

FRISCO BAY MARINA  
FOOD AND BEVERAGE CONCESSIONAIRE'S LEASE

THIS LEASE (this "Lease") is made this 23rd day of May, 2023 by and between the TOWN OF FRISCO, COLORADO, a Colorado municipal corporation, with an address of P.O. Box 4100, Frisco, Colorado 80443 ("Landlord") and THE ISLAND GRILL, INC., a Colorado corporation d/b/a The Island Grill, with an address of P.O. Box 15, Frisco, CO 80443 ("Tenant").

In consideration of the premises, the mutual covenants contained in this Lease and that certain Frisco Bay Marina Concessionaire Agreement entered into between parties hereto on or about May 23, 2023 (the "Concessionaire Agreement"), and each and every act to be performed by the parties, Landlord and Tenant agree as follows:

1. Premises. Landlord by this Lease leases and demises to Tenant, and Tenant takes and hires from Landlord the real property and improvements located in the Frisco Bay Marina at 249 Marina Road, Town of Frisco, Summit County, Colorado described in Exhibit A attached hereto and incorporated herein by this reference (the "Premises").

2. Use and Occupancy.

A. Tenant covenants and agrees (i) to occupy the Premises in accordance with those uses set forth in the Concessionaire Agreement and in accordance with all applicable laws, ordinances, orders, rules, regulations and other governmental requirements relating to the use, condition or occupancy of the Premises and all applicable protective covenants and all rules, orders, regulations and requirements of the Board of Fire Underwriters, or any other similar body, having jurisdiction over the Premises and for no other purpose; and (ii) to use the Premises in a careful, safe and proper manner; and (iii) not to use or permit the Premises to be used for any purpose prohibited by the laws, ordinances, codes, rules and regulations of the United States, the State of Colorado or the Town of Frisco.

B. Tenant shall not commit waste, or suffer or permit waste to be committed, or permit any nuisance on or in the Premises. The use and occupation by Tenant of the Premises shall be subject to the terms and conditions of this Lease.

3. Term and Possession. The term of this Lease shall be concurrent with the term of the Concessionaire Agreement (the "Lease Term"), and any notice of termination or non-renewal of the Concessionaire Agreement shall constitute an effective notice of termination of this Lease Agreement. 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. Should Tenant hold over after the expiration or termination of this Lease, such holding over shall be construed as a month-to-month tenancy on all of the terms and conditions of this Lease reasonably applicable to a month-to-month lease at a minimum base rent of Two Thousand Dollars (\$2,000.00) per month. In the event of any unauthorized holding over, Tenant shall also indemnify Landlord

against all claims for damages by any person to whom Landlord may have leased all or any part of the Premises effective after the termination of this Lease.

4. Rent. Rent for the Lease Term shall be the payments due under the Concessionaire Agreement. All payments required under this Lease shall be paid without notice, demand, setoff or deduction, in lawful money of the United States of America, at Landlord's address as set forth in the first paragraph hereof or at such other place as Landlord may from time to time designate in writing.

5. Security Deposit. Tenant shall maintain with Landlord a security deposit of \$1,000 (the "Security Deposit") as security for the payment by Tenant of rent and additional rent and for the faithful performance of all the terms, conditions and covenants of this Lease. If at any time Tenant defaults in the performance of any provision of this Lease, Landlord may, but shall not be required to, use all or part of the Security Deposit in payment of any of the rent or additional rent in default, or any expense, damage, or liability suffered by Landlord by reason of Tenant's default. In such event, Tenant shall, within five days after written demand from Landlord, deposit with Landlord a sufficient amount in cash to restore the Security Deposit to its original amount. If Landlord's claims exceed the Security Deposit, Tenant shall remain liable for the balance of such claims. The Security Deposit shall not be considered an advance payment of rent or a measure of Landlord's damages in case of default by Tenant. If Tenant shall fully perform every provision of this Lease, the Security Deposit, or any balance thereof remaining, shall be returned to Tenant within a reasonable time after the expiration of this Lease and Tenant's vacation of the Premises. Landlord shall have the right to commingle the Security Deposit with other funds of Landlord, and Tenant shall not be entitled to interest on the Security Deposit. Landlord shall deliver the Security Deposit to the purchaser of Landlord's interest in the Premises in the event such interest be sold, and thereupon Landlord shall be discharged from further liability with respect to the Security Deposit. Tenant shall not assign or encumber or attempt to assign or encumber the Security Deposit except as part of a permitted assignment of this Lease.

