

**AGREEMENT
FOR
CERTAIN ECONOMIC INDUCEMENTS AND INCENTIVES**

THIS AGREEMENT FOR CERTAIN ECONOMIC INDUCEMENTS AND INCENTIVES ("Agreement") is executed effective as of January 1st, 2024 ("Effective Date"), by and between the TOWN OF FRASER, COLORADO, a Colorado municipal corporation ("Town"), and The Birdie Lounge LLC (hereinafter referred to as "the Business").

RECITALS:

- A. The Town has adopted Fraser Municipal Code Section 2-2-10(d) to encourage, in part, the establishment and expansion of new retail sales tax generating businesses within the Town of Fraser and to further other public purposes.
- B. The Business will be located at 406 Zerex St, Unit B, Fraser, Colorado ("Property"), incorporated herein by this reference as if set forth fully. The Business intends to operate a for profit enterprise ("Business Operation") on the Property.
- C. In order to facilitate such Business Operation, the Business desires to obtain the benefits of certain incentives pursuant to Fraser Municipal Code Section 2-2-10(d) as set forth below. The Town finds and determines that such incentives will facilitate the Business Operation, which will generate additional sales tax revenues and otherwise serve the public interest.
- D. It is an appropriate and lawful function of Colorado municipalities to encourage economic vitality through economic inducements and incentives.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Business agree as follows:

1. The foregoing Recitals are fully incorporated herein by this reference with the same force and effect as though restated below.

2. Determination of Public Benefit, Reliance of the Town.

- a. The Town maintains certain guidelines for evaluating the public benefit of Business Operations within its corporate limits, and the value of providing economic inducements and incentives to encourage and sustain such Business Operations. In reliance upon certain data and information provided to the Town by the Business, the Town has determined that construction and operation of the proposed Business Operation satisfies such guidelines and will be of substantial economic benefit to the Town.
- b. The Business has provided the Town with certain information and representations upon which the Town has relied in determining future tax revenue generation from commercial activity presently taking place and anticipated to take place in the foreseeable future within the Property. By entering into this Agreement, the Town is relying on the Business's representations in good faith.

3. Agreed Incentives and Inducements.

In light of the foregoing, the Town agrees to the following incentives and inducements upon the terms and conditions set forth below. These incentives shall only apply to the Business Operation on the Property.

- a. **Sales Tax Rebate.** The Town will reimburse the Business for certain Town sales taxes generated by the Business Operation conducted on the Property. Such rebate shall be in an amount equal to 100% of the Town's 4% municipal sales tax (excluding the additional 1% sales tax for transit) collected for the period of five (5) years from the date of issuance of this Agreement. Such rebates shall be made on an annual or other periodic basis, as determined by the Town, based on sales tax returns submitted to the State and reported to the Town. The Business hereby voluntarily waives its right to confidentiality as provided in State statutes and the Fraser Municipal Code and consents to disclosure of sales and use tax information specific to taxable activity taking place on the Property during the entire period for which such rebates are to be made, and the Business specifically consents to public discussion and analysis of such information before Town governmental and administrative bodies. In the event all or a part of the Property is subleased or assigned to a new tenant business operator, the Business agrees to obtain and provide to the Town the new tenant's written waiver of confidentiality and consent to disclosure of the new tenant's sales tax information, as a condition to the rebate of sales taxes paid by such tenant. All rebates shall be paid to the Business, and the Town is not responsible for any agreement the Business may enter into with a tenant regarding such rebates.

4. **Conditions; Enforcement.**

- a. **Length of Operation.** The incentives provided herein contemplate that the Business will continue operations for a period of time to accomplish the public purposes for which such incentives are intended. In addition, the incentives are intended to facilitate creation of a new business within the Town, not a relocation of an existing business. At a minimum, the Business shall operate the proposed retail business, or a similar new sales tax generating business on the Property for a period of five (5) years from date of this Agreement. If, at any time prior to that date, the Business decides to terminate its retail sales tax generating business operations on the Property, or if the premises are to be used for the relocation of another existing retail business, the Business shall provide the Town with written notice of its decision no later than thirty (30) days prior to the actual termination or transfer of operations. In that event, and within thirty (30) days following written demand by the Town, the Business shall repay to the Town an amount equal to ten percent (10%) of the aggregate amount of all rebates and waivers of fees and/or taxes actually provided to the Business pursuant to this Agreement, multiplied by the total number of calendar years remaining in said 5-year period.
- b. **Lien.** In the event that the Business fails to repay any rebates, taxes and fees within the time provided for herein, the Town shall have and may enforce a lien upon the Business — but not the Property — and all of the assets of the Business for payment of all such sums owed, together with all costs of collection, including reasonable attorney fees. Such lien shall have priority over other liens or claims of whatever kind or nature, except any liens for the nonpayment of property taxes and State sales and use taxes, and may be foreclosed in the same manner as a mechanics lien under the laws of the State of Colorado. In addition to said lien, the Town shall have all other rights and remedies granted to it by state and local law for the collection of unpaid taxes and fees.

