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Before the Idaho Senate State Affairs Committee

Honorable Patti Anne Lodge, Chair

Honorable Jim Guthrie, Vice Chair

Honorable Chuck Winder

Honorable Kelly Arthur Anthon

Honorable Mark Harris

Honorable Abby Lee

Honorable Lee Heider

Honorable Michelle Stennett

Honorable Grant Burgoyne

February 12, 2021

Talking Points. S1047:

**Relating to Alcohol to address the ambiguity in the law relating to
Café Sabor, a Waterfront Resort in Island Park, Fremont County, Idaho.**

To maintain the economic development growth in the area of island park (gateway to Yellowstone National Park) on the Henry's Fork of the upper Snake River for tourism and recreational activities, this measure provides that the current operators of a certain Riverfront Resort, Café Sabor, which includes a year-round, full-service restaurant may continue to sell alcoholic beverages, including liquor by the drink. Food and beverage service is also made available to those who visit the 110-unit Springhill Suites by Marriott, owned in substantial part by Resort Licensee, located just across the river from Café Sabor. The hotel is not necessary for qualifying for the Waterfront Resort liquor license at Café Sabor and is not considered as part of the licensed Waterfront Resort premises. The Café Sabor Riverfront Resort has been licensed by the State, the City of Island Park and Fremont County for seven years. The investment in the Waterfront Resort, not including the hotel,

is substantial, and further development is in the works. The hotel investment, made in reliance in part of the Waterfront Resort amenities, exceeds \$24,000,000.

I.C. § 23-948 states that the river frontage for a Waterfront Resort must have “. . . at least an average six (6) months’ flow of eleven thousand (11,000) cubic feet per second.” ISP/ABC, at this time, reads that to mean an average waterflow per second “per day,” as discussed in an email to Captain Doty at the ISP/ABC dated July 9, 2020, which is shown in pertinent part as follows:

From: Brian Donesley [<mailto:bd@bdidlaw.com>]
Sent: Thursday, July 9, 2020 1:15 PM
To: Doty, Bradley <Bradley.Doty@isp.idaho.gov>
Cc: Harvey, Nichole <Nichole.Harvey@isp.idaho.gov>; Sue Archer <admin@bdidlaw.com>; Justin Hamilton <justin@cafesabor.com>; vburtenshaw@senate.idaho.gov; rod furniss1@gmail.com
Subject: RE: JJH Holdings Inc. dba Cafe Sabor, 2F-16123

Good day, Capt. Doty

Thank you for giving us a little time to dig into this. I shall be preparing a package of information to show:

IC 23-448 requires “at least an average six (6) months’ flow of eleven thousand (11,000) cubic feet per second...”) which is met by the Henry’s Fork at Island Park, according to the USGS and the Bureau of Reclamation records. That takes the daily flow times 365 days, divided by 12 months for a monthly average, times 6 months for an average six (6) months’ flow of 113,628 cubic feet per second over such six month period, far exceeding the 11,000 cu. feet per second requirement in the statute. The statutory water flow requirement is not a daily flow requirement.

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It is respectfully requested that no formal administrative action be taken for 30 days, to allow me to develop a presentation for your consideration. If this is not acceptable, please advise as soon as you can.

Thank you.

Brian Donesley
Attorney for JJH Holdings Inc.

Since issuance of the Waterfront Resort license, the waterflow of the river has not changed. The current interpretation threatens Café Sabor. The problem would be remedied with this proposal. It allows renewal of the existing Café Sabor Waterfront Resort liquor license only. All qualifications shall continue under the statute for Café Sabor and all others. The ISP/ABC interpretation of how to calculate the waterflow will become a non-issue with respect to Café Sabor.

Upon legal review, ISP/ABC requested that the language at line 24 be amended by inserting after “. . . this state” the words “the county, city, if within a city, . . .” and continuing with “. . . or the federal government . . .” Also, at line 2 on page 2 is a housekeeping change from an obsolete reference to “lake” resort to “waterfront” resort.

Annual sales from the restaurant exceed \$1,200,000. Group sales bookings of the hotel/conference center rely upon access to the food/alcohol beverage services provided by the restaurant at Café Sabor. Annual hotel revenue in just this first year open is more than \$6,000,000.

The restaurant is open year-round, serving the area’s growing tourism economy and the local community. At least 35 persons are employed by the restaurant.

If not passed, jobs would be lost. The economy of the City of Island Park, Fremont County and other tourism and vacation related businesses would be damaged by loss of this economic driver in this highly tourism based economy.

The original “Lakefront Resort” provision was added to the Idaho Code as I.C. § 23-948 in 1959. In 1986, this section was amended to provide for “Waterfront Resort,” which would include qualifying Riverfront Resorts. The purpose of the original designation for licensing Lakefront Resorts, now Waterfront Resorts, remains unchanged. That is to promote tourism and local economies in Idaho based upon the development of substantial resorts for the public. The following language was added to I.C. § 23-948 in 1986 as subsection (c):

(c) The provisions of this section shall not be construed to interfere with the privileges of the holder of a lake resort license issued under section 23-948, Idaho Code, prior to the effective date of this section.

This was to protect existing lake resorts from any changes, express or implied in the 1986 amended language, from being disqualified for licensure as a now Waterfront Resort. Protecting existing and fully licensed resorts is a responsible public policy. In the case of Café Sabor, before you, the Resort was built, then licensed by the State for the sale of liquor by the drink. Seven (7) years later, the statute was interpreted to jeopardize such licensure, notwithstanding the investments and reliance upon such licensure by the operators/owners.

The policy of preserving the ongoing economic interests, it is respectfully submitted, should be maintained and applied under the facts before you with S1047 for Café Sabor.

ISP/ABC has reviewed this measure and has no objection to its form or purpose.

S1047 HAS NO EFFECT ON ANY LICENSE OTHER THAN THAT AT CAFÉ SABOR. AND, IT DOES NOT AUTHORIZE ISSUANCE OF ANY OTHER LICENSES, JUST RENEWAL OF THE EXISTING CAFÉ SABOR WATERFRONT LICENSE. NO OTHERS ARE KNOWN TO BE IN THE CIRCUMSTANCES SOUGHT HERE TO BE REMEDIATED.