6. Expenses of Operating the Premises.

A. Utilities.

(i) Landlord. Landlord shall provide the necessary mains, conduits and facilities in order that water, electricity, telephone, and sewer may be furnished to the Premises. Landlord also agrees to pay 1/3 of gas, electric, cleaning, and toiletries charges.

(ii) Tenant. As additional rent, Tenant shall pay, prior to delinquency, water, sewer, annual security inspections, quarterly fire system fees, and telephone charges. Tenant will maintain trash enclosure ensuring proper cleanliness and will pay for all trash, recycling, and disposal fees. Tenant will pay 2/3 of gas, electric, cleaning, and toiletries charges.

B. Maintenance and Repairs.

(i) Landlord. Landlord shall keep the foundations, exterior walls, roof, electrical, heating, water and sewer systems of the Premises in good repair, except that Landlord shall not be required to make any repairs which become necessary or desirable by reason of any negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees. In addition, Landlord shall be responsible for the periodic mowing of turf area outside of the Premises.

(ii) Tenant. Tenant shall keep the interior of the Premises, including, but not limited to, plate glass, interior walls, floors, ceilings, and lighting fixtures, in good repair at its own expense and cost. As a part of the consideration for this Lease, Tenant shall maintain the Premises; shall be responsible for and keep any and all sidewalks, alleys, parking areas adjacent to or on the Premises clean, orderly and free of trash, debris, papers, ice, snow and other hazards or obstructions; and shall place all trash and refuse deposited outside any building in covered receptacles. Areas that require special access will be kept clear and be in compliance with all regulations regarding storage of items.

C. Taxes.

(i) Personal Property, Etc. Tenant shall be responsible for and pay before delinquency any and all taxes and assessments levied or otherwise charged by any governmental entity on the personal property of Tenant, on Tenant's privilege of doing business, on Tenant's sales or otherwise resulting from Tenant's conduct of operations on or at the Premises.

(ii) Real Property. Tenant shall be responsible for and pay before delinquency any and all real property taxes attributable to Tenant's leasehold estate. The Landlord shall be responsible for and pay before delinquency all general and special real estate taxes, special assessments, assessments for improvements, special district or improvement district assessments, water taxes, sewer tax and all other taxes, charges, rates, levies and assessments of whatever nature levied, assessed or collected by any governmental or quasi-governmental authority (whether now existing or hereafter created) upon or with respect to the Premises of Landlord's ownership or operation thereof, and all taxes or charges imposed in lieu of (or in lieu of any increases in) any such tax.

D. Reimbursement; Proration. If Landlord deems it necessary to pay any expenses described in this Section 6, Tenant shall reimburse Landlord promptly upon demand. If the Lease Term commences after the beginning of, or expires before the end of, a calendar year, any amount payable by Tenant with respect to that calendar year under this Section 6 shall be adjusted proportionately on a daily basis, and the obligation to pay such amount shall survive the expiration or earlier termination of this Lease.

7. Alterations and Modifications.

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 Landlord in each instance. All Modifications approved by Landlord shall be at Tenant's expense. Tenant acknowledges that Landlord's consent will be conditioned upon, at Landlord's option, among other things, Landlord'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 Landlord be obtained before installation or construction of Modifications is begun, and the Town of Frisco 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. Landlord's consent to Tenant's Modifications shall not be unreasonably withheld, but any approval or denial shall be based on Landlord'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 Landlord, unless otherwise agreed in writing. 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 Lease, 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 Landlord on account of any injury to persons or property by reason of any Modification by Tenant, and to protect, indemnify and save harmless Landlord 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. Upon any changes in door lock keys, a new key will be provided to the Marina main office immediately upon making the change.

