Federal Health Care Program. The foregoing representation shall be an ongoing representation during the term of this Lease and the Town shall immediately notify the Tenant of any change in the status of the representation set forth in this Paragraph, at which time the Tenant will have the right to immediately terminate this Lease.

(b) The Town acknowledges that the Tenant is subject to the provisions of the Health Insurance Portability and Accountability Act of 1996 and related regulations (“**HIPAA**”), and may be or become subject to other state or federal privacy or confidentiality laws or regulations imposed upon providers of health care services (collectively, with HIPAA, “**Confidentiality Requirements**”), and that the Confidentiality Requirements require Tenant to ensure the safety and confidentiality of patient medical records. The Town further acknowledges that, in order for the Tenant to comply with the Confidentiality Requirements, the Tenant may restrict access or require access accompanied by an authorized representative of the Tenant to the portions of the Premises where patient medical records are kept or stored. The Town agrees that neither the Town nor its employees, agents or contractors shall need access to, nor shall they use or disclose, any such protected health information. The Parties agree that the foregoing does not create, and is not intended to create a “business associate” relationship between the Parties.

(c) The Town further agrees that notwithstanding any other provision of this Lease to the contrary, in exercising any remedies under this Lease or in entering the Premises at any time, whether due to an event of default or inspection, maintenance and repair, the Town may not enter an examination room or other area of the Premises occupied by the Tenant’s patients or other invitees receiving medical treatment services at the time of the inspection or the Tenant’s file room(s) containing any such person’s medical records unless the Town is accompanied and supervised by an authorized representative of the Tenant, except in the event of an emergency, in which event the Town shall use diligent efforts to comply with the terms hereof given the circumstances that exist at the time. The Town shall not remove, control, take or retain access to any prescription medications, testing materials or medical records, whether during the Lease term or upon surrender of the Premises. The Tenant hereby assumes full responsibility and liability to remove all prescription medications, testing materials and patient medical records upon the surrender of the Premises and in no event shall the Town have any liability in connection therewith.

28. Counterparts. This Agreement may be executed in two or more counterparts, using manual or facsimile signature, each of which shall be deemed an original and all or which together shall constitute one and the same document.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

Town: Town of Frisco, Colorado

Tenant: Vail Clinic, Inc. d/b/a Vail Health

By: _____
Hunter Mortensen, Mayor

By: _____
Name: _____
Title: _____

ATTEST:

Deborah Wohlmuth, CMC, Town Clerk

EXHIBIT A

USE OF PREMISES

Tenant may use the Premises only for a drive up COVID-19 testing center and other uses directly-related and accessory thereto. Notwithstanding the foregoing, the Town shall be entitled to use of that area of the Premises known as the Storage Room at all times during the term of this Agreement.