

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION

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CONCESSION LICENSE

The City and County of Denver, hereinafter referred to as the "City", acting by and through its Manager of Parks and Recreation, hereinafter referred to as the "Manager," pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor's Cabinet, hereby grants to Concessionaire hereinafter named the license or privilege of operating a concession or selling goods and providing services in the park or recreational facility hereinafter described or to sub-license, subject to the terms and conditions of this Concession License, to commercial tenant(s) of the Concessionaire. Concessionaire, by execution of this Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same. Despite any understanding that Concessionaire may have with its sub-licensee, the Concessionaire shall be responsible and liable for the full and faithful performance of all obligations under this Concession License. Furthermore, the Concessionaire agrees to pay such compensation to the City and to perform such duties and responsibilities for the term of the Concession License, all as specified herein.

97-979-B

I. CONCESSION SITE: Concessionaire is the owner of the real property described on Exhibit A attached to this Concession License commonly known as the Park Central Building (the "**Building**"). Adjoining the Building is an area of land within Skyline Park (Block 75, East Denver, Denver, Colorado) (the "**Park**") as located and described in Exhibit B attached to the Concession License which constitutes the Concession Site.

II. CONCESSIONAIRE: CONCESSIONAIRE'S ADDRESS:
WSC 1515 Arapahoe Investors V, LLC 900 N. Michigan Ave., Ste. 1900, Chicago, IL 60611

III. PURPOSE: Open-air public seating area for patrons of the commercial business in the Building immediately adjoining the area of the Park depicted in Exhibit B and, if appropriate for the type of commercial business involved, food and beverage service, including the sale and service of alcohol beverages, and related activities that are common and customary for the outdoor operation of food and beverage service. The furnishings and equipment allowed in the Concession Site shall include tables, chairs, umbrellas, railings, awnings, planters, lights, and other similar and readily removable items, including those necessary or convenient to the outdoor service and consumption of food and beverages. No other commercial activity is allowed in the Concession Site.

IV. CONCESSIONAIRE'S RESPONSIBILITIES: At the sole expense of the Concessionaire:
a. The cleaning and sanitation of the Concession Site shall be provided on an as-needed basis and in compliance with Denver and Colorado Health Department regulations.
b. The Concession Site shall not be enclosed in any fashion and shall not be heated, and the railings shall have openings. The railings shall be located on or within the boundaries of the

Concession Site, constructed so as not to cause any damage to surfaces owned by the City, and arranged so as to satisfy any licensing requirements for any legally authorized service of alcohol beverages. No improvements or fixtures, including railings, shall be attached to any surfaces owned by the City. Entry and exit ways from the Building to the Concession Site are allowed.

c. The area of the Park within two hundred feet of the Concession Site shall be regularly canvassed so that any trash or litter arising from the service of food or beverages within the Concession Site is removed, and any stains on park property arising from food or beverages served within the Concession Site are removed by cleaning.

d. All furniture, equipment, and other facilities located in the Concession Site shall be maintained, repaired, or replaced as needed to insure proper function, safety, and appearance and shall be contained within the Concession Site.

e. No signs may be placed on or near the railings at any time, including menus, signs for special promotions, or any sort of product advertising.

f. Any snow removal in the Concession Site shall be the responsibility of Concessionaire, and no removed snow shall be placed in Skyline Park, except in areas designated by the Manager.

g. Public utility requirements associated with the food and beverage service in the Concession Site must be provided from the restaurant.

h. No Improvements or Fixtures, as defined in sub-sections 1-8 and 1-11 of the Terms and Conditions (Section IX below) are allowed.

V. TERM: EFFECTIVE DATE: EXPIRATION DATE:
 Date of Concession License December 31, 2015

Unless revoked in accordance with Section 7 of the Terms and Conditions (Section IX below) or extended as provided in Section VI of this Concession License.

VI. TERM EXTENSION: Concessionaire may request the extension of the Term of the Concession License for an additional five-year period by providing a written request to the Manager by August 1st of the year in which the Concession License is due to expire. No more than two (2) term extensions are allowed. Any extension shall be subject to the Concession License being amended to provide for a new amount of Compensation. Should the Concessionaire and the City be unable to agree upon a new amount of Compensation for the extended Concession License, the parties agree that this Concession License shall expire, and Concessionaire agrees, without further notice or action by the City, to cease operations and vacate the Concession Site and to require any sub-licensee to cease operations and vacate the Concession Site in accordance with the Section 7-5 of the Terms and Conditions (Section IX below).

VII. COMPENSATION TO BE PAID TO CITY: Concessionaire shall pay the City thirteen thousand nine hundred dollars (\$13,900.00) for calendar year 2011, to be increased by five hundred dollars (\$500.00) a year for each year thereafter including any term extension, to be paid to the Manager in advance by January 15th of each year. The 2011 payment shall be allocated as

\$10,500 for the patio area (total square feet 1650) and \$3,400 for the existing entrance, bay window and exit door stoop areas (total square feet 685); however, these allocations do not create any special or separate rights in either of these areas.

- VII. **INSURANCE & SURETY**: In accordance with Section 5-2 of the Terms and Conditions (Section IX below), the following amounts of insurance coverage are required:

Comprehensive General Liability	\$1,000,000.00 per occurrence
Worker's Compensation	Colorado statutory requirements
Automobile	None

In addition, the Concessionaire shall provide to the City and maintain a bond or irrevocable letter of credit in favor of the City in the amount of twenty thousand dollars (\$20,000.00), to be drawn at the discretion of the Manager in the event that Concessionaire fails to timely or completely repair any damage to the Concession Site caused by it or its sub-licensee, or any of their employees, contractors, agents, customers, or invitees, or fails to remove furnishings and equipment and to restore the Concession Site as specified herein upon expiration or revocation of the Concession License. The amount of the bond or letter of credit may be increased by the Manager as a condition of approval of any term extension.

- VIII. **LIQUOR LICENSE**: The Concessionaire or its sub-licensee shall be solely responsible for obtaining, maintaining, and complying with any liquor license for the sale and service of alcohol beverages within the Concession Site. For the purposes of Concessionaire or the sub-licensee securing any license for the sale and service of alcohol beverages, this Concession License may be considered and construed as a lease, and the Concession Site where alcohol beverages are sold and consumed may be considered and construed as an area leased by the City to Concessionaire, and Concessionaire in securing any liquor license shall be deemed to have sole and exclusive possession of the Concession Site to the extent required under any state or local liquor license laws or regulations.
- IX. **TERMS AND CONDITIONS**: The following sections or sub-sections of the Terms and Conditions, attached to and incorporated into this Concession License are applicable to this Concession License: 1 (except 1-9 and 1-10); 2 (except 2-1 and 2-4); 3 (except 3-1, 3-3, and 3-8); 4 (except 4-2); 5 (except 5-4a.); 6; 7; and 8.
- X. **CONFLICTS**: In the event of any conflicts or inconsistencies amongst the specific provisions of the Concession License and the Terms and Conditions, the specific provisions of the Concession License shall control over the Terms and Conditions.
- XI. **SUPERSESSON**: This Concession License supersedes and replaces the Concession License dated December 3, 1997 (Contract Control # RC72014; Clerk Filing # 97-979).

**[REMAINDER OF PAGE DELIBERATELY LEFT BLANK.
SIGNATURE BLOCKS ON NEXT PAGE.]**

DATED this _____ day of _____, 2011.

ATTEST:

CITY AND COUNTY OF DENVER

STEPHANIE Y. O'MALLEY,
Clerk and Recorder, Ex-Officio Clerk
of the City and County of Denver

By _____
MAYOR

RECOMMENDED AND APPROVED:

By *XC Unfyg*
Manager of Parks and Recreation

APPROVED AS TO FORM:

DAVID W. BROADWELL, Attorney for
the City and County of Denver

By *Pat A. Wells*
Assistant City Attorney

REGISTERED AND COUNTERSIGNED:

By _____
Manager of Finance
Contract Control No. RC72014 (1)

By: _____
Auditor

"CITY"

WSC 1515 ARAPAHOE INVESTORS V, LLC

Taxpayer (IRS) Identification Number:
84-1302279

By: *B. T. Kelly*
Name: Brian T. Kelly
Title: Authorized Representative

"CONCESSIONAIRE"

**CONCESSION LICENSE
TERMS AND CONDITIONS**

The terms and conditions stated herein, as modified and supplemented by the specific provisions of the Concession License to which these Terms and Conditions are attached, shall constitute the terms and conditions of the Concession License to the extent specified in the Concession License, Section XII.

NOTE: The granting of a Concession License to a Concessionaire allows the use of the Concession Site for the operation of a Concession. The Concession License does not create or recognize, nor shall it be construed to create or recognize, any obligation on the part of the City or the Department of Parks and Recreation to provide the Concessionaire with an operating business or to guarantee the success of the business operated by the Concessionaire on the Concession Site.

