

FRISCO DAY LODGE CONCESSIONAIRE AGREEMENT

This Frisco Day Lodge Concessionaire Agreement (this “Agreement”) is made and entered into this 12th day of November 2024, by and between Frisco Haus LLC, a Colorado limited liability company d/b/a Frisco Haus, (“Concessionaire”) and the Town of Frisco, a Colorado home rule municipal corporation (“Frisco”).

WHEREAS, Frisco operates the Frisco Adventure Park, including, the provision of recreational activities and special events, but wishes to contract for the provision of certain other services; and

WHEREAS, it is the goal of the Frisco Town Council to provide visitors and citizens with quality food and beverage at the Frisco Day Lodge; and

WHEREAS, Concessionaire provides food and beverage services and facilities.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, Concessionaire and Frisco hereby agree as follows:

1. Food and Beverage Services and Facilities. Concessionaire shall have the right and obligation to provide food and beverage services and facilities to the public at the Frisco Day Lodge (hereinafter the “Food and Beverage Operations” or the “Operations”), under the terms of this Agreement.

2. Service Standards. Concessionaire agrees that in conducting its Operations, it shall adhere to the following service standards adopted by the Frisco Town Council. Concessionaire shall:

(a) operate in accordance with all applicable state and local government food service regulations, and in a professional manner provide quality service and equipment to all users;

(b) ensure that the Operations are conducted in a timely manner, including but not limited to being open for business during posted operating hours, which operating hours shall include breakfast, lunch and snack service five days per week (Thursday through Monday, including holidays) during the Term of this Agreement (defined in paragraph 3 below)

(c) ensure that its employees provide courteous and friendly service to all patrons without regard to age, race, color, sex, sexual orientation, disability, religion or political affiliation;

(d) work cooperatively with and support the Town of Frisco and Frisco Adventure Park whenever appropriate with respect to mutually beneficial programs;

(e) maintain any portion of the Frisco Day Lodge that it uses in a generally good appearance, keeping it clean, tidy and free of debris in order to project a professional image at all times and maintain all equipment in properly functioning order, and;

(f) abide by any parking restrictions at the Frisco Day Lodge , both for concessionaire- owned vehicles and those vehicles belonging to employees of concessionaire, to allow for the orderly flow of traffic throughout the Frisco Adventure Park; and

(g) uphold and support applicable programs and policies of Frisco. Maintain operating standards as written in this Agreement.

(h) uphold Town of Frisco’s policies to operate sustainably, and utilize such equipment, standards, and materials to best reduce, reuse, and recycle all cutlery and related food service items.

These standards of service shall hereinafter be referred to as the “Service Standards”.

3. Term, Possession and Interest. The term of this Agreement (the “Term of this Agreement”) shall be from November 15, 2024, to April 6, 2025. Thereafter the term of this agreement will expire. The portion of the Frisco Day Lodge provided by Frisco for use by Concessionaire (the “Leased Premises”) shall be as described in that certain Frisco Adventure Park Food and Beverage Concessionaire Lease (the “Lease Agreement”) Concessionaire shall not use the leased premises for any use or purpose other than as expressly provided in this Agreement or the Lease Agreement.

4. Payments by Concessionaire.

(a) Reporting Requirements.

(i) Before 5 p.m. on the first Monday of each month during the term of this Agreement, Concessionaire shall submit to the Town of Frisco’s Finance Director a report of Concessionaire’s gross revenues collected during the previous month from its Operations and any retail sales allowed under this Agreement (“Gross Revenues Collected”). Concessionaire shall include with each report a signed statement affirming the completeness and accuracy of such a report. Such statement may be prepared and certified to be true and correct by Concessionaire’s bookkeeper; provided, however, that if the Finance Director has a reasonable objection to the use of Concessionaire’s bookkeeper to prepare such statement, Concessionaire will engage an independent certified public accountant or other qualified person acceptable to the Finance Director to prepare and certify such statement.

(ii) The Finance Director shall have the right at any time upon 15 days’ written notice to audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to Gross Revenues Collected from operations at the Frisco Day Lodge. Concessionaire, on the 16th day after written notice of the request to audit, shall make all such documents available for examination at the main offices of the Town of Frisco.