8. Leasehold Improvements.

A. Except as expressly set forth herein, any improvements to the Leased Premises shall be made at Tenant's sole cost and expense. In making such improvements, the Tenant shall submit plans for such improvements to the Landlord for approval, which approval shall not be unreasonably withheld or delayed. The Tenant shall make or cause to be made such improvements promptly, in a good workmanlike manner, in compliance with all applicable permits and authorizations and building and zoning laws and all laws, in accordance with the orders, rules and regulations of the Town codes. All such improvements shall become the property of Landlord at the expiration or termination of the Lease Term and shall be surrendered with the Leased Premises.

9. Liability and Insurance.

A. Landlord shall not be liable to Tenant, its agents, servants, employees, invitees or licensees, for any injury to persons or damage to property caused

by any negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees, and Tenant agrees to protect, indemnify and save harmless Landlord from all claims for any such injury and damage.

B. At all times during the Lease Term, Tenant shall carry, at Tenant's expense, with insurance companies and on forms satisfactory to Landlord: (i) Comprehensive general liability insurance with a combined single limit for bodily injury and property damages of not less than \$1,000,000, including contractual liability insurance covering the insuring provisions of this Lease and the performance by Tenant of the indemnity agreements set forth in this Lease; and (ii) "All risk" insurance (including sprinkler leakage, if applicable) covering all leasehold improvements, equipment, fixtures, appliances, furniture, furnishings and personal property from time to time installed or placed in, on or upon the Premises by or for Tenant, in an amount not less than the full replacement cost without deduction for depreciation. Any casualty or fire policy proceeds shall be used for the repair or replacement of the property damaged or destroyed unless this Lease is terminated pursuant to Section 18. Tenant shall maintain such coverage throughout the Lease Term. Certificates of insurance evidencing all insurance required by this Lease or, at Landlord's request, certified copies of the policies, shall be delivered to Landlord prior to Tenant's occupancy of the Premises and thereafter at least 30 days prior to the expiration of each such policy. Such insurance shall provide that Landlord and any other additional insured, although named as insured, shall nevertheless be entitled to recover under such policy for any loss occasioned to it, its agents or its employees, notwithstanding any act or omission of Tenant. All such policies shall provide that they may not be terminated or amended except after thirty (30) days' written notice thereof to Landlord and all other additional insured's. All such insurance shall be written as primary policy, not contributing with and not in excess of coverage that Landlord may carry.

C. Landlord and Tenant each hereby waive any and all rights to recover against the other, its agents, employees and representatives for any loss or damage to the property of such waiving party arising from any cause or type of peril covered by any insurance required to be carried by such party pursuant to this Section 9 or any other insurance actually carried by such party. Landlord and Tenant shall cause their respective insurers to issue appropriate waiver of subrogation rights endorsements to all policies of insurance carried in connection with the Premises or the contents thereof. Tenant shall cause all occupants of the Premises claiming under or through Tenant to execute and deliver to Landlord a waiver of claims as stated above and to obtain waiver of subrogation rights endorsements as stated above.