SECTION 1 -- DEFINITIONS

As used throughout, the following definitions shall apply:

- 1-1. "Auditor" shall mean the City Auditor or the Auditor's authorized representative.
- 1-2. "City" shall mean the City and County of Denver.
- 1-3. "Compensation" shall mean the amount of money due the City during or following the Term of the Concession License from Concessionaire in accordance with any payment schedule and other requirements in the Concession License and subject to any adjustments in amount provided for in the Concession License.
- 1-4. "Concessionaire" shall mean the party identified as such on the signature page of the Concession License and the Concessionaire's successors and permitted assigns, subcontractors, and transferees.
- 1-5. "Concession" shall mean the right to operate sales and service activities as authorized by the Concession License.
- 1-6. "Concession License" shall mean the Concession License to which these Terms and Conditions are attached and any exhibits and attachments to that Concession License including these Terms and Conditions, and any duly approved amendments to the Concession License.
- 1-7. "Concession Site" or "Premises" shall mean the entire real property and structures covered by the Concession License, including any Improvements and Fixtures.
- 1-8. "Fixture" shall mean any goods, items and other articles, other than Improvements, which are securely affixed to the Concession Site and which ultimately becomes the property of the City because they cannot be removed without obvious damage to the Concession Site.
- 1-9. "Gross Revenues" shall mean the aggregate of fees, receipts, sales, and income of any kind derived directly or indirectly from the operation of the Concession and before deducting any

costs, expenses, or losses, except applicable excise taxes collected from customers on behalf of government agencies and tips and gratuities may be deducted.

- 1-10. "Guaranteed Annual Minimum Payment" ("GAMP") shall mean a minimum dollar amount, which the Concessionaire agrees to annually pay, as specified in the Concession License.
- 1-11. "Improvement" shall mean any permanent improvement, other than a Fixture, constructed or installed on or in the Concession Site which becomes the property of the City upon construction or installation.
- 1-12. "Manager" shall mean the Manager of Parks and Recreation of the City or the Manager's authorized representative.
- 1-13. "Term" shall mean the time period between and including the effective date and the expiration date provided in the Concession License and any extension thereto as allowed in the Concession License or approved by amendment to the Concession License.

SECTION 2 – REAL & PERSONAL PROPERTY

2-1. CONSTRUCTION OF IMPROVEMENTS BY CONCESSIONAIRE:

a. Concessionaire, at no cost to the City and subject to the requirements of this Sub-section 2-1, shall cause to be designed, constructed and installed in or on the Concession Site those Improvements described in the Concession License, if any (see Section IV.i).

b. Concessionaire agrees that any permanent improvement to the Concession Site, unless otherwise expressly provided in the Concession License, must receive the prior written approval of the Manager, which will not be unreasonably withheld provided the proposed improvement serves the stated purposes of the Concession License. A payment and performance bond for construction as prescribed in the Concession License and Sub-section 5-4.a. of these Terms and Conditions will be prerequisite for any work performed under this Sub-Section 2-1. Upon construction or installation, the additional improvement shall be regarded as an Improvement or Fixture, as appropriate under the Concession License.

c. Prior to the commencement of any construction, Concessionaire shall, at no cost to the City, develop or have developed plans, drawings, and specifications for all construction to be performed and installed on the Concession Site and obtain approval of such plans, drawings, and specifications from the Manager and, if required, from the Department of Public Works. Any substantive changes in the work schedule, plans, drawings, and specifications must likewise obtain prior approval by the Manager and, if required, from the Department of Public Works. All plans, drawings, and specifications shall be prepared under the direction of and certified by licensed professionals such as architects, landscape architects, structural engineers, electrical engineers, or mechanical engineers or others as applicable and appropriate, based on construction project elements. All plans, drawings, and specifications shall meet all requirements of current editions of all applicable codes and regulations established by federal, state, and local law. Concessionaire shall provide City with a schedule of final construction plans and phasing of actual construction.

d. Concessionaire shall secure, pay for, and keep current all necessary licenses, fees, and taxes for its construction and operation of the Concession, including but not limited to site development permits and water and sewer connection fees, as required. Concessionaire shall obtain, pay for, and keep current any and all site development permits, building permits, zoning permits, and any other necessary approvals prior to the commencement of each applicable component of construction and observe and comply with the applicable provisions of the Charter, ordinances, and rules and regulations of the City as well as applicable state and federal laws.

e. Depending on the scale of the construction project, the Manager may require Concessionaire to purchase, or to arrange for any contractor to purchase, All Risks Form Builder's Risk insurance for any Improvements or Fixtures to be constructed or installed. The insurance coverage shall include all equipment, machinery, supplies, and other property intended to be permanently incorporated in the Concession Site for which title or risk of loss shall have passed at the time of loss to the insured. Limits under this insurance shall not be less than 100% of the replacement value of the Improvements or Fixtures to be constructed or installed and for physical damage to property and related expenses. Coverage shall include expense due to delays in completion as a result of the insured perils, subject to a thirty (30) day deductible. Coverage shall apply to such property while it is located at the Concession Site or on nearby City-owned property, or located at temporary off-site storage or staging areas, or while in land-based transit to the Concession Site within the continental United States. Coverage shall include subcontractors working on the Improvements or Fixtures. The deductible shall be no more than 2% of the total value of the Improvements or Fixtures being made or installed, or \$10,000, whichever is the greater or at an amount agreed by the Risk Administrator for the City and County of Denver. The City and County of Denver, its employees and officers shall be named as loss payee and additional insured.

f. Concessionaire shall require every contractor or subcontractor to post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the contractor and subcontractors of all tiers.

g. In performance of all work under this Sub-section 2-1, Concessionaire agrees to comply with and be bound by all requirements and conditions of the City's Payment of Prevailing Wages Ordinance, Sections 20-76 *et seq.*, Denver Revised Municipal Code (DRMC), including but not limited to all any anniversary date wage rate adjustments, and any determinations made by the City pursuant thereto. As such, Concessionaire shall require every contractor and subcontractor of any tier performing work under this Sub-section 2-1 to pay all workers, mechanics, and laborers in accordance with the rates and classifications established under the federal Davis-Bacon Act and Section 20-76 of the Denver Revised Municipal Code and require that employees be paid weekly. Concessionaire shall require every contractor and subcontractor to fully familiarize themselves with all the terms, conditions, and requirements of said Revised Municipal Code Section 20-76, which is part of the Concession License.

h. In accordance with Section 20-76(b), DRMC, the prevailing wage rate schedule applicable to any work performed under this Section shall be the most current schedule available at the time Concessionaire executes a contract. The most current schedules are available from the City's Career Service Authority and the Auditor's Office. Such schedule must be attached to and incorporated in any contract for construction of Improvements or installation of Fixtures authorized

under this Sub-section 2-1. The Concessionaire shall require every contractor and subcontractor of any tier performing work that is covered by the Section 20-76 of the Denver Revised Municipal Code to furnish to the City for each week during which workers are employed, copies of the payroll records of all such workers demonstrating compliance with the prevailing wage requirements. These payroll records must contain information showing classification, the number of hours worked, itemized deductions made from the pay of each worker, and the gross and net amount of pay received by each worker for the week ending period covered by the payroll. Upon request, the contractor or subcontractor shall provide other documentation deemed necessary by the City. All copies of the payroll records shall be accompanied by sworn statements of the contractor or subcontractor that the copies are true and correct and are the payroll records of all mechanics, workers, and laborers employed; that the payments were made to the workers as stated in the said payroll records; and that no deductions were made other than those set forth in the payroll records. Three sets of these payroll records are required. The original shall be transmitted to the Auditor of the City and copies to appropriate City departments and agencies.

i. If any laborer, mechanic, or worker employed by any contractor or any subcontractor to perform work for Concessionaire at the Concession site has been or is being paid less than the rate of wages required by the applicable prevailing wage rate schedule, the City may suspend or revoke the Concession License. In the event of revocation, the City may prosecute the work to completion by contract or otherwise, and Concessionaire and its sureties shall be liable to the City for any additional costs to the City. No payroll shall be approved by the Auditor of the City unless the party presenting such payroll, or in whose behalf it is presented, has filed with the Auditor the reports and statements described herein, nor while any such contractor or any subcontractor under him shall be in default in the payment of such wages as are required by the Concession License.

j. Notwithstanding any provision above, any contractor, subcontractor, consultant, supplier, materialman, workman, or other person, firm, or corporation who engages in or participates in any design and construction of any Improvements, or installation of Fixtures, or other additions, alterations, changes or replacements shall be an independent contractor to whom the City shall have no obligation, responsibility, or relation except as expressly stated in this Sub-section 2-1.

k. Concessionaire understands and agrees that all phases of construction shall be subject to complete inspection and approval by the Department of Parks and Recreation and, if required, the Department of Public Works. The City shall have the right to have on the Concession Site at any time during the construction period an inspector who shall have the right of access to the Premises and the construction work. Concessionaire shall not proceed with subsequent phases of construction until the prior phase of construction has been inspected and approved by the Department of Parks and Recreation and, if required, the Department of Public Works.

l. Upon completion of each project under this Sub-section 2-1, the City may require Concessionaire to provide a complete and final, unconditional waiver or release of any and all lien and claim rights from each contractor, subcontractor, supplier, manufacturer and dealer for all labor, equipment and material used or furnished by each.

2-2. OWNERSHIP AND USE OF CITY REAL PROPERTY:

a. Concessionaire acknowledges and agrees the City shall have or shall be given unencumbered title to all Improvements and Fixtures, other than any items expressly excluded in the Concession License, after construction or installation on the Concession Site. Upon written request by the City and for no additional consideration, Concessionaire shall execute and deliver any instruments necessary and appropriate to convey all title and interest, completely unencumbered, to any Improvements or Fixtures Concessionaire constructs or installs or has constructed or installed on or in the Concession Site. Concessionaire shall be entitled to use such Improvements and Fixtures upon completion of their construction or installation in accordance with the provisions of the Concession License.

b. Concessionaire shall use the Concession Site only for those purposes specified in the Concession License and for no other purposes, unless authorized by the Manager in writing. Concessionaire may not sell or offer goods on Department of Parks and Recreation property outside of the Concession Site, unless otherwise so permitted in the Concession License or authorized by the Manager in writing.

c. Concessionaire agrees that no improvements, changes, alterations, additions, maintenance or repairs shall be made to the Concession Site which might impair the structural soundness of the Concession Site; result in an overload of utility, plumbing, or HVAC systems serving the Concession Site or other City-owned property; or interfere with electric, electronic, or other equipment of the City. In the event of violations hereof, Concessionaire agrees to immediately remedy the violation at Concessionaire's sole expense.

d. The rights or privileges granted by the Concession License to Concessionaire do not create or recognize, nor shall they be construed as creating or recognizing, a property interest in the Concession Site, the Improvements, or the Fixtures.

