

REVOCABLE LICENSE AGREEMENT FOR USE OF PUBLIC PROPERTY

THIS REVOCABLE LICENSE AGREEMENT FOR USE OF PUBLIC PROPERTY (this "License Agreement") is made and entered into this 12th day of September, 2023 (the "Effective Date") by and between the **TOWN OF FRISCO**, a home rule municipal corporation, whose address is P.O. Box 4100, Frisco, Colorado 80443 (the "Town"), and **BRUCE LUBERSKI**, whose legal address is 317 Granite St, Unit #6. PO Box 2364, Frisco, CO 80443 ("Licensee").

RECITALS

- A. The Town owns the Granite Street Right-of-Way (the "Town Property")
- B. Licensee desires to install and maintain certain private improvements on the Town Property, to include landscaping as shown in Exhibit A (the "Private Improvements") to be located on and within the boundaries of the Town's Property;
- C. Pursuant to the 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. Subject to the promises, terms, conditions, rights and obligations set forth in this Agreement, the Town is willing to grant a revocable license to Licensee to allow Licensee to install, maintain and repair the Private Improvements referenced above within the Town Property;
- E. The purpose of this License is to authorize, on a revocable basis, the installation and maintenance of the Private Improvements within the Town Property without cost or liability to the Town for such installation and maintenance, and

NOW THEREFORE, in consideration of the mutual promises, covenants and obligations of the Parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Town and the Licensee agree as follows:

AGREEMENT

1. Grant of Revocable License. The Town hereby grants to the Licensee a revocable and non-exclusive license (the "License"), which includes the privilege and permission, to enter upon the Town's Property and install and maintain the Private Improvements in the Town Property, provided, however, that the Licensee shall, at Licensee's sole cost and expense:
 - (i) Prepare a sketch of the Town Property that is subject to this License, as well as the Private Improvements constructed, and to be constructed, therein. The sketch shall be prepared by the Licensee and be attached hereto and incorporated herein as Exhibit A;

- (ii) Construct, maintain, repair or replace the Private Improvements only within the boundaries of the area depicted on said sketch as being within the Town Property;
- (iii) Private improvements may include any additional landscaping that may be approved in writing by the Town's Public Works Director.
- (iv) Maintain, repair and replace the Private Improvements during the term of this Agreement in a good and attractive condition, as further set forth in Paragraph 5, below;
- (v) Provide for any and all snow removal as may be necessary or desirable for Licensee to make use of the Private Improvements; and
- (vi) Without limiting the Licensee's duties under Paragraph 8, below, indemnify and hold the Town harmless from and against any claims or demands made of the Town that are related to any change in historic drainage flow that are alleged to have been caused by the construction or maintenance of the Private Improvements

The License granted hereunder is non-exclusive, and expressly subject to the rights of the public to use the Town Property. The License is further subject to all existing utility easements and Town improvements, if any, located on, over or under the Town's Property.

2. Term of License. The License granted herein shall commence on the Effective Date and will continue so long as the Town Property, and the Private Improvements exist, unless sooner terminated by revocation or otherwise terminated pursuant to the terms of this Agreement.

3. No Interest In Land. Licensee understands, acknowledges and agrees that this Agreement does not create an interest or estate in Licensee's favor in the Town Property. The Town retains legal possession of the full boundaries of the Town Property and this Agreement merely grants to the Licensee the personal privilege to enter upon the same during the term of this Agreement. Notwithstanding the expenditure of time, money or labor by the Licensee on any improvements which Licensee may install on the Town Property, this Agreement shall not be construed to create an assignment coupled with an interest in favor of the Licensee. Licensee shall expend any time, money or labor at Licensee's own risk and peril.

4. Limited Scope of License. The License granted hereunder is limited in its scope to allow the keeping, maintaining, repair and replacement of the Private Improvements by Licensee. Any alterations, expansions, or changes to the Private Improvements or in activities of Licensee within or on the Town Property, other than the replacement of allowed Private Improvements, shall be first submitted in writing to the Town, in advance, for approval or denial by the Town. The Town's approval or denial of such request shall be in accordance with the Town Code.

5. Installation and Maintenance of Private Improvements on Town Property. Licensee shall, at its sole cost, expense and liability, design, install, keep, maintain, repair and replace the Private Improvements on the Town Property in good condition and repair; shall have the sole

responsibility for the upkeep, maintenance, replacement, and repair of the Private Improvements, as limited by the provisions set forth in this Agreement and, shall have sole responsibility for all liability related to the Private Improvements. The Licensee shall replace the Private Improvements if and when necessary, in order to keep and maintain the Private Improvements in good condition, all at the sole cost of the Licensee. The Town shall have no liability for any claims, losses or damages related to the Private Improvements. Licensee shall pay all fees and costs associated with providing water to the Private Improvements as needed.

6. General Limitations on Use; Repair. In connection with the License being granted hereunder, Licensee agrees as follows:

(i) Licensee shall promptly repair any and all damage to its Private Improvements or public facilities in the Town Property caused by its activities. If such damage poses a threat to public health, safety or welfare, the Town may cause repairs to be made at Licensee's expense unless the Licensee makes such repairs upon the Town's request.

(ii) Licensee acknowledges that it is installing the Private Improvements at its peril. Moreover, Licensee shall be solely responsible for any damage to the Private Improvements caused by Town personnel, or the Town's contractors or subcontractors, in connection with conducting maintenance, emergency or other operations near on or in the Town Property.

(iii) 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 Property encroached upon as a public place, 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 Property.