10. Default. Each of the following events shall be an event of default (an "Event of Default") by Tenant under this Lease:

A. Tenant shall fail to pay any installment of the rent hereby reserved and such failure shall continue for a period of ten (10) days;

B. Tenant shall fail to comply with any term, provision or covenant of this Lease, other than the payment of rent, and shall not cure such failure within thirty (30) days after written notice thereof to Tenant;

C. Tenant shall become insolvent, shall make a transfer to defraud, hinder or delay creditors or shall make an assignment for the benefit of creditors;

D. Tenant shall file a petition under any provision of Title 11 of the United States Code, as amended from time to time, or under any reorganization, dissolution, insolvency, liquidation or similar law of the United States or any state thereof; or Tenant shall be adjudged a debtor or to be bankrupt or insolvent in proceedings filed against Tenant under any such law;

E. A receiver, custodian or trustee shall be appointed for all or substantially all of the assets of Tenant or for Tenant's operations conducted in or at the Premises;

F. This Lease, the Premises, or any part of either shall be taken upon execution or by other process of law directed against Tenant or shall be taken upon or subject to any attachment at the instance of any creditor of or claimant against Tenant, and such attachment shall not be discharged or disposed of within fifteen (15) days after the levy thereof;

G. Any license, permit or other authorization necessary for Tenant's operations conducted on or at the Premises shall be revoked, suspended or renewal thereof shall be denied for any reason;

H. Tenant shall amend its Governing Documents, otherwise terminate its existence or substantially modify its purposes or ownership structure;

I. Tenant shall desert, abandon or vacate the Premises;

J. Tenant shall fail to comply with any provision of the Code of Ordinances or other ordinances, rules or regulations of the Town of Frisco in force from time to time; and

K. Tenant shall fail to maintain or repair the Premises.

11. Landlord's Remedies. Upon the occurrence of any Event of Default, Landlord shall have the following rights and remedies, in addition to all other remedies at law or equity, and none of the following, whether or not exercised by Landlord, shall preclude the exercise of any other right or remedy whether herein set forth or existing at law or equity:

A. Landlord shall have the right to terminate this Lease by giving Tenant written notice at any time. No act by or on behalf of Landlord, such as entry of the Premises by Landlord to perform maintenance and repairs and efforts to relet the Premises, other than giving Tenant written notice of termination, shall terminate this Lease. If Landlord gives such notice, this Lease and the Lease Term as well as the right, title and interest of Tenant under this Lease shall wholly cease and expire in the same manner and with the same force and effect (except as to Tenant's liability) on the date

specified in such notice as if such date were the expiration date of the Lease Term without the necessity of reentry or any other act on Landlord's part. Upon any termination of this Lease Tenant shall quit and surrender to Landlord the Premises as set forth in Section 18. If this Lease is terminated, Tenant shall be and remain liable to Landlord for damages as hereinafter provided and Landlord shall be entitled to recover forthwith from Tenant as damages an amount equal to the total of: (i) all rent and other sums accrued and unpaid at the time of termination of the Lease, plus interest thereon at the rate provided in Section 11(C), and (ii) the amount of rent and all other sums that would have been payable hereunder if the Lease had not been terminated, less the net proceeds, if any, of any reletting of the Premises, after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation, all repossession costs, brokerage commissions, tenant inducements, legal expenses, attorneys' fees, alteration, remodeling and repair costs, expenses of employees, and expenses of preparation for such reletting, which damages Tenant shall pay to Landlord on the days on which the rent and other sums would have been payable if the Lease had not terminated, or, alternatively, at Landlord's option, an amount equal to the present value (discounted at the rate of 8% per annum) of the balance of the rent and other sums payable for the remainder of the stated term of this Lease after the termination date less the present value (discounted at the same rate) of the reasonable rental value of the Premises for such period, plus all of Landlord's expenses incurred in repossessing the Premises and reletting (or attempting to relet) the Premises, including, but without limitation, the expenses enumerated above, and all other amounts necessary to compensate Landlord fully for all damage caused by Tenant's default. No provisions of this Lease shall limit or prejudice the right of Landlord to prove for and obtain, as liquidated damages by reason of any termination of this Lease, an amount equal to the maximum allowed by any statute or rule of law in effect at the time when, and governing the proceedings in which, such damages are to be proved, whether or not such amount be greater, equal to, or less than the amount referred to above.