2-3. INSPECTIONS & CONDITION OF CITY REAL PROPERTY:

a. Just prior to or shortly after commencement of the Concession License, Concessionaire agrees to mutually inspect Concession Site with City to document the existing condition of said property. Concessionaire agrees to accept the condition of the property "as is," "where is" without any improvements or alterations, unless otherwise provided in the Concession License. Concessionaire agrees to make no demands upon the City for any improvements or alterations thereto other than those agreed to in writing.

b. The City reserves a full right of entry on and in the Concession Site for any purpose necessary, incidental to or in connection with the City's rights and obligations in the Concession License, or in the exercise of the City's governmental functions, or for the purpose of making any inspection the City deems necessary for health and safety purposes. The City will make a reasonable effort to notify Concessionaire of any impending inspection and to coordinate such inspection so as to minimize any disruption to the operation of the Concession. The Concessionaire agrees not to take any action to prevent or hinder authorized City employees or agents from entering at any time, with or without advance notice, upon the Concession Site for inspection purposes. Furthermore, the City

shall have the right to enter the property, with advance notice, to show the Premises to parties that may or will be future concessionaires and to allow for such parties to evaluate and plan for future uses of the Premises.

2-4. MAINTENANCE & REPAIR OF FACILITIES:

For a Concession Site contained in or about a building or other structure:

a. Unless otherwise provided in the Concession License and subject to the terms and conditions of this Section 2 and the availability of appropriated funds, the City will maintain and repair existing structural elements of the building or other structures at the Concession Site, including roof, roof support, walls, floor substructure, concrete foundations, brick facades, patios, patio covers, driveways, parking lots, fences, storage or maintenance buildings, and similar or related features (“Structural Elements”). The City may, at its sole discretion, improve, expand, or replace said Structural Elements.

b. Unless otherwise provided in the Concession License and subject to the terms and conditions of this Section 2 and the availability of appropriated funds, the City will maintain and repair existing mechanical, electrical, and utility systems for heating, ventilation, and air conditioning (HVAC), water, sewer, drainage, electrical, natural gas, fire protection, and telephone systems, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, vents, meters, panels, and associated equipment and appurtenances (“Systems”) located on the Concession Site or used by the Concession. The City may, at its sole discretion, improve, expand, or replace said Systems.

c. The City or its contractors and agents shall have the right to enter upon the said Concession Site at all reasonable times to take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in paragraphs a and b of this Sub-section 2-4. Except for emergency situations, the City will make every reasonable effort to timely notify Concessionaire of any pending work and to coordinate such work so as to minimize any disruption to the Concession. Paragraphs a and b of this Sub-section 2-4 is not intended, nor shall be construed, to impose upon the City any obligation to maintain, repair, replace, or alter any Structural Element or System at a specific time, in any particular manner, or to the satisfaction of Concessionaire nor to provide a basis for liability for failure to do so.

d. Concessionaire may, at its own expense and subject to advance written approval by the Manager, install, improve, expand, or replace Structural Elements or Systems upon satisfaction of the requirements in Sub-section 2-1 and shall undertake such installation, improvements, expansions, or replacements of Structural Elements or Systems if so specified in the Concession License.

e. Unless otherwise expressly provided in the Concession License and with the understanding that it is responsibility of the Concessionaire to keep and maintain the Concession Site in good physical and working condition, Concessionaire shall, at its own expense, maintain, repair, or replace any of the following damaged, broken, or worn out items: 1) windows and window frames; 2) doors and door frames; 3) handles and locks; 4) cabinets, counters, and bars; 5) carpet, floor tiles, and other flooring; 6) paints and stains; 7) woodwork, wall paneling and tiles, drywall,

and plastering; 8) plumbing items, including sinks, toilets, urinals, garbage disposals, dishwashers, and associated above-floor or below-ceiling pipes and drains; 9) light switches, plugs, and lighting; 10) ceiling tiles; 11) all built-in or attached electrical fans, stove or grill venting systems, and kitchen hood fire suppression system (including recharging), 12) refrigerators or refrigeration units; 13) stoves, ovens, cooktops, ranges and grills; 14) drinking fountains; 15) telephones, televisions, and other communication devices; and 16) items of similar character or use. Replacements shall be of at least equal quality and functionality as the replaced items were when they were new. Upon execution of the Concession License, the Concessionaire shall promptly procure, pay for and maintain for the Term of the Concession License, a payment bond or letter of credit which shall guarantee that all those performing labor or furnishing materials, supplies, rental items, tools, and equipment in carrying out these maintenance, repair and replacement obligations shall be paid. The form of the bond or letter of credit must be acceptable to and approved by the Manager. This bond or letter of credit shall be in the amount of Ten Thousand Dollars (\$10,000.00) and shall comply with the requirements of Section 20-53 of the Denver Revised Municipal Code. If the cost of any work under this paragraph e. of Sub-section 2-4 is anticipated to exceed ten thousand dollars, then any supplemental bond, letter of credit or other financial assurance acceptable to the Manager must be provided prior to commencement of work. For any work performed under this paragraph e. of Sub-section 2-4, Concessionaire shall comply with Sub-section 2-1.g through 2-1.i regarding payment of prevailing wages and may be required to comply with Sub-section 2-1.l regarding lien waiver or release.

f. Notwithstanding any other provision in this Sub-section 2-4, Concessionaire shall be responsible for any repairs or replacements of Structural Features or Systems that are damaged or broken by the willful or negligent actions of Concessionaire, its owners, shareholders, members, officers, employees, servants, contractors, invitees, suppliers and agents, including the failure to properly monitor or supervise public use of the Premises that result in such damage. Such repairs or replacements shall be performed by Concessionaire within a reasonable time period specified in a written notice from the City and in accordance with Sub-section 2-1.

g. Concessionaire shall provide, at its own expense, for all cleaning and sanitation for the Premises, including without limitation all janitorial services and window washing. Concessionaire shall comply with Sub-section 2-1.g through 2-1.i regarding payment of prevailing wages in carrying out these obligations.

h. Maintenance and care for any landscaping on Premises shall be as provided in the Concession License.

2-5. PERSONAL PROPERTY & EQUIPMENT:

a. Concessionaire shall supply all personal property and equipment as necessary or prudent to operate the Concession unless such items are already available for Concessionaire's use at the Concession Site. Concessionaire and the City acknowledge and agree that, unless provided otherwise in the Concession License, all personal property and equipment which 1) are not affixed to the Concession Site so as to constitute Fixtures, and 2) are owned or leased by Concessionaire, shall remain the property of Concessionaire.

b. Concessionaire shall keep and maintain all City personal property and equipment that Concessionaire uses at the Concession Site in good physical and working condition, except for ordinary wear and tear resulting from uses allowed under the Concession License.

c. All personal property and equipment owned by Concessionaire shall be maintained in good physical and working condition. The City reserves the right to require the removal and/or replacement of inoperable or physically deteriorated personal property and equipment owned by Concessionaire.

d. Concessionaire shall not keep, maintain, store, or use any booths, stands, mobile units, furnishings, equipment, vehicles, supplies or materials at the Concession Site not needed for the operation of the Concession or not permitted by the Concession License or that would impair the use or value of the Concession Site or any adjoining City-owned property.

SECTION 3 – CONCESSION OPERATION

3-1. COMMENCEMENT OF OPERATIONS; FAILURE TO OPERATE:

a. Unless otherwise provided in the Concession License or a later date is approved by the Manager in writing and subject to *force majeure*, the provision of goods and services by the Concessionaire shall commence on the effective date of the Concession License. Failure to commence operations when required may result in the revocation of the Concession License as provided in Sub-section 7-1 below. All specified Compensation shall be paid by Concessionaire when due, notwithstanding failure to commence operation of the Concession, and if the Compensation is based, in whole or part, on Gross Revenues, Concessionaire covenants and agrees to pay One Hundred Dollars (\$100.00) a day in lieu of the specified percentage of Gross Revenues then due, in addition to any other Compensation or Guaranteed Annual Minimum Payment due, until Concessionaire commences operations or the Concession License is revoked. This remedy shall be in addition to any other remedies provided in the Concession License or by law to the City.

b. Subject to any exceptions in the Concession License and *force majeure*, Concessionaire is expected to operate the Concession according to the monthly, daily, and hourly schedule in the Concession License. Failure to operate when required may result in the revocation of the Concession License as provided in Sub-section 7-1 below. All specified Compensation shall be paid by Concessionaire when due, notwithstanding the fact that the Concession is not operating, and if the Compensation is based, in whole or part, on Gross Revenues, Concessionaire covenants and agrees to pay 1) One Hundred Dollars (\$100.00) a day in lieu of the specified percentage of Gross Revenues then due, or 2) twenty-five percent (25%) more than the highest monthly payment based on Gross Revenues over the previous six month period of Concession operations, whichever amount is larger, in addition to any other Compensation or Guaranteed Annual Minimum Payment due, until Concessionaire restarts operations or the Concession License is revoked. This remedy shall be in addition to any other remedies provided in the Concession License or by law to the City.

c. *Force majeure* shall mean circumstances where it is impossible, for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, acts of God, acts of the public enemy, closure or suspension of operations

by regulatory order of a governmental entity, weather disaster, floods, riots, rebellion, sabotage, or national calamity, for Concessionaire to sell goods or provide services as contemplated in the Concession License.

