

FRISCO BAY MARINA CONCESSIONAIRE AGREEMENT

This Frisco Marina Concessionaire Agreement and License (this "Agreement") is made and entered into this 23rd day of May, 2023, by and between The Island Grill, Inc., a Colorado corporation d/b/a The Island Grill, ("Concessionaire") and the Town of Frisco, a Colorado home rule municipal corporation ("Frisco").

WHEREAS, the Frisco Bay Marina (the "Marina") is a facility proudly operated by Frisco pursuant to a special use permit (the "Permit") from the Dillon Reservoir Recreation Committee ("DRReC") and a lease (the "Denver Water Lease") from the City and County of Denver acting by and through its Board of Water Commissioners ("Denver Water"); and

WHEREAS, Frisco operates the Marina, including the provision of boat slips and launching, trailer storage, marketing, winterizing and winter storage but wishes to contract out the provision of certain other services; and

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

WHEREAS, Concessionaire provides food and beverage services and facilities; and

WHEREAS, On May 14, 2019, the Town and Concessionaire entered into (i) that certain Lease of the Food and Beverage Building at the Frisco Bay Marina dated to be effective as of May 14, 2019 (the Existing Lease"); and (ii) that certain Frisco Bay Marina Concessionaire Agreement and License (the Existing Agreement"); and

WHEREAS, under the Existing Lease and the Existing Agreement, Concessionaire has provided food and beverage services and facilities and the parties desire that Concessionaire continue to provide, such services and facilities in the Town of Frisco on property owned or controlled by Frisco; and

WHEREAS, Concessionaire desires to make improvements in 2023 to the premises that it leases from the Town of Frisco, including the addition of a modular beer cooler with glycol and a true tap system, which improvements will be fixtures and become a part of the real property owned by the Town upon their installation; and

WHEREAS, Concessionaire will pay for the improvements and Frisco will reimburse Concessionaire for the improvements over the initial term and first renewal term of this agreement, and

WHEREAS, Concessionaire desires an extension to its concession rights for a period of seven (7) years from the date of this Agreement, which is through the Summer of 2029 Operating Season, and

WHEREAS, the Town is willing to extend the term of the concession as desired by Concessionaire; and

WHEREAS, accordingly, the Concessionaire and the Town desire to terminate the Existing Agreement and Existing Lease, and enter into this Agreement and an alternative lease agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth below, Concessionaire and Frisco hereby agree that the Existing Agreement and Existing Lease are terminated and of no further force or effect, and further 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 Marina (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) do nothing to jeopardize, and shall always act in compliance with, the Permit and the Denver Water Lease;

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

(c) 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 lunch and dinner/happy hour service seven days per week during the period of each year within the Term of this Agreement (defined in paragraph 6(c) below) in which the Marina is open for business, with such period generally being from the Saturday of Memorial Day weekend to September 30 of each year (such periods being described herein, respectively, as the “Summer of 2023 Operating Season,” the “Summer of 2024 Operating Season,” the “Summer of 2025 Operating Season,” the “Summer of 2026 Operating Season,” the “Summer of 2027 Operating Season,” the “Summer of 2028 Operating Season,” and the “Summer of 2029 Operating Season”, individually as an “Operating Season”);

(d) 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;

(e) work cooperatively with and support Frisco and DRReC whenever appropriate with respect to mutually beneficial programs;

(f) maintain any portion of the Marina 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;

(g) abide by any parking restrictions at the Marina, both for concessionaire-owned vehicles and those vehicles belonging to employees of concessionaire, to allow for the orderly flow of traffic throughout the Marina; and

(h) uphold and support applicable programs and policies of Frisco, including the 2018 Frisco Bay Marina and Waterfront Park Master Plan, while serving as a representative of Frisco.

(i) maintain operating standards as written in this Agreement while understanding that substantial portions of the 2018 Frisco Bay Marina and Waterfront Park Master Plan will likely be implemented and, as such, the entire Marina, and various parts thereof, will be under construction during the Terms of this Agreement.

(i) 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 the date first written above to September 30, 2023. Thereafter the term of this agreement will be renewed for six (6) successive one year renewal terms unless, not less than 30 days prior to the end of the initial term or any renewal term, the Concessionaire or the Town provides written notice to the other party of its desire to terminate this Agreement, which notice shall cause this Agreement to terminate at the end of the then-current term or renewal term. The initial term of this Agreement together with any automatic renewal term of this Agreement is referred to herein as the "Term of this Agreement."