B. Landlord may, without demand or notice, reenter and take possession of the Premises or any part thereof, and repossess the same as of Landlord's former estate and expel Tenant and those claiming through or under Tenant, and remove the effects of any and all such persons (forcibly, if necessary) without being deemed guilty of any manner of trespass and without prejudice to any remedies for arrears of rent or preceding breach of covenants. If Landlord elects to reenter as provided in this Section 11(B), or if Landlord takes possession pursuant to legal proceedings or pursuant to any notice provided for by law, Landlord may, from time to time, without terminating this Lease, relet the Premises or any part thereof for such term or terms and at such rental or rentals, and upon such other conditions as Landlord may in its absolute discretion deem advisable, with the right to make alterations and repairs to the Premises. No such reentry, repossession or reletting of the Premises by Landlord shall be construed as an election on Landlord's part to terminate this Lease unless a written notice of termination is given to Tenant by Landlord. No such reentry, repossession or reletting of the Premises shall relieve Tenant of its liability and obligation under this Lease, all of which shall survive such reentry, repossession or reletting. Upon the occurrence of such reentry or repossession, Landlord shall be entitled to the amount of the monthly rent and all other sums which would be payable hereunder if such reentry or repossession had not occurred, less the net proceeds, if any, of any reletting of the Premises after deducting all of Landlord's expenses in connection with such reletting, including, but without limitation,

the expenses enumerated in Section 11(A) above. Tenant shall pay such amounts to Landlord on the days on which the rent and other sums due hereunder would have been payable hereunder if possession had not been retaken. In no event shall Tenant be entitled to receive the excess, if any, of net rent collected by Landlord as a result of such reletting over the sums payable by Tenant to Landlord hereunder. If this Lease is terminated as a result of Landlord's actions in retaking possession of the Premises or otherwise, Landlord shall be entitled to recover damages from Tenant as provided in Section 11(A).

C. Landlord shall have the right to recover from Tenant the rents and damages provided for above by suit or suits brought from time to time without Landlord being required to wait until the expiration of the Lease Term, or if this Lease is terminated, the date on which such expiration would have occurred. If Tenant shall default in making any payment required to be made by Tenant (other than payments of rent) or shall default in performing any other obligations of Tenant under this Lease, Landlord may, but shall not be obligated to, make such payment or, on behalf of Tenant, expend such sum as may be necessary to perform such obligation. All sums so expended by Landlord with interest thereon shall be repaid by Tenant to Landlord on demand. No such payment or expenditure or other action by Landlord shall be deemed a waiver of Tenant's default nor shall it affect any other remedy of Landlord by reason of such default. Whenever Tenant shall be required to make payment to Landlord of any sum with interest, interest shall be payable from the date such sum is due until paid, at an interest rate equal to the annual interest rate announced publicly from time to time by the Chase Manhattan Bank of New York City as its prime rate or its base corporate borrowing rate if the same is at any time not called the prime rate plus 10% per annum or at the maximum rate permitted by law, whichever is lower. As used in this Lease, the terms "reenter," "reentry," "take possession," "repossess" and "repossession" are not restricted to their technical legal meaning.

12. Quiet Enjoyment. Landlord shall warrant and defend Tenant in the quiet enjoyment and possession of the Premises during the Lease Term so long as Tenant complies with the provisions of this Lease.

13. Force Majeure; Landlord's Failure to Perform. Anything in this Lease to the contrary notwithstanding, Landlord shall not be in default with respect to the performance of any of the terms, covenants or conditions of this Lease if such default shall be due to any strike; lockout; civil commotion; riot; invasion; rebellion; sabotage; governmental regulations or controls, except those imposed by the Town of Frisco; inability to obtain any material, service or financing; an act of God; or any other cause beyond the control of Landlord; provided that such cause is not due to the willful or grossly negligent act or omission of Landlord or its agents or employees. Further, Landlord shall not be deemed to be in default in the performance of any of its obligations unless and until it has failed to perform such obligation within 30 days after written notice from Tenant specifying Landlord's failure to perform; but if the nature of Landlord's obligation is such that more than 30 days are required for its performance, then Landlord shall not be deemed to be in default if it shall commence such performance within such 30-day period and thereafter diligently prosecutes same to completion.