3-2. BASIC OPERATION REQUIREMENTS:

a. Concessionaire shall provide the food, beverage, goods and other services to the extent and in manner provided in the Concession License subject to seasonal public demand and within the hours of operation, and any exceptions thereto, provided in the Concession License and subject to any reasonable orders, rules and regulations concerning conduct and management that may be made by the Manager.

b. Concessionaire shall maintain the Premises in a neat, clean, safe, and sanitary condition. All trash, debris, junk, waste, or packing boxes or materials shall not be allowed to accumulate or to be stored for more than a week on the Premises or any adjoining City-owned property and must be containerized, if possible, and regularly removed from the Concession site and disposed of in accordance with law. Spills of any nature shall be promptly cleaned up.

c. Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit any nuisance on the Premises or annoy, disturb or be offensive to others and shall take all reasonable measures to eliminate any unusual, nauseous, or objectionable noise, gases, vapors, odors, and vibrations and to maintain the lowest possible sound level in its operations.

d. No amusement or vending machines or other coin-operated machines shall be installed or maintained in or on the Premises without the written permission of the Manager.

e. Concessionaire shall give personal supervision and direction to the operation of the Concession and, when absent, keep competent personnel in charge. Concessionaire shall staff the Concession with qualified, trained, and courteous staff in sufficient numbers to meet reasonable needs or demands of patrons during hours of operation.

3-3. RATES – GOODS & SERVICES:

Concessionaire agrees to provide for the public at the Concession Site food, beverage, goods and other services equivalent in quality and price to that generally furnished to the public at similar places of comparable size and scope in the Denver metropolitan area. All menus and prices shall be subject to the reasonable approval of the Manager unless the Manager waives, in whole or part, this right of approval. Prices of all merchandise sold shall be posted in a conspicuous place at the Concession Site, including making available menus.

3-4. LIQUOR, BEER & WINE:

The right to sell or serve liquor, beer, or wine on Premises shall be as provided in the Concession License. Any such right is subject to Concessionaire securing of a license (or licenses) from the appropriate licensing authority therefor and compliance with any and all terms and conditions connected therewith. However, the City makes no representation that such license(s) may

be issued or transferred from a prior concession operator. All sale and service of liquor, beer, or wine shall be solely for consumption on site within the food service area or as otherwise designated by the licensing authority. If the sale or service of liquor, beer, or wine on Premises is prohibited by the Concession License, the sale or service of any liquor, beer, or wine by Concessionaire shall be grounds for immediate revocation of the Concession License.

3-5. TOBACCO PRODUCTS:

Concessionaire is prohibited from selling or permitting the sale of tobacco products on Premises. "Sale" includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration. Concessionaire shall comply with D.R.M.C. Section 24-301 *et seq.* concerning Environmental Tobacco Smoke Control.

3-6. ADVERTISING/SIGNAGE:

a. Advertising signs on Premises are prohibited; provided, however, that this prohibition shall not apply to advertising of products sold on Premises or to advertising by sponsors of a performance, show, or special event held on or in City-owned facilities. "Advertising" includes the display of commercial and noncommercial promotion of products for sale through any medium whatsoever.

b. All signage (other than directional or labeling signs that are small, discrete, and not lighted) which is visible to, and intended for viewing by, persons located off-site from the Premises shall be subject to prior approval by the Manager. Such signage shall conform to any standards established by the Manager and to all zoning and other code requirements for signs. Any sign promoting the Concession shall recognize, in a manner acceptable to the Manager, the Denver Parks and Recreation Department as owner of the Concession Site.

3-7 ACCESS:

a. Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of any utility, heating, ventilating, or air conditioning systems, or portions thereof, on or in the Concession Site or on adjoining City-owned property.

b. Concessionaire shall not do or permit to be done anything which might interfere with free access and passage in, to, or by the Concession Site or public-accessible areas adjacent thereto, or hinder police, firefighting, or other emergency personnel, or the Department of Parks and Recreation staff, in the discharge of their duties.

c. Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door on or in the Concession Site, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Concession Site, nor refuse, upon the expiration, revocation, or termination of the Concession License, to surrender to the City any and all keys to windows and doors in and on the Concession Site, whether said keys were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by the City are lost, Concessionaire shall pay the City, on demand, the cost of replacement thereof.

3-8. BACKGROUND CHECKS:

a. Concessionaire shall be responsible for conducting background checks on all employees and other persons that Concessionaire assigns to, or allows to work at, a Concession Site. Concessionaire shall not assign or allow any person to work at a Concession Site if that person has been convicted or released from confinement following conviction within the preceding five years, anywhere in the United States, for one or more of the following:

1. Sexually-related crimes: prostitution, pandering, procuring, and pimping; sexual assault; incest; indecent exposure or public indecency; stalking; harassment; obscenity or the promotion, sale, distribution, or possession of obscene materials; any of the foregoing related to a child or children, including trafficking in child pornography, sexual exploitation of a child, or providing sexually explicit material to a child; and any criminal attempts, solicitations, or conspiracies, including racketeering, involving any of the foregoing; or

2. Drug-related crimes: the unlawful manufacture, transportation, promotion, distribution, dispensing, sale or possession with intent to distribute narcotics, stimulants, depressants, or other controlled substances; the unlawful manufacture, transportation, promotion, distribution, dispensing, or sale of alcohol beverages, including the dispensing or sale to a person under twenty-one years of age or a visibly intoxicated person; and any criminal attempts, solicitations, or conspiracies, including racketeering, involving any of the foregoing; or

3. Any criminal act or violation of local government ordinance or regulation, which criminal act or violation was punished, following conviction, by incarceration and was directly related to the operation, or committed upon the premises, of a concession licensed by the City or any similar business operated elsewhere in the United States; or

4. Any criminal act or violation of local government ordinance or regulation, which resulted in a conviction or judicial determination directly ordering or causing the permanent closure or forfeiture of any business owned or managed by the person and licensed as a concession by the City or any similar business owned or managed by the person elsewhere in the United States.

b. The Manager may also consider criminal convictions for lesser crimes that are sexually-related or drug-related but are not listed in paragraph a. of this Sub-section 3-8 under either of the following circumstances: There have been multiple convictions (3 or more) within the past ten-year period *or* the conviction for a lesser crime appears, from uncontradicted evidence, to have resulted from a plea bargain and that the original charge or indictment was for a criminal act listed in paragraph a. of this Sub-section 3-8.

c. If such a criminal or ordinance violation conviction or judgment exists and Concessionaire believes there are extenuating circumstances that should be considered, Concessionaire may request, in writing, that the Manager waive the restrictions of this Sub-section 3-8 in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights.

d. The words “convicted” or “conviction” as used in Sub-sections 3-8 and 3-9 shall mean a plea of guilty, a plea of nolo contendere, a finding of guilty, a default judgment, or a deferred judgment and sentence.

3-9. NO UNLAWFUL USE; CRIMINAL ACTS:

a. Concessionaire shall use the Concession Site for no unlawful purposes whatsoever.

b. During the Term of the Concession License, a conviction of the Concessionaire or any of its owners, shareholders, members, officers or employees for any felony or misdemeanor involving bribery, kickbacks, collusive bidding, bid-rigging, antitrust, fraud, undue influence, misappropriation, theft, racketeering, extortion, or any offense of a similar nature, in connection with Concessionaire’s business may result in the revocation of the Concession License as provided in Sub-section 7-1 below, unless, upon knowledge of Concessionaire, such owner, shareholder, member, officer or employee is promptly terminated or the relation with Concessionaire’s business is severed.

3-10. COMPLIANCE WITH LAW:

a. Concessionaire shall comply with all applicable laws of the United States, the State of Colorado, and the Charter and Ordinances of the City and County of Denver, and all rules and regulations issued pursuant thereto, including but not limited to the payment of prevailing wages, to the extent applicable, under Section 20-76, D.R.M.C., and payment of living wages, to the extent applicable, under Section 20-80, D.R.M.C.

b. Unless otherwise provided in the Concession License, a Concession shall be operated in conformance with the Rules and Regulations of the Department of Parks and Recreation, and Concessionaire shall require all employees, servants, contractors, invitees, suppliers, agents, customers and patrons of the Concession to comply with said Rules and Regulations.

SECTION 4 – COMPENSATION & ACCOUNTING

4-1. COMPENSATION & OTHER PAYMENTS:

a. Concessionaire covenants and agrees, without offset, deduction or abatement, to pay the City, as consideration for the rights and privileges granted in the Concession License, 1) the Compensation provided for in the Concession License; 2) any Guaranteed Annual Minimum Payment provided for in the Concession License; and 3) any other payments or reimbursements specified in the Concession License. Said obligation to make said specified payments shall commence on the effective date of the Concession License and continue through the Term thereof.

b. All payments shall be made at Parks Finance, at 201 West Colfax Ave., Dept. 602, Denver, Colorado 80202, or at such other office as may hereafter be substituted hereafter by notice to Concessionaire, and made payable to the Denver Manager of Revenue.

c. Upon failure to make prescribed payments by the date provided in the Concession License, interest of 15% per annum shall accumulate and be paid for all amounts past due.