5. **Miscellaneous.**

- a. **TABOR.** Nothing herein shall be deemed a multiple-fiscal year obligation in violation of the limitations set forth in Article X, Section 20 of the Colorado Constitution. All sums payable hereunder by the Town in any future fiscal year shall be subject to legal availability and annual appropriation.
- b. **Subsequent legislation, constitutional limits.** The Town shall not be required to reimburse the Business in the event that subsequent legislation adopted by the State of Colorado makes such reimbursement unlawful, or in the event a court of competent jurisdiction declares any portion of this Agreement or legislation authorizing payment under this Agreement to invalid or unconstitutional.

- c. **Compliance With Title 31, Article 15, Part 9, C.R.S.** In connection with providing these incentives, the Town agrees to comply with any obligations imposed pursuant to Section 31-15-903, including the notification requirements of sub-section (4) thereof.
- d. **Assignment.** The Business shall not assign or subcontract with respect to any of its rights, benefits, obligations or duties under this Agreement except upon prior written consent and approval of the Town. In the event of a sale of the Property, the Town will approve an assignment to the new business, provided the Business is not then in default hereunder and the new business expressly assumes the Business's obligations hereunder in writing.
- e. **Entire Agreement.** This writing constitutes the entire agreement between the parties with respect to its subject matter, and supersedes any prior written or oral communication, negotiations, agreements, representations and understandings between them with respect to its subject matter.
- f. **Modification.** This Agreement may not be modified, enlarged or altered, except in writing, signed by both parties.
- g. **No Third-Party Beneficiaries.** No person not a signatory hereto shall have any right to seek enforcement or declaration of status under this Agreement. No third-party beneficiaries are intended.
- h. **Attorney fees, costs of litigation.** In the event of litigation between the parties arising out of this Agreement, and in which the Town shall prevail, in addition to any judgment for damages or declaratory relief, the Business shall pay all costs incurred by the Town, including attorney fees, expert witness fees and other costs of suit.
- i. **Venue.** This Agreement shall be governed by and construed in accordance with the law of the State of Colorado. Venue for all purposes shall be deemed proper in the District Court of Grand County, Colorado.
- J. **No Waiver.** A waiver by either party of a breach of any of the provisions of this Agreement shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.
- k. **Severability.** If any part, term or provision of this Agreement is held by the courts to be illegal or otherwise unenforceable, such illegality or unenforceability shall not affect the validity of any other part, term or

provision, and the rights of the parties shall be construed as if the part, term or provision in question was never part of this Agreement.

6. **Recording.** Upon its execution by the parties, this Agreement shall be recorded by the Town with the Colorado Secretary of State.
7. **Successors and Assigns.** Upon execution by the parties, this Agreement shall be binding upon the parties, their respective successors and permitted assigns.

[SIGNATURES ON NEXT PAGE]

In witness whereof, the parties have executed this Agreement as of the Effective Date.

TOWN:

The Town of Fraser, Colorado,
a Colorado municipal corporation

BUSINESS:

BY:

Philip Vandernail, Mayor

ATTEST:

Antoinette McVeigh, Town Clerk

(SEAL)

STATE OF COLORADO)

) ss.

COUNTY OF GRAND)

The foregoing instrument was acknowledged before me on the _____ day of _____, 2023, by Philip Vandernail, as Mayor, and Antoinette McVeigh, as Town Clerk, of **The Town of Fraser, Colorado**, a Colorado municipal corporation.

Witness my hand and official seal.

My Commission expires: _____

(SEAL)

Notary Public

[INSERT NOTARY FOR THE BUSINESS]