14. Signs. Tenant shall not place or paint any signs, window stickers or decals or other similar materials (collectively, "Signage") at, on, or above the Premises, or on windows or doors of the Premises, or in, on, or above any streets, walks or parking areas, nor paint any exterior surface of the Premises without the prior written consent of Landlord; and Landlord shall have the right to remove any Signage in order to paint the Premises or to make any other repairs or alterations to the Premises. Tenant acknowledges that Landlord's consent will be conditioned upon, at Landlord's option, among other things, Landlord's approval of plans and specifications for any Signage and that Tenant's compliance with Town ordinances and regulations relative to signs and the issuance of a sign permit shall not satisfy the requirement that written approval from Landlord be obtained before installation or construction of signage has begun. The Town of Frisco hereby reserves to itself the contractual right, as Landlord, to review and evaluate Tenant's plans for all Signage and 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 sign plans prior to issuance of a sign permit. Landlord's consent to Tenant's proposed Signage shall not be unreasonably withheld, but any approval or denial shall be based on Landlord's best judgment as a landlord, not on the standards by which building permits are issued or denied

15. Relationship of Parties. Landlord and Tenant agree that nothing in this Lease shall be deemed, held or construed as creating any relationship between them other than that of Landlord and Tenant.

16. Assignment and Subletting. Tenant shall not voluntarily, by operation of law or otherwise, assign, encumber or otherwise transfer this Lease or any interest herein or sublet all or any part of the Premises, or suffer or permit the Premises or any part thereof to be occupied by others (any and all of which hereinafter shall be referred to as a "Transfer"), without the prior written consent of Landlord in each instance. Landlord may withhold such consent in its sole and absolute discretion. Any Transfer without Landlord's prior written consent shall constitute an Event of Default hereunder and shall be void and shall confer no rights upon any third person. Without limiting the generality of the foregoing, if Tenant is not a natural person, any change in the parties controlling Tenant on the date hereof, whether by sale of stock or other ownership interests, or otherwise, and any merger, dissolution, consolidation or other reorganization of Tenant, shall be deemed a Transfer. Every assignment of this Lease to which Landlord consents shall be by an instrument in writing pursuant to which the assignee expressly agrees for the benefit of Landlord to assume, perform and observe all of Tenant's obligations under this Lease. If any Transfer shall occur, with or without Landlord's prior consent, Landlord may, after default by Tenant, collect rent from the assignee, subtenant or other transferee, and apply the net amount collected to the rent herein reserved, but no such collection shall be deemed a waiver of this Section 16, or the acceptance of the assignee, subtenant or other transferee as the tenant hereof, or a release of Tenant from continuing liability to perform this Lease. The consent by Landlord to a Transfer shall not relieve Tenant from primary liability hereunder (which shall be joint and several with any assignees, subtenants and other transferees) or from the obligation to obtain the express consent in writing of Landlord to any further Transfer.

17. Eminent Domain. If the entire Premises or so much thereof as shall render the balance untenable shall be taken by right of eminent domain or sold under threat of the exercise of such right, this Lease shall terminate as of the date the condemning authority takes physical possession. If only part of the Premises is so taken or sold and as a result thereof Landlord decides that substantial alteration or reconstruction of the Premises is desirable or Landlord decides to demolish or discontinue operating the Premises, Landlord may, at its option, terminate this Lease by written notice to Tenant given within 45 days after such taking or sale. Tenant shall pay all rent under this Lease due through the date of any termination of this Lease pursuant to this Section 16. In the event of any taking or sale whatsoever, all awards, damages and proceeds shall belong to Landlord, and Tenant hereby assigns to Landlord the interest, if any, of Tenant in such awards, damages and proceeds.