4-2. BOOKS OF ACCOUNT AND AUDITING:

a. Concessionaire shall keep and make available, upon request, true and complete records and accounts of all Gross Revenue and business transacted, including daily bank deposits and quarterly sales tax statements. Not later than March 31st of each and every year during the Term of the Concession License, Concessionaire shall furnish to the Manager a true and accurate statement of the total of Gross Revenues during the preceding calendar year or any part thereof (unless a different reporting period is specified in the Concession License) that the Concession operated. The statement shall itemize the authorized deductions and exclusions in computing the amount of such Gross Revenues and shall include a breakdown of Gross Revenues on a month-by-month basis. Such statement shall be prepared and certified by an independent certified public accountant who has audited the Gross Revenues in accordance with generally accepted accounting procedures for special reports. The above requirements for the annual statement may be modified by the Manager, in the Manager's discretion, if such modification is in the best interests of the City.

b. Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the Auditor. Such system shall be kept in a manner as to allow Concessionaire's operations at the Concession Site to be distinguished from all other locations or operations of Concessionaire. Concessionaire shall keep and preserve for at least three years, or until sooner audited by City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period. The Auditor or Manager shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to the Gross Revenues and business transacted.

c. Concessionaire, upon written request, shall make all such documents available for examination within the Denver metropolitan area or shall pay to the City, in full and in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request. The parties agree that any delay in furnishing such records to the City will cause damages to the City which the parties agree are liquidated in the amount of Three Hundred and Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established as the City's notice.

d. If the City determines, after an audit for any year, that the Gross Revenues shown by Concessionaire's statement for such year are understated, Concessionaire shall pay the amount of the deficiency plus 15% per annum interest for being past due. If the Gross Revenues are understated by more than 3%, Concessionaire shall pay to the City the cost of the audit, in addition to the deficiency and interest. The City's right to perform such an audit will expire three (3) years after Concessionaire's statement for that year has been delivered to the City.

e. Concessionaire agrees that the Manager or the Auditor may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Revenue and any related reports, document, data or other information generated by the City's Manager of Revenue or employees under the control of such Manager of Revenue in connection with any investigation or audit of Concessionaire by the City's Department of Revenue. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager or Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

SECTION 5 – INDEMNIFICATION, INSURANCE & FINANCIAL ASSURANCES

5-1. DEFENSE, INDEMNIFICATION & IMMUNITY:

a. Concessionaire hereby agrees to defend, indemnify, and hold harmless the City, its appointed and elected officials, agents and employees against all liabilities, claims, judgments, suits or demands for damages to persons or property arising out of, resulting from, or relating to the work or activities performed under this Concession License ("Claims"), unless and until such Claims have been specifically determined by the trier of fact to be due to the sole negligence or willful misconduct of the City. This indemnity shall be interpreted in the broadest possible manner to indemnify City for any acts or omissions of Concessionaire or its employees, agents, subcontractors or sub-consultants either passive or active, irrespective of fault, including the City's concurrent negligence whether active or passive, except for the sole negligence or willful misconduct of the City.

b. Concessionaire's duty to defend and indemnify the City shall arise at the time written notice of the Claim is first provided to the City regardless of whether an action has been filed in court on the Claim. Concessionaire's duty to defend and indemnify the City shall arise even if the City is the only party sued and/or it is alleged that the City's negligence or willful misconduct was the sole cause of the alleged damages.

c. Concessionaire will defend any and all Claims which may be brought or threatened against the City and will pay on behalf of the City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of the City shall be in addition to any other legal remedies available to City and shall not be considered the City's exclusive remedy.

d. Insurance coverage requirements specified in the Concession License or these Terms and Conditions shall in no way lessen or limit the liability of Concessionaire under the terms of this indemnification obligation. Concessionaire shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

e. In addition, the City is relying upon, and has not waived, the monetary limitations (presently \$150,000 per person, \$600,000 per occurrence) and all other rights, immunities and protection provided by the Colorado Governmental Act, § 24-10-101, *et seq.*, C.R.S.

e. This defense and indemnification obligation shall survive the expiration, revocation, or termination of the Concession License.

5-2. INSURANCE:

a. General Conditions: Concessionaire agrees to secure, at or before the time of execution of this Agreement, insurance covering all operations, activities, and services provided pursuant to the Concession License in the types and amounts of coverage specified in the Concession License. Concessionaire shall keep the required insurance coverage in force at all times during the Term of the Concession License and for three (3) years after termination of the Concession License. The required insurance shall be underwritten by an insurer licensed or authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. Each policy shall contain a valid provision or endorsement stating "Should any of the above-described policies be canceled or non-renewed before the expiration date thereof, the issuing company shall send written notice to Denver Risk Management, 201 West Colfax Avenue, Dept. 1105, Denver, Colorado 80202. Such written notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior." Additionally, Concessionaire shall provide written notice of cancellation, non-renewal and any reduction in coverage to the address above by certified mail, return receipt requested. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Concessionaire. Concessionaire shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Concession License are the minimum requirements, and these requirements do not lessen or limit the liability of Concessionaire.

b. Proof of Insurance: Concessionaire shall provide a copy of the Concession License and these Terms and Conditions to its insurance agent or broker. Concessionaire certifies that the certificate of insurance provided, preferably an ACORD certificate, shall comply with all insurance requirements of the Concession License and these Terms and Conditions. The City requests that the City's contract number be referenced on the Certificate. The City's acceptance of a certificate of insurance or other proof of insurance which does not comply with all insurance requirements set forth herein shall not act as a waiver of any of the City's rights or remedies under the Concession License or these Terms and Conditions. The City's Risk Management Office may require additional proof of insurance, including but not limited to policies and endorsements.

c. Additional Insureds: For Commercial General Liability, Excess/Umbrella Liability, and Liquor Liability, Concessionaire's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages, Concessionaire's insurer shall waive subrogation rights against the City.

e. Subcontractors and Subconsultants: All subcontractors and subconsultants (including independent contractors, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Concessionaire. Concessionaire shall include all such subcontractors and

subconsultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such subcontractors and subconsultants maintain the required coverages. Concessionaire agrees to provide proof of insurance for all such subcontractors and subconsultants upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: If Colorado statutory requirements are specified in the Concession License, Concessionaire shall maintain the coverage as required by statute for each work location and shall maintain Employer's Liability insurance with limits of \$100,000 for each bodily injury occurrence claim, \$100,000 for each bodily injury caused by disease claim, and \$500,000 aggregate for all bodily injuries caused by disease claims. Concessionaire expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of Concessionaire's officers or employees who may be eligible under any statute or law to reject Workers' Compensation Insurance shall effect such rejection during any part of the Term of the Concession License, and that any such rejections previously effected, have been revoked as of the date Concessionaire signs the Concession License.

g. Commercial General Liability: Unless different coverage amounts are specified in the Concession License, Concessionaire shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$1,000,000 for each personal and advertising injury claim, \$2,000,000 products and completed operations aggregate, and \$2,000,000 policy aggregate. Aggregate limits must be "per location," if applicable under the Concession License.

h. Business Automobile Liability: Unless different coverage amounts are specified in the Concession License, Concessionaire Business Automobile Liability with limits of \$1,000,000 combined single limit applicable to all owned, hired and non-owned vehicles used in performing under the Concession License.

i. Other Coverage: Concessionaire shall obtain and maintain insurance coverage for Excess/Umbrella Liability and Liquor Liability, if so required by the Concession License.

j. Additional Provisions:

(1) For Commercial General Liability and Excess/Umbrella Liability, the policies must provide the following:

- (i) That this Concession License is an Insured Contract under the policy;
- (ii) Defense costs in excess of policy limits;
- (iii) A severability of interests, separation of insureds or cross liability provision; and
- (iv) A provision that coverage is primary and non-contributory with other coverage or self-insurance maintained by the City.

(2) For claims-made coverage, the retroactive date must be on or before the contract date or the first date when any goods or services were provided to the City, whichever is earlier.

(3) Concessionaire shall advise the City in the event any general aggregate or other aggregate limits are reduced below the required per occurrence limits. At the Concessionaire's own expense, where such general aggregate or other aggregate limits have been reduced below the required per occurrence limit, Concessionaire shall procure such per occurrence limits and furnish a new certificate of insurance showing such coverage is in force.

k. Failure to Insure. Failure to obtain, keep, renew, or replace, or pay premiums for, insurance policies required under the Concession License may result in the immediate revocation of the Concession License upon failure to provide proof that the required insurance policies are in effect and fully paid within fifteen (15) days of notice from the City that such proof is required. The City reserves the right to suspend Concession operations, at Concessionaire's cost, during any time period that the required insurance policies are not available or have not been provided.

5-3. PERSONAL PROPERTY INSURANCE:

a. Concessionaire agrees to carry property insurance on an all-risk basis, including flood and earth movement, for the replacement cost of Concessionaire's personal property and equipment used in the operation of the Concession. Concessionaire hereby expressly waives and releases any claim or cause for right of recovery which Concessionaire may have hereafter against the City for any loss or damage to the Premises or contents therein belonging to either party, caused by fire, windstorm, explosion, and other Acts of God or by third persons. Any and all risks covered by Concessionaire's property insurance shall contain a waiver of subrogation rights against the City.

b. The City may secure and maintain all-risk fire and extended peril property insurance provided on a replacement cost basis for City-owned personal property. Such coverage may be placed on a blanket basis. The City may also insure on a self-funded basis. To the extent that such property insurance is obtained and covers all losses or damages, the City waives and releases any subrogation rights which the City may have against Concessionaire for any loss or damage to the affected premises, or to the contents thereof belonging to either party, caused by a covered cause of loss or damage.