(iv) All excavation shall be accomplished in accordance with the Town Code and the required permits. Licensee is responsible for locating all utilities prior to any excavation. The Town Manager or the Town Manager's designee, prior to excavation, shall review and approve plans and specifications governing the installation and any later replacement or alteration of the Private Improvements. Upon completion of installation and alteration, if any, a reproducible copy of the exact location and dimensions of the Private Improvements shall be filed with the Town Manager.

7. Termination. This Agreement and the License granted hereunder Licensee is fully terminable under, and pursuant to, the following terms and conditions:

(i) This Agreement, and the License granted hereunder may be terminated by Town or Licensee without liability for breach of this Agreement by the giving of notice as hereafter provided. If notice of termination is given by the Town or Licensee pursuant to this Paragraph 7, this Agreement and the License shall terminate thirty (30) days from the date of the notice of termination. The notice provision established by this Paragraph 7 shall conclusively be deemed to be reasonable.

(ii) In the event that Licensee's improvements which have been placed by Licensee on the Town Property are destroyed and Licensee has no intent to replace same, or are permanently removed by Licensee, this Agreement, and the License herein granted to Licensee, may be terminated by Town upon not less than thirty (30) days' advance written notice to Licensee.

(iii) This Agreement and the License granted to Licensee may be terminated by the Town upon the default by the Licensee in the performance of the Licensee's obligations, promises, covenants or agreements set forth in this Agreement.

(iv) In the event of termination of this Agreement for any reason, Licensee shall not be entitled to receive a refund of any portion of the consideration paid for this Agreement, nor shall Licensee be compensated for any improvements which must be removed from the Town Property.

(v) Upon termination of this Agreement and the License herein granted, and upon the Town's written demand, Licensee shall pay all costs and perform all removal of the Private Improvements from the Town Property within sixty (60) days of the written demand. Upon any failure of the Licensee to remove the Private Improvements within said sixty (60) days, the Private Improvements shall become and remain the property of the Town, subject to use or disposal at the Town's sole discretion, and the transfer of ownership of the Private Improvements shall be the Town's sole remedy for the Licensee's failure to remove the Private Improvements.

8. Indemnification. 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 or liability, 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, contractors, subcontractors, or lessees, in the installation, construction, use or maintenance of the Private Improvements. Licensee further agrees that should it fail to indemnify the Town as required in this Paragraph 8, 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 or its assignees, which lien may be foreclosed upon in the manner provided in Colorado Statutes for the judicial foreclosure of liens.

9. Insurance. Licensee shall obtain and maintain at all times during the term hereof, at Licensee's sole cost and expense, a policy or policies of comprehensive general liability insurance with limits of coverage of not less than \$1,000,000 for injuries, damages or losses sustained by any one person in any one accident or event, and not less than \$1,000,000 for injuries, damages or losses incurred by two or more persons in any one accident or event on the Town Property. The Town shall be named as an additional insured on all such policies and Licensee shall furnish the Town with a copy of such policy or policies prior to the effective date hereof. Notwithstanding anything contained herein to the contrary, Town may terminate this Agreement,

and the License granted to Licensee, if Licensee fails to procure and maintain the insurance required by this Paragraph 9.

10. Notices. Any notice required or permitted under this Agreement shall be in writing and shall be sufficient if personally delivered or mailed by certified mail, return receipt requested, addressed to the following:

If to the Town:

Town Manager
Town of Frisco
PO Box 4100
Frisco, Colorado 80443

If to the Licensee:

Bruce Luberski
PO Box 2364
Frisco, CO 80443

Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given upon mailing. Notices personally delivered shall have been deemed to have been given upon delivery. Either party may change its address by giving notice thereof to the other party in the manner provided in this Paragraph 10.

11. Dispute Resolution; Attorney's Fees. Prior to either Party instituting any action in court or in arbitration, the parties must first, as a condition precedent, attempt in good faith to resolve any dispute arising out of or relating to this License Agreement by mediation. In any action brought by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial, in arbitration or upon appeal, shall recover its reasonable attorney's fees as well as costs, including expert witness's fees, incurred in the prosecution or defense of such action.

12. No Waiver. The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by the party waiving its rights.

13. Governmental Immunity. The Licensee understands and agrees that Town 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, Section 24-10-101, et seq., C.R.S., as from time to time amended, or any other law or limitations otherwise available to Town, its officers, or its employees.

14. Entire Agreement; Modification. This Agreement constitutes the entire agreement and understanding between the parties hereto with regard to the subject matter contained herein and supersedes any prior agreement or understanding relating to the subject matter of this Agreement. This Agreement may be modified or amended only by a duly authorized written instrument executed by the Parties hereto.

15. Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the District Court of the County of Summit, State of Colorado. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

16. Authority Of Town. This Agreement is entered into pursuant to a Resolution of the Town Council of the Town of Frisco, Colorado adopted on September 12th, 2023.

[SIGNATURE PAGE FOLLOWS]

TOWN OF FRISCO, a Colorado Home Rule Municipal Corporation

Hunter Mortensen,
Mayor

ATTEST:

By: Stacey Nell
Town Clerk

LICENSEE: _____

By:

Its:

STATE OF COLORADO)
) ss.
County of Summit)

The foregoing instrument was acknowledged before me this ____ day of _____, 2022,
by _____, Owner of 317 Granite Street Unit #6.

Notary Public

EXHIBIT A
to
REVOCABLE LICENSE AGREEMENT FOR USE OF PUBLIC PROPERTY
[Depiction of Town Property and Private Improvements]