Concessionaire understands and agrees that, if it is determined by the Town Council that a new food and beverage service facility will be established at the Marina, either as a replacement or as a supplement to the facility provided for in this Agreement and in the Lease Agreement (as defined below), then the Town shall determine, in its sole discretion and in accordance with applicable law, whether to seek competitive proposals for the operation of some or all food and beverage service facilities within the Marina. In the event that this Agreement is terminated or not renewed at a time when the Town has not fully reimbursed the Concessionaire for improvements constructed under section 4.(b)(iii) below, the Town will reimburse Concessionaire for any remaining amounts owed at the time that it provides Concessionaire with any notice of termination or nonrenewal.

The portion of the Marina provided by Frisco for use by Concessionaire (the "Leased Premises") shall be as described in that certain Frisco Bay Marina 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 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.

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 Bay Marina. 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.

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.

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.

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

(iii) Concessionaire will, during the initial term of this Agreement, plan, pay for and install or construct improvements to the facility owned by the Town of Frisco, including the addition of a modular beer cooler with glycol and a true tap system. Concessionaire will provide Frisco with an estimate of the work prior to ordering and starting construction. If Frisco approves the estimate, Concessionaire will pay for all improvements and secure all necessary permits for the work. Frisco will reimburse

Concessionaire the total cost in equal parts over the Summer of 2023 Operating Season and the Summer of 2024 Operating Season.

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, Doug Sakata 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 lunch dinner/happy hour services seven days per week during the Marina operating season. 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 Marina 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 DRReC, 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 Bay Marina 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. (3) Concessionaire shall pay to Frisco 66.66% of the cost incurred by Frisco for daily janitorial services and supplies for the public restrooms at the Frisco Bay Marina.

(g) *Premises.* The Concessionaire shall provide, at its sole cost and expense, all furnishings, fixtures and equipment necessary or desirable to effectively provide its Food and Beverage Operations within the Leased Premises, including but not limited to restaurant and bar furniture, fixtures and equipment, a register, credit card system and telephone lines; provided, however, that Frisco shall provide a walk-in cooler, fire suppression system, and bar tops for the facility.

(h) *Sponsorship of Town Events* Concessionaire shall support at least four Town-sponsored special events at the Frisco Bay Marina each calendar year. Such support shall consist of the provision of food and beverage services to the Town on an at cost basis for such events, with the details of such services to be negotiated on a case by case basis. In cases where the Concessionaire will receive special promotional exposure as a result of a Town-sponsored special event, the Town may negotiate with Concessionaire for the provision of food and beverage services on a below cost basis. The dates of the Town-sponsored special events to be supported by Concessionaire pursuant to this subsection shall be negotiated in good faith between the parties and agreed to prior to the beginning of the each respective operating season.

(i) *Food and beverage menu and pricing* Prior to the offering of any food or beverages for sale at the Frisco Marina, 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.

(j) *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.

(k) *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.

(l) *Insurance.* During the Term of this Agreement, Concessionaire shall procure and maintain, at its own expense, the following policy or policies of insurance.

(m) Commercial General Liability insurance with minimum combined single limits of one million dollars (\$1,000,000) each occurrence and one 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.

(ii) 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.

(iii) Comprehensive Automobile Liability insurance with minimum combined single limits for bodily injury and property damage of not less than one million dollars (\$1,000,000) each occurrence and one million dollars (\$1,000,000) aggregate with respect to each of Concessionaire's owned, hired and non-owned vehicles assigned to or used in performance of services under this Agreement. The policy shall contain a severability of interests provision.

(iv) Every policy required under this Section 6(m) 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.

(v) 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.

(vi) Concessionaire shall not be relieved of any liability, claims, demands or other obligations assumed pursuant to this Section 6(m) 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.

(vii) 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.

(n) *Signage.* Concessionaire shall provide on-site signage for its Operations at the Marina, which signage shall be subject to Frisco's sign code and to Frisco's prior approval as operator of the Marina, which approval shall not be unreasonably withheld.

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

(a) *Denver Water and DRReC.* Frisco shall be responsible for payment of any amounts due to Denver Water or DRReC out of the fees paid to Frisco by Concessionaire.

(b) *Marketing.* Frisco shall review and shall have the right to approve all advertising and promotional events, races and special programs that Concessionaire wishes to conduct.

(c) *Inquiries.* Any telephone inquiries regarding Concessionaire received by Frisco employees shall be directed to Concessionaire at 970-668-9999. 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) The foregoing notwithstanding, this Agreement shall terminate at such time as the Permit is terminated by DRReC or the Denver Water Lease is terminated by Denver Water and the terminated Permit or Denver Water Lease is not reissued or renewed for a succeeding period on terms substantially similar to the existing terms of the Permit and the Denver Water Lease.

(d) 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
Island Grill, Inc.
PO Box 15
Frisco, CO 80443
Attn: Bobby Kato

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

THE ISLAND GRILL, INC:
a Colorado corporation

Hunter Mortensen, Mayor

Bobby Kato, President

ATTEST:

Stacey Nell, Town Clerk