5-4. PAYMENT & PERFORMANCE GUARANTEES:

Without limiting or waiving any other obligations or liabilities of Concessionaire under the Concession License, Concessionaire shall provide any bonds or other payment or performance guarantees specified in the Concession License, subject to the following requirements and subject to the review and approval of the Denver City Attorney:

a. Payment and Performance Bonding for Construction: Concessionaire shall deliver to the City, prior to the commencement of the construction of any Improvements or the installation of Fixtures, and shall maintain until the completion and acceptance of the same, contractor's payment and performance bonds, acceptable to and approved by the Manager and, if Public Works is managing the project, the Manager of Public Works, each in the amount equal to one hundred percent of the proposed amount of the work and costs of said Improvements and Fixtures to be performed by Concessionaire, in conformance with section 2.3.3 of the Denver Charter and Section 20-53 of the Denver Revised Municipal Code. Satisfactory proof of renewal must be provided at

least sixty (60) days prior to the date of expiration of the Surety if the construction is not completed and accepted by the City.

b. Performance Assurances for Operations: Concessionaire shall deliver to the Manager, prior to the execution of the Concession License, a performance bond or a letter of credit, as specified in the Concession License and in a form acceptable to and approved by the Manager, to assure performance of the duties and obligations under the Concession License, including payment of Compensation (the "Surety"). Said Surety shall be in the amounts specified in the Concession License. The Surety must be issued from a surety corporation or bank authorized to do business in the State of Colorado. Such Surety shall be payable without condition to the City and shall guarantee to the City full and faithful performance of the Concession License. The Surety shall state that 1) if it is subject to annual renewal or cancellation, that written notice of non-renewal or cancellation must be provided to the Manager at least thirty (30) days in advance of non-renewal or cancellation, and any claims the City has against the Surety prior to termination or cancellation shall survive; and 2) the Surety will remain in effect for a ninety (90) day period following the expiration of the Term of the Concession License or the revocation or termination of the Concession License. If a bond or letter of credit is to be cancelled or not renewed during the Term of the Concession License, Concessionaire must provide a satisfactory replacement of the bond or letter of credit prior to the effective date of cancellation or non-renewal.

c. Failure to comply with this Sub-section 5-4 may result in an immediate revocation under Sub-section 7-1, with the City exercising its right of recourse against any bond for any amounts due to the City by Concessionaire.

5-5. TAXES, LICENSES, EMPLOYEE TAXES & INSURANCE & LIENS:

a. Concessionaire shall pay promptly all taxes, excises, and license or permit fees of whatever nature applicable to the Concession, and take out and keep current all licenses or permits, municipal, state or federal, required for the conduct of the business, and further shall not permit any of said taxes, excises, or license or permit fees to become delinquent. Upon request, Concessionaire shall provide proof to the City of payment of all taxes, excises, and license and permit fees.

b. Concessionaire also shall not permit any legitimate mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Concession Site or any Improvements or Fixtures, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association of persons, firm, company, or corporation at, in or upon the Concession Site or regarding the Concession herein granted, either pursuant to C.R.S. section 38-26-107, as amended, or by other authority.

c. Upon request, Concessionaire shall provide to the City proof sufficiently demonstrating the prompt and full payment of Social Security taxes, unemployment insurance, and worker's compensation insurance for all officers and employees of Concessionaire.

d. Concessionaire shall pay promptly when due all bills, debts and obligations incurred in connection with the operation of the Concession so as to not permit same to become delinquent

and suffer no lien, mortgage, judgment, execution or adjudication in bankruptcy which will in any way impair the rights and title of the City to the Concession Site or under the Concession License.

5-6. UTILITIES:

All charges, taxes, and excises for public utilities and cable television used or consumed at the Concession Site, including but not limited to gas and electric, telephone, water, and garbage and waste disposal, shall be the sole responsibility of Concessionaire, unless otherwise provided in the Concession License.

5-7. PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS:

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, machines, articles, marks, names or slogans used by it in its operations under or in any way connected with this concession. Any and all services, processes, machines, articles, marks, names or slogans owned by Concessionaire prior to the execution of the Concession License shall remain the sole property of Concessionaire. Concessionaire shall save and hold the City, its officers, employees, agents and representatives, free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement of any patent, trade mark or copyright arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under or in any way connected with this Concession.

SECTION 6 -- ASSIGNMENT, TRANSFER OF CONTROL & ENCUMBRANCES

6-1. ASSIGNMENT:

Concessionaire covenants and agrees not to assign, subcontract, or otherwise transfer any rights, benefits, obligations, or duties under the Concession License, in whole or in part, without the prior written consent of the City. The Manager may require documented evidence that the proposed assignee, subcontractor, or transferee has the skills and financial ability to fully perform the Concession License and may require that the proposed assignee, subcontractor, or transferee unequivocally agree, in a signed document satisfactory to the Manager, (1) to assume the obligations and duties of Concessionaire under the Concession License; and (2) to be bound by all of the terms, covenants and conditions contained in the Concession License. If the City consents, then any assignment, subcontract, or transfer may be permitted only if Concessionaire pays all amounts due and owing to the City before any assignment, subcontract, or transfer is effective. Concessionaire shall be responsible in all respects for the work assigned or subcontracted, unless a release is consented to by the City in writing. Every assignment, subcontract, or transfer shall make the Concession License subject to revocation unless and until the City consents in writing thereto. The consent of the City shall be evidenced by City Council approval and the signature of the Manager.

6-2. TRANSFER OF CONTROL:

Any transfer of fifty percent (50%) or more of the outstanding voting stock of Concessionaire or of fifty percent (50%) or more of the equity interest in Concessionaire, including transfer by

merger, consolidation, or liquidation, or other change in ownership of Concessionaire, shall constitute a Transfer of Control by Concessionaire under this Sub-section 6-2; provided, however, that transfers of such stock or equity interest to successors or heirs resulting from the death of a shareholder or owner shall not constitute a Transfer of Control under this Sub-section 6-2. Concessionaire shall promptly notify the Manager of any proposed Transfer of Control. The Manager may require documented evidence that the transferee has the skills and financial ability to fully perform the Concession License and may require the transferee, in a signed document satisfactory to the Manager, (1) to assume the obligations and duties of Concessionaire under the Concession License; and (2) to be bound by all of the terms, covenants and conditions contained in the Concession License. Every Transfer of Control shall make the Concession License subject to revocation unless and until the City consents in writing thereto. The consent of the City shall be evidenced by City Council approval and the signature of the Manager.

6-3. ENCUMBRANCE OF INTERESTS:

Concessionaire shall not, under any circumstances, encumber or hypothecate any rights or interests in the Concession License, the Concession Site, Improvements, Fixtures, or any personal property owned by the City. This prohibition shall not pertain to equipment or other personal property owned or leased by Concessionaire.

SECTION 7 – REVOCATION, CURE, TERMINATION & REMISE OF PREMISES

7-1. DISCRETIONARY REVOCATION:

a. If any one or more of the following events shall occur, then the Manager may, at the Manager's option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed:

1. Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under this federal bankruptcy laws or under any other law or statute of the United States or any State thereof, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

2. By order or decree of a court, Concessionaire is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Concessionaire and is not dismissed within sixty (60) days after the filing thereof; or

4. By or pursuant to, or under authority of, any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or liquidator takes possession or control of all or substantially all of the property of Concessionaire and such possession or control continues in effect for a period of sixty (60) days; or
5. Concessionaire becomes a corporation in dissolution or liquidation; or
6. The interests of or rights of Concessionaire hereunder are transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceeding or occurrence described in paragraphs a.1, 2, 3, 4, or 5 of this Sub-section 7-1; or
7. Concessionaire fails to construct or install any Capital Improvements or pay any costs of any Capital Improvements as required by the Concession License; or
8. In violation of Sub-section 3-1, Concessionaire fails to commence Concession operations or discontinues Concession operations for a period of thirty (30) days when no exclusions or exceptions under the Concession License are applicable or no time extension or waiver has been granted by the Manager; or
9. There is substantial evidence that it has been or will be impossible for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of one hundred-eighty (180) days or more due to strikes, boycotts, labor disputes, acts of God, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, court orders, weather disaster, floods, riots, rebellion, sabotage, or national calamity; or
10. There is a violation of Sub-sections 3-8 or 3-9 that is not resolved to the reasonable satisfaction of the Manager; or
11. Concessionaire fails to obtain, renew, or maintain insurance coverage or provide proof of insurance as required under Sub-section 5-2 or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and Concessionaire fails to remedy situation to the Manager's reasonable satisfaction; or
12. Any lien is filed against the Premises or any portion thereof because of any act or omission of Concessionaire and is not discharged within twenty (20) days, unless Concessionaire, within the aforesaid twenty (20) days, furnishes to the City such bond or reasonably acceptable insurance as the Manager in his or her reasonable discretion determines to be adequate to protect the interests of City; or
13. Concessionaire fails to obtain or maintain any financial assurances required under Sub-section 5-4; or
14. Concessionaire completes an assignment or transfer of control or encumbers interests in violation of Section 6; or

15. The Premises or any part or portion thereof is destroyed or substantially damaged as a result of a casualty that renders the Premises wholly or partially unusable in the opinion of the City. In the alternative, the City may elect to enter a separate agreement with Concessionaire to use any property insurance proceeds and other funding that the parties, at their individual discretion, elect to make available for the reconstruction or repair of the Premises.

b. If Concessionaire is a privately owned corporation or partnership, and any of the events enumerated in paragraphs a.1, 2, 3, 4, 5 or 6 of this Sub-section 7-1 hereof occurs with respect to a principal shareholder or owner of Concessionaire, or said shareholder's or owner's estate, and such event adversely affects the operation of the Concession, then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