(iii) If Town determines after an audit that the Gross Revenues Collected for any reporting period as shown by Concessionaire’s report(s) have been understated by more than three percent (3%), Concessionaire shall pay to Town the cost of such audit, the amount of any deficiency and interest, at the rate of 1.5% per month, on such amount. The

Town's right to perform such an audit shall expire three (3) years after Concessionaire's certified reports have been delivered to the Town.

(iv) If the audit conducted by the Finance Director shows that the Concessionaire's Gross Revenues Collected reports have been understated more than three percent (3%), Concessionaire shall have the right to have an independent audit conducted at its expense. Such audit shall be completed within thirty (30) days from the date Concessionaire is notified of the results of the Finance Director's audit. The Finance Director and the independent auditor shall attempt to reconcile any discrepancies between the two audits. If the Finance Director and the independent auditor are unable to reconcile any such discrepancies, either party may enforce its right or remedies under this section by appropriate judicial action as provided by law.

(v) Concessionaire expressly agrees that Finance Director may inspect any sales tax return or report and accompanying schedules and data which Concessionaire may file with Town pursuant to the Town's Retail Sales Tax Ordinance and Concessionaire waives any claim of confidentiality which it may have in connection therewith.

(b) Operating Fees.

(i) Concessionaire shall pay 10% of all gross revenues collected (the "Operating Fee") to Frisco

(ii) On or before the 20th of each month, Concessionaire shall pay to Frisco the Operating Fee that accrued during the immediately previous operating month. Non-payment of the Operating Fee shall constitute a material breach of this Agreement for which Frisco may terminate this Agreement pursuant to Section 8 herein

5. Concessionaire's Specific Responsibilities. Concessionaire shall be responsible for the following:

(a) *Generally.* Concessionaire shall monitor its Operations, meet monthly with Frisco staff to assure continued coordination of activities, and work toward the accomplishment of Frisco's Service Standards. Concessionaire shall designate a person to serve as the primary contact with Frisco. Until such designation is changed in writing, Shervin Aghili shall be such contact.

(b) *Safety.* In addition to undertaking such safety measures as are normal and customary in the food service industry, Concessionaire shall provide any safety measures reasonably required by Frisco from time to time.

(c) *Daily Operation.* During the Term of this Agreement, Concessionaire shall schedule its Operations for breakfast, lunch, and snack services five days per week (Thursday through Monday, including holidays) during the Term of this Agreement. The length of the daily services also may be longer or shorter depending on weather conditions, at Concessionaire's discretion, and reservations may be taken at various hours outside these daily hours of operations for catering or other special events. Concessionaire shall be available by phone at all other times to

accommodate Concessionaire's customers and shall make such phone number available to the Frisco Adventure Park Staff.

- (d) *Financial records.* Concessionaire shall maintain complete and accurate financial records and information with respect to its Operations and shall retain all such records and information for no less than three years from their date of origination. Concessionaire shall make such records and information available for inspection by Frisco upon request.
- (e) *Permits.* Concessionaire is responsible for obtaining all permits required by Fire Department, Health Department, and any other governing agencies. Concessionaire shall provide proof of such permitting to the Finance Director for the Town of Frisco prior to commencing Operations for the Term of this Agreement.
- (f) *Janitorial Services and Trash Removal* Concessionaire shall provide at its sole cost and expense: (1) daily janitorial services for the Leased Premises and any other portion of the Frisco Day Lodge that is used by concessionaire from time to time in connection with its food and beverage operations; (2) regular trash removal for waste created in connection with food and beverage operations. Concessionaire is encouraged to engage in the recycling of waste so created.
- (g) *Food and beverage menu and pricing* Prior to the offering of any food or beverages for sale at the Frisco Adventure Park, Concessionaire shall present to the Town for its approval, which approval shall not be unreasonably withheld, the menu for such food and beverages and the prices to be charged by the Concessionaire for the same.
- (h) *Employees.* Concessionaire shall provide such employees for the Operations as it deems necessary. All employee benefits, including FICA and worker's compensation insurance, shall be provided and paid for by Concessionaire.
- (i) *Office equipment.* Concessionaire shall provide all office equipment necessary to effectively provide its Operations, including but not limited to, register, credit card system and radio and telephone lines.
- (j) *Insurance.* During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance.
- (k) Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and two million dollars (\$2,000,000) aggregate. The policy shall be applicable to all premises and operations. The policy shall include coverage for bodily injury, broad form property damage, personal injury (including coverage for contractual and employee acts), blanket contractual, independent contractors, products and completed operations. The policy shall name Frisco, its employees and agents as additional insureds and shall include severability of interests, waiver of subrogation and cross-liability endorsement provisions.