18. Casualty.

A. If, during the Lease Term, the Premises shall be damaged by fire, explosion, windstorm or other casualty (a "Casualty"), Tenant shall give Landlord prompt notice in writing of the Casualty (the "Casualty Notice").

B. If it reasonably appears to Landlord that the damage caused by the Casualty can be repaired with reasonable diligence within one hundred eighty (180) calendar days from the date of Landlord's receipt of the Casualty Notice, Landlord shall proceed promptly to repair such damage, so as to restore the Premises to their condition prior to the Casualty. But, if it reasonably appears that such damage cannot be so repaired within the 180-day period and Landlord notifies Tenant in writing on or before thirty (30) calendar days after the date of Landlord's receipt of the Casualty Notice, or if the damage is not insured, this Lease shall terminate as of the date of the Casualty Notice, and all rent and additional rent shall be prorated to that date. During the period of repairs, the rent shall be abated based on the ratio that the square footage of the portion of the Premises that are damaged bears to the square footage of the entire Premises. Notwithstanding anything to the contrary contained in this Section 17, if the Casualty is due to the negligent or willful act or omission of Tenant, its agents, servants, employees, invitees or licensees, this Lease shall remain in full force and effect, and there shall be no abatement of rent.

C. Landlord's election to repair, or Landlord's commencement of any repairs, shall not constitute a waiver by Landlord of any of its rights to proceed against Tenant for damages resulting from the Casualty to the extent the Casualty is due to the negligent or willful act or omission of Tenant, its agents, servants, employees, and invitees or licensees.

19. Delivery of Premises. Upon the expiration or termination of this Lease, Tenant shall deliver the Premises in good repair and condition, excepting only normal wear and tear since the last required repairs. If Tenant is not then in default hereunder, Tenant may remove from the Premises any trade fixtures and movable equipment and furniture placed therein by Tenant subject to the terms of Section 7(B). Whether or not Tenant is in default hereunder, Tenant shall remove such alterations, additions, improvements, trade fixtures, equipment and furniture as Landlord shall require, and Tenant shall fully repair any damage occasioned by such removal. If Tenant fails to remove such items requested by Landlord, such items shall conclusively be deemed to have been abandoned, and Landlord shall have the right to sell or otherwise dispose of such items without obligation to account to Tenant therefor. Tenant shall be responsible for all costs connected with such sale or disposal of such items. Tenant's obligations to observe and perform the covenants in this Section 19 shall survive the expiration or the termination of this Lease.

20. No Implied Surrender or Waiver. No provisions of this Lease shall be deemed to have been waived by Landlord unless such waiver is in writing signed by Landlord. The failure of Landlord to seek redress for violation of, or to insist upon the strict performance of, any covenant or condition of this Lease shall not prevent a subsequent act, which would have originally constituted a violation, from having all the force and effect of an original violation. The receipt by Landlord of rent with knowledge of the breach of any covenant of this Lease shall not be deemed a waiver of such breach. No act or thing done by Landlord or Landlord's agents during the Lease Term shall be deemed an acceptance of a surrender of the Premises, and no agreement to accept such surrender shall be valid unless in writing signed by Landlord. No employees of Landlord or of Landlord's agents shall have any power to accept the keys of the Premises prior to the termination of this Lease. The delivery of keys to any employee of Landlord, or of Landlord's agents, shall not operate as a termination of this Lease or a surrender of the Premises. No payment by Tenant, or receipt by Landlord, of a lesser amount than the rent due hereunder, shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy available to Landlord. Time is of the essence hereof.