7-2. VIOLATION, CURE & REVOCATION:

a. In the event Concessionaire fails to perform or, improperly or incompletely performs, any of its duties or obligations under the Concession License or violates any term or condition of this Concession License ("Non-Performance") and provided the Non-Performance is not a basis for immediate revocation under the Concession License or discretionary revocation under Sub-section 7-1 above so that the Manager has revoked or intends to revoke the Concession License, then the City shall provide Concessionaire with a notice of Non-Performance which shall set forth specifically the Non-Performance. Concessionaire shall have thirty (30) days from the date of receipt of such notice, except as provided below, within which to correct the Non-Performance. Should Concessionaire cure the Non-Performance within the thirty (30) day period, it shall notify the City in writing of when and how the cure was accomplished and provide any required documentation of said cure. Notwithstanding the foregoing, Concessionaire agrees that it will undertake all good-faith measures to cure the Non-Performance as promptly as commercially practicable, and Concessionaire will not take thirty (30) days to cure the Non-Performance if such can be cured in a shorter period. In the event the Non-Performance is not cured within such thirty (30) day period, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed. Such revocation notice shall not extend further the cure period afforded to Concessionaire.

b. Notwithstanding the foregoing, if the Non-Performance cannot be cured through the exercise of reasonable diligence within the thirty (30) day period, then such thirty (30) day period may be extended to a time as is reasonable to cure the Non-Performance, provided Concessionaire has proceeded and is continuing to proceed in a diligent and reasonable manner to cure, in the opinion of the Manager. Concessionaire shall, if the Non-Performance cannot be cured within the thirty (30) day time period through the exercise of reasonable diligence, so advise the City in writing as soon as reasonably possible and include in said writing a detailed listing of what measures that Concessionaire has undertaken to cure the Non-Performance and Concessionaire's best estimate of when and how such Non-Performance will be cured. The City reserves the right to reject any time

extension if, in the opinion of the Manager, Concessionaire has not proceeded in a diligent and reasonable manner to cure or any further delays in curing the Non-Performance would substantially damage the City's interests under the Concession License. In the alternative, the Manager may, as a condition of approving any time extension for cure, specify, within reason, certain actions Concessionaire must undertake in order to cure or specify a shorter or longer cure period than that indicated in Concessionaire's writing. If a time extension is approved, Concessionaire shall advise the City in writing when and how the cure was accomplished and provide any required documentation of said cure. In the event the Non-Performance is not cured within the specified time extension, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

c. The foregoing cure provisions shall not apply if Concessionaire fails to timely pay any Compensation or any other sums of money due and owing to the City under the Concession License ("Payment Non-Performance"). In lieu thereof, the cure period shall be five (5) days following receipt of notice of such Payment Non-Performance. If full payment is not received within five (5) days, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

d. Concessionaire will be allowed only two (2) notices of Non-Performance in any twelve (12) month period which it may cure within the time specified. The third such notice in any twelve (12) month period shall be final, and all of Concessionaire's rights under the Concession License shall be immediately revoked without any right on the part of Concessionaire to cure such Non-Performance after receiving notice.

e. A failure by the City to take any action with respect to any Non-Performance by Concessionaire shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous, or subsequent Non-Performance or with respect to any continuation or repetition of the original Non-Performance. The acceptance by the City of Compensation for any period or periods after Non-Performance shall not constitute a waiver or diminution, nor create any limitation upon any right of the City pursuant to the Concession License to revoke the Concession License. However, if Concessionaire timely and fully cures the Non-Performance after receipt of notice, said Non-Performance shall be deemed resolved and the forgoing non-waiver provisions shall not apply, except as provided in paragraph d. of this Sub-section 7-2.

7-3. RIGHT OF RE-ENTRY:

The City shall, as an additional remedy upon revocation, have the right to re-enter the Concession Site and every part thereof upon the effective date of revocation without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner effect, alter or diminish any of the obligations of Concessionaire under the Concession License, and shall in no event constitute an acceptance of surrender.

7-4. TERMINATION:

a. At any time, upon written and mutual consent of the City and Concessionaire, the Concession License may be terminated.

b. For good cause shown by Concessionaire in writing and satisfactory to the Manager, the Concession License may be terminated. "Good cause shown" shall be limited to circumstances where it is impossible, for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, acts of God, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, weather disaster, floods, riots, rebellion, sabotage, or national calamity, for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of sixty (60) days or more.

c. Subject to any adjustments the Manager may deem appropriate, all Compensation and other payments due and owing the City shall be paid by Concessionaire as a condition precedent to any termination.

7-5. REMISE OF PREMISES:

At the expiration of the Term of the Concession License or upon revocation or termination of the Concession License:

a. Concessionaire will promptly deliver the Premises and any Improvements and Fixtures to the City in as good condition and state of repair as when received except for ordinary wear and tear or loss or damage caused by an Act of God. Delivery shall include the return of all keys and security codes.

b. Subject to any requirements of the Concession License to the contrary, Concessionaire shall promptly remove from said Premises, all personal property and equipment which are not Improvements or Fixtures or not otherwise owned by the City and which are currently owned or leased by Concessionaire, subject however, to any valid lien or claim which the City may have for unpaid Compensation or other amounts owed to the City. If said removal causes any damage to the Premises, said Concessionaire shall promptly repair the same in a good and workmanlike manner at its own expense. If Concessionaire fails to remove any of Concessionaire's personal property and equipment upon expiration, revocation, or termination of the Concession License, the City may, at its option, keep and retain said items or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from Concessionaire any costs of the City in removing the same and in restoring the Concession Site in excess of the actual proceeds, if any, received by the City from the disposition thereof.

7-6. HOLDING OVER:

a. If Concessionaire holds over after expiration of the Term of the Concession License, thereafter Concessionaire's occupancy shall be deemed a periodic tenancy from month-to-month at a monthly rental equal to twice 1) the amount of Compensation provided in the Concession License

which is in effect as of the final month of the Term or 2) the highest amount of Compensation paid for any equivalent month during the last year of the Term, whichever is higher. Concessionaire shall be subject to all other terms and conditions of the Concession License. Upon 10 days notice by the City or Concessionaire, such holding over shall be immediately terminated.

b. Nothing herein shall be construed to give Concessionaire the right to hold over, and the City may exercise any remedy at law or in equity to recover possession of the Premises, as well as any damages incurred by City on account of such holding over.

7-7. REMEDIES CUMULATIVE; SURVIVAL:

The remedies provided in this Section 7 shall be cumulative and shall in no way affect any other remedy available to the City under law or equity. All remedies shall survive the expiration, revocation, or termination of the Concession License.

SECTION 8 -- GENERAL PROVISIONS

8-1. NOTICES:

a. Any notice from the City to Concessionaire shall be deemed sufficiently rendered or given if the same be in writing and personally delivered, by the Manager's representative or a courier, to Concessionaire or sent by registered or certified return receipt mail to Concessionaire. Notice shall be delivered or sent to the Concessionaire's address in the Concession License or the latest address provided by Concessionaire in writing to the Manager. The date of mailing or personal delivery of such notice or communication shall be deemed to be the date when the same is received.

b. Any notice from Concessionaire to the City shall be validly given if sent by registered or certified return receipt mail addressed to the Manager, Department of Parks and Recreation, 201 West Colfax Ave., Dept. 601, Denver, Colorado 80202, or at such other address as the City shall hereafter designate in writing to Concessionaire.

8-2. GOVERNING LAW; VENUE:

a. The Concession License shall be governed by the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated as if fully set out herein, by this reference.

b. Venue for any and all legal action regarding the Concession License shall lie in the District Court in and for the City and County of Denver, State of Colorado.

c. Concessionaire agrees that any and all notices, pleadings and process that cannot be delivered personally to Concessionaire may be made by serving two copies of the same upon the Colorado Secretary of State at the Secretary's office in Denver, Colorado, and by mailing by registered mail, an additional copy of the same to Concessionaire at the last address provided by

Concessionaire in accordance with Sub-section 8-1; that said service shall be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, response is not made.

8-3. PARTIAL INVALIDATION; OTHER AGREEMENTS; AMENDMENTS:

a. If for any reason, any term, covenant, or condition herein is to any extent held or rendered invalid, unenforceable, or illegal, then such term, covenant, or condition shall be deemed to be independent of the remainder of the Concession License and to be severable and divisible therefrom, and its invalidity, unenforceability, or illegality shall not affect, impair, or invalidate the remainder of the Concession License or any part thereof, which remainder shall continue to be applicable and enforceable unless the Manager shall determine, in the Manager's sole discretion, that the purpose intent of the Concession License can no longer be fulfilled or satisfied.

b. The City shall not be bound by any statements, agreements or representations, oral or written, express or implied, not contained herein.

c. The Concession License shall not be modified or amended in any manner other than the same manner the Concession License was approved or as expressly provided in the Concession License.

8-4. NO DISCRIMINATION IN EMPLOYMENT:

In connection with the performance of work under the Concession License, Concessionaire agrees not to refuse to hire, discharge, promote or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and Concessionaire further agrees to insert the foregoing provision in all subcontracts hereunder. In addition, the Concession License is conditioned upon, and requires full compliance with Article IV of Chapter 28 of the Denver Revised Municipal Code entitled PROHIBITION OF DISCRIMINATION IN EMPLOYMENT, HOUSING AND COMMERCIAL SPACE, PUBLIC ACCOMMODATIONS, EDUCATIONAL INSTITUTIONS AND HEALTH AND WELFARE SERVICES.

8-5. USE, POSSESSION OR SALE OF ALCOHOL OR DRUGS:

Concessionaire, its officers, agents, and employees, shall cooperate and comply with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Violation of these provisions or refusal to cooperate with implementation of the policy can result in the City's barring Concessionaire's offending personnel from City-owned facilities or participating in Concession operations, but such occurrence shall not constitute a revocable violation under the Concession License.