- (i) 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) disease – policy limit, and six hundred thousand dollars (\$600,000) disease – each employee. Every policy required under this Section 6(k) shall be primary insurance and any insurance carried by Frisco, its officers or its employees or carried by or provided through any insurance pool of Frisco, shall be excess and not contributory insurance to that provided by Concessionaire. Concessionaire shall be solely responsible for any deductible losses under any policy required above. Any insured policy required under this Agreement shall be written by a responsible company.
 - (ii) Prior to commencement of this Agreement, concessionaire shall provide Frisco with a certificate of insurance completed by Concessionaire'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 Frisco.
 - (iii) Concessionaire shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Section 6(k) by reason of Concessionaire'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 Concessionaire to procure or maintain policies providing the required coverage, conditions and minimum limits shall constitute a material breach of contract upon which Frisco may immediately terminate this Agreement or, at its discretion, Frisco 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 Frisco shall be repaid by Concessionaire to Frisco upon demand.
 - (iv) Concessionaire will notify Frisco of any accident, claim or potential claim involving Concessionaire or its Operations within twenty-four (24) hours of such accident or of learning of such claim or potential claim.
- (l) *Signage.* Concessionaire shall provide on-site signage for its Operations at the Frisco Day Lodge, which signage shall be subject to Frisco's sign code and to Frisco's prior approval as operator of the Frisco Adventure Park, which approval shall not be unreasonably withheld.

6. Frisco's Specific Responsibilities. Frisco shall provide the following services or property to the Concessionaire:

- (a) *Marketing.* Frisco shall review and shall have the right to approve all advertising and promotional events and special programs that Concessionaire wishes to conduct.
- (b) *Inquiries.* Any telephone inquiries regarding Concessionaire received by Frisco employees shall be directed to Concessionaire at (650) 208-2277. Anyone making an in-person inquiry regarding Concessionaire at a Frisco office shall be directed to Concessionaire's location where he or she will be met by Concessionaire.

7. Termination.

- (a) Either party may terminate this Agreement by written notice to the other in the event that the other party is in breach of any of its obligations hereunder. A party shall be deemed to be in breach if it fails to remedy any default or failure to perform hereunder within fifteen (15) days after written notice from the other party of such default or failure or, in the event such default or failure is non-monetary and cannot be remedied within fifteen (15) days, if the party in breach fails to initiate such cure within fifteen (15) days after notice from the other party or fails diligently to pursue such cure thereafter.
- (b) Without limiting Frisco's right to declare and give notice of a default or failure to perform by Concessionaire based on Frisco's reasonable determination that Concessionaire is in default or has failed to perform its obligations under this Agreement, including but not limited to, complying with all of the Service Standards and paying fees in a timely manner, Concessionaire shall be deemed to be in breach if Frisco has received three or more written complaints within any twelve month period concerning any similar default or failure to perform by Concessionaire. In the event of a breach based upon Frisco's receipt of three or more written complaints as described herein, Concessionaire shall be deemed to be in breach without the need for Frisco to provide written notice of a default or failure to perform, provided that Frisco has provided Concessionaire with a copy of each of the first two written complaints within seven days of Frisco's receipt thereof, and has provided Concessionaire an opportunity to respond to each such complaint within seven days of delivery of the same to Concessionaire. After receipt of the third such written complaint, Frisco may terminate this Agreement if, after mediation between the parties before a neutral third party, Frisco determines, in its reasonable direction, that Concessionaire is unlikely to remedy the defaults or failures to perform that gave rise to the written complaints. The costs of any such mediation shall be divided equally between the parties, and the parties shall bear their own attorneys fees, if any, incurred in connection with the mediation. If the parties are unable to agree upon a neutral third party mediator, each shall engage its own mediator and, together, such mediators shall designate a neutral third-party mediator.
- (c) Nothing herein shall constitute a multiple fiscal year obligation pursuant to Colorado Constitution Article X, Section 20. In the event that the Frisco Town Council shall fail to appropriate sufficient sums to meet the Town's financial obligations hereunder in fiscal years beyond that of the date first written above,

this Agreement shall automatically terminate and neither party shall owe any other or further duties to the other. The Town shall promptly give the Concessionaire written notice of the Town Council's failure to appropriate sums that may be necessary to meet the Town's obligations hereunder in such future fiscal years.