21. Access to the Premises. Landlord, its agents and employees shall have the right to enter the Premises at all times to gain access to the second floor of the Staley Building, the use of which is reserved to the Landlord, to examine the Premises, to post notices as Landlord deems necessary or desirable for the protection of Landlord or the Premises, and to make such repairs, alterations, improvements and additions to the Premises as Landlord may be required to perform under this Lease or as Landlord may deem necessary or desirable, and may for such purposes bring and keep upon the Premises all necessary materials, supplies and equipment, without the same constituting an eviction of Tenant in whole or in part or entitling Tenant to any abatement of rent or damage, by reason of loss or interruption of business, or otherwise, nor shall the same affect Tenant's obligations under this Lease in any manner whatsoever. If Tenant shall not be present to open the Premises for any such entry, Landlord may gain entry by use

of a master key or card, and in an emergency by any means (including breaking any doors or windows), without rendering Landlord, its agents or employees liable therefor. In exercising its rights under this Section 21, Landlord shall attempt to minimize interference with Tenant's use and enjoyment of the Premises.

22. Notice. Unless otherwise specified herein, all notices shall be in writing and shall be deemed delivered upon hand delivery or three days after deposit in the United States mail, postage prepaid, addressed to the other party at the addresses set forth in the first paragraph of this Lease or at such other address as either party may direct from time to time pursuant to the terms of this Section 22.

23. Estoppel Certificate. Tenant shall, from time to time, upon request from Landlord, deliver to Landlord a statement certifying as to certain facts regarding this Lease, including without limitation, that this Lease is in full force and effect, that Tenant has no defenses or offsets to this Lease and that Landlord is not in default under this Lease together with any other facts Landlord may reasonably request. Tenant's failure to deliver such certificate shall be a material default hereunder. Tenant hereby acknowledges that such certificates may be relied upon by third parties.

23. Additional Provisions. None.

24. Miscellaneous.

A. Benefits. This Lease shall bind and inure to the benefits of the heirs, legal representatives, successors and permitted assigns of the respective parties hereto.

B. Amendments. No amendment, alteration, modification of or addition to this Lease shall be valid or binding unless expressed in writing and signed by the party or parties to be bound thereby.

C. No Representations by Landlord; Entire Agreement. Landlord and Landlord's employees and agents have made no representations, warranties, agreements or promises with respect to the Premises except such as are expressed herein. The entire contract of the parties is contained herein, and there are no promises, agreements, representations, warranties, conditions or understandings, either oral or written, between them, other than as are herein set forth.

D. Attorneys' Fees. In the event of any litigation between Tenant and Landlord to enforce any provision of this Lease or otherwise with respect to the subject matter hereof, the unsuccessful party in such litigation shall pay to the successful party all costs and expenses, including reasonable attorneys' fees, incurred therein by the successful party. Landlord and Tenant hereby mutually waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other on any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Landlord and Tenant, Tenant's use or occupancy of the Premises, or any claim of injury or damage.

E. Construction. The language in all parts of this Lease shall be in all cases construed according to its fair meaning, and not strictly for or against Landlord or Tenant. The caption of each Section is added as a matter of convenience only and shall be considered of no effect in the construction of any of the provisions of this Lease.

F. Governing Law. This Lease shall be governed by and interpreted in accordance with the laws of the State of Colorado.

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

LANDLORD:

TENANT:

TOWN OF FRISCO

THE ISLAND GRILL, INC.

By: \_\_\_\_\_  
Hunter Mortensen, Mayor

By: \_\_\_\_\_  
Bobby Kato, President

ATTEST

By: \_\_\_\_\_  
Name: Stacey Nell  
Town Clerk

## **EXHIBIT A**

(Attached to and made a part of that Lease dated  
May 23, 2023 naming the Town of Frisco, Colorado  
as Landlord and The Island Grill, Inc., as Tenant)

### **DESCRIPTION OF THE PREMISES**

The Island Grill Lease Area is defined as the food and beverage building. Storage is allowed in the northern most rear storage closet on the bathroom building and a portion of the southern most utility room on rear of bathroom building. Non exclusive use of front Lund House deck is allowed for over-flow food and beverage service.