8. Remedies. 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 any remedy constitute a forfeiture or waiver of any fees owed to Frisco or to any damages occurring to Frisco by reason of the violation of any of the terms or provisions herein contained.

9. Indemnification.

(a) Concessionaire agrees to indemnify and hold harmless Frisco, its officers, employees and insurers from and against all liability, claims and demands, on account of injury, loss or damage, including without limitation claims arising from bodily injury, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement, if such injury, loss or damage is caused in whole or in part by, or is claimed to be caused in whole or in part by, the act, omission, error, mistake, negligence, or other fault of the Concessionaire, or of any subcontractor of the Concessionaire, or any officer, employee, representative or agent of the Concessionaire or of any subcontractor of the Concessionaire, or any employee of any subcontractor of the Concessionaire. The Concessionaire agrees to investigate, handle, respond to and provide defense for and defend against, any such liability claims or demands at the sole expense of Concessionaire or, at the option of Frisco, agrees to pay for, or reimburse Frisco for, the defense costs incurred by Frisco in connection with any such liability, claims or demands. Concessionaire also agrees to bear all other costs and expenses related thereto, including court costs and reasonable attorney fees, whether or not any such liability, claims or demands alleged are groundless, false or fraudulent. The obligations of Concessionaire shall not extend to any injury, loss or damage which is caused solely by the act, omission or other fault of Frisco, its officers or its employees.

(b) The parties hereto understand and agree that Frisco 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, Section 24-10-101 et seq., CRS., as from time to time amended, or otherwise available to Frisco, its officers or its employees.

10. Assignment. Concessionaire shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer its rights under this Agreement or any interest herein without the prior written consent of Frisco in each instance. Frisco may withhold such consent in its sole and absolute discretion. Any transfer without Frisco's prior written consent shall constitute a default under this Agreement and shall be void and shall confer no rights upon any third party. Without limiting the generality of the foregoing, if Concessionaire is not a natural person, any change in the parties controlling Concessionaire

on the date hereof, whether by sale of stock or other ownership interest, or otherwise, and any merger, dissolution, consolidation or other reorganization of Concessionaire, shall be deemed a transfer. Every assignment of this Agreement to which Frisco consents shall be by an instrument in writing pursuant to which the assignee expressly agrees for the benefit of Frisco to assume, perform and observe all of the Concessionaire's obligations under this Agreement. The consent by Frisco to a transfer shall not relieve Concessionaire from primary liability hereunder (which shall be joint and several with any assignees or other transferees) or from the obligation to obtain the express consent in writing of Frisco to any further transfer.

11. Notice. Whenever a provision is made in this Agreement for notice of any kind, such notice shall be in writing and signed by or on behalf of the party giving the same, and it shall be deemed sufficient notice if personally delivered to the other party or if sent by certified mail, postage prepaid, to the addresses set forth below for the parties or to such other address as either party may furnish by notice.

FRISCO
Town of Frisco
PO Box 4100
Frisco, CO 80443
Attn: Finance Director

CONCESSIONAIRE
Frisco Haus LLC
PO Box 4393
Dillon, CO 80435
Attn: Shervin Aghili

12. Entire Agreement. Except as otherwise expressly provided herein, this Agreement sets forth the entire agreement of the parties and supersedes all prior negotiations and understandings.

13. Relationship of Parties. Frisco and Concessionaire agree that nothing in this Agreement is intended to create, nor shall be deemed, held or construed as creating, any partnership, joint venture, employer/employee or other relationship between them other than that of Concessionaire as Frisco's independent contractor. Concessionaire shall at all times control the means and manner by which Concessionaire performs the work under this Agreement, subject to Frisco's right to monitor, evaluate and improve such work.

14. No Third Party Beneficiary. No term or provision of this Agreement is intended to be, nor shall any such term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party hereto, and no such other person, firm, corporation or entity shall have any right or cause of action hereunder.

15. Amendments. This Agreement may only be amended, supplemented or modified in a written document signed by both parties.

16. Colorado Law. This Agreement is to be governed by the laws of the State of Colorado.

17. 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 of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

TOWN OF FRISCO, a Colorado municipality

Frisco Haus LLC, a Colorado limited liability company

Frederick J. Ihnken, Mayor

Shervin Aghili, Owner

ATTEST:

Stacey Nell, Town Clerk