8-6. INDEPENDENT CONTRACTOR:

CONCESSIONAIRE UNDERSTANDS AND AGREES THAT CONCESSIONAIRE IS AN INDEPENDENT CONTRACTOR. This means, among other things, that Concessionaire and its officers, employees, and agents are not entitled to workers' compensation benefits that the City makes available to its employees and that Concessionaire is obligated to pay, and is personally liable for paying, federal and state income tax on any moneys Concessionaire earns pursuant to this Concession License and any payroll taxes and charges for Concessionaire's officers and employees. Furthermore, Concessionaire shall have no authority or power to take any action or to make any contract or agreement which will bind the City.

8-7. CONFLICT OF INTEREST:

No employee or officer of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Concessionaire further agrees not to hire or contract for the services of any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.8 through 1.2.12.

8-8. THIRD PARTIES:

The Concession License does not, and shall not be deemed or construed to, confer upon or grant to any third part or parties, except as permitted for assignments or transfers of control under Section 6 above, any right to claim damages or to bring any suit, action, or other proceeding against the City or Concessionaire because of any non-compliance with or violation of the Concession License or because of any of the terms, covenants, and conditions contained in the Concession License.

8-9. SECTION HEADINGS:

The section headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of the Concession License.

8-10. ENVIRONMENTAL PROTECTION:

a. Concessionaire shall comply with the applicable federal, state, and local laws, regulations, and standards that are or may become applicable to Concessionaire's activities on the Concession Site. For purposes of this Concession License, the Concession Site does not include any City maintenance facility which is not used as part of Concessionaire's activities. Therefore, Concessionaire shall be neither liable nor responsible for any past or future releases, discharges, emissions, spills, storage, disposal or hazardous substances at or from the maintenance facility, or for any other acts or omissions at or related to such maintenance facilities unless caused by the actions of Concessionaire after the execution date of the Concession License.

b. Concessionaire shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operation under this Concession License, independent of any existing permits.

c. Concessionaire shall save, indemnify and hold harmless the City from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by Concessionaire, its officers, agents, employees, or sublessees, giving rise to City liability, civil or criminal, or responsibility under federal, state or local environmental laws. This provision shall survive the expiration or revocation of the Concession License, and Concessionaire's obligations hereunder shall apply whenever the City incurs costs or liabilities for Concessionaire's actions of the types described in this Sub-section 8-10.

d. The City's rights under the Concession License specifically include the right for City officials to inspect, upon reasonable notice, the Concession Site for compliance with environmental, safety, and occupational health laws and regulations, whether or not the City is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The City normally will give Concessionaire twenty-four (24) hours prior notice of its intention to enter the Concession Site for an inspection pursuant to this paragraph unless it determines the entry is required for safety, environmental, or security purposes.

e. The City is not responsible for any removal or containment of asbestos unless such responsibility is so provided in the Concession License. If any improvement plans for the Concession Site require the removal of asbestos, an asbestos removal and disposal plan must be submitted concurrently with the improvement plans. The asbestos removal and disposal plan must identify the proposed disposal site for the asbestos.

f. Concessionaire agrees that the City assumes no liability to Concessionaire should hazardous waste cleanup requirements, whether imposed by law or regulatory agencies, interfere with Concessionaire's use of the Concession Site. Concessionaire shall have no claim on account of any such interference against the City or any officer, agent, employee or contractor thereof.

g. Concessionaire must comply with all federal, state, and local laws, regulations, orders, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

h. Concessionaire shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. Concessionaire must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material violation of the Concession License. Notwithstanding any other provisions of this License, neither Concessionaire nor any of its contractors or subcontractors shall store or otherwise allow its hazardous waste to remain on the Concession Site in excess of ninety (90) days without the express written consent of the Manager.

i. Concessionaire must maintain and make available to the City all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. The City reserves the right to inspect the Concession Site, Concessionaire records for compliance with federal, state,

and local laws, regulations, orders and other requirements relating to the generation, handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the City to appropriate regulatory agencies, as required by applicable law. Concessionaire will be liable for the payment of any fines and penalties, which may accrue as a result of the actions of Concessionaire.

j. Concessionaire shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System (NPDES), and any applicable state or local requirements.

k. Concessionaire shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Manager. Failure to adhere to federal and state regulations concerning underground storage tanks at the Concession Site, if any, shall be sufficient grounds for revoking the Concession License after appropriate notice. Such revocation shall not release Concessionaire from any liability resulting from a release which occurred while the Concession License was in effect, including any fines, civil penalties or damages. Concessionaire shall be responsible for permanent closure and any remedial action required by the Colorado Department of Health or the Environmental Protection Agency.

l. Concessionaire must notify the Manager of Concessionaire's intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of Concessionaire's intent to possess, use, or store radium; and of Concessionaire's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation, at least sixty (60) days prior to the entry of such materials or equipment upon the Concession Site. Upon notification, the Manager may impose such requirements, including prohibition of possession, use, or storage, as the Manager deems necessary to adequately protect health and the human environment. Thereafter, Concessionaire must notify the Manager of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided; however, that Concessionaire need not make either of the above notifications to the Manager with respect to source and byproduct material which is exempt from regulation under the Atomic Energy Act. Concessionaire shall not, under any circumstances, use, own, possess or allow the presence of special nuclear material on the Concession Site.

m. Concessionaire acknowledges that lead-based paint may be present in and on facilities and equipment within the Concession Site. The City may conduct surveys to determine the existence and extent of any possible lead-based paint. Concessionaire will be notified if the City determines there is lead-based paint in or on the licensed facilities or equipment. Prior to beginning any alteration or modification, Concessionaire or City must test any paint which would be disturbed unless a conclusive determination has been made that lead-based paint is not present. If the paint is lead-based, Concessionaire is required to handle it in accordance with all applicable federal, state, and local laws and regulations at its own expense. Concessionaire is required to ensure that any lead-based paint left in place is maintained in good condition.

8-11. NO EMPLOYMENT OF ILLEGAL ALIENS:

a. The Concession License is subject to Article 17.5 of Title 8, Colorado Revised Statutes, and as amended hereafter (the "Certification Statute") and Concessionaire is liable for any violations as provided in the Certification Statute.

b. Concessionaire certifies that:

1) At the time of its execution of the Concession License, it does not knowingly employ or contract with an illegal alien who will perform work under this Concession License.

2) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the "Department Program"), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under the Concession License.

c. Concessionaire also agrees and represents that:

1) It shall not knowingly employ or contract with an illegal alien to perform work under the Concession License.

2) It shall not enter into a contract with a sub-consultant or subcontractor that fails to certify to Concessionaire that it shall not knowingly employ or contract with an illegal alien to perform work under the Concession License.

3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under the Concession License, through participation in either the E-Verify Program or the Department Program.

4) It is prohibited from using either the E-Verify Program or the Department Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Concession License.

5) If it obtains actual knowledge that a sub-consultant or subcontractor performing work under the Concession License knowingly employs or contracts with an illegal alien, it will notify such sub-consultant or subcontractor and the City within three days. Concessionaire will also then terminate such sub-consultant or subcontractor if within three days after such notice the sub-consultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three day period the sub-consultant or subcontractor provides information to establish that the sub-consultant or subcontractor has not knowingly employed or contracted with an illegal alien.

6) It will comply with any reasonable request made in the course of an investigation by the Colorado Department of Labor and Employment under authority of § 8-17.5-102(5), C.R.S.

EXHIBIT A

LEGAL DESCRIPTION

LOTS 1 TO 32 INCLUSIVE, BLOCK 75, EAST DENVER, TOGETHER WITH THE VACATED ALLEY IN SAID BLOCK 75, CITY AND COUNTY OF DENVER, STATE OF COLORADO.

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED RESERVED PARCELS:

RESERVED PARCEL A:

THE SURFACE OF THE SOUTHEASTERLY 100 FEET OF SAID BLOCK 75, BEING THAT PORTION OF SAID 100 FOOT STRIP OF GROUND LYING AND BEING ABOVE THE TOP FACE OF THAT CERTAIN EXISTING AND SLOPING CONCRETE SLAB, WHICH SLAB IS THE CEILING OF AN UNDERGROUND PARKING GARAGE.

RESERVED PARCEL B:

THE AIR SPACE, WITHOUT LIMIT AS TO HEIGHT, ABOVE THE SURFACE OF THE SOUTHEASTERLY 83 FEET OF SAID BLOCK 75.

RESERVED PARCEL C:

THE AIR SPACE ABOVE THE SURFACE OF THE NORTHWESTERLY 17 FEET OF THE SOUTHEASTERLY 100 FEET OF SAID BLOCK 75, TO A HEIGHT OF 5235 FEET ABOVE MEAN SEA LEVEL.

EXCEPTING, HOWEVER, FROM SAID RESERVED PARCELS A, B AND C THE FOLLOWING PARCELS AND RIGHTS IN CONNECTION THEREWITH:

- 1) THAT PORTION OF THE ABOVE DESCRIBED RESERVED PARCELS A, B AND C, IF ANY, NEEDED FROM TIME TO TIME AND ON ANY ONE OR MORE OCCASIONS TO INSTALL, MAINTAIN, REPLACE AND REPAIR THAT CERTAIN EXISTING UNDERGROUND PARKING GARAGE BELOW ALL OF SAID RESERVED PARCELS AND THAT CERTAIN BUILDING EXISTING ADJACENT TO SAID RESERVED PARCELS, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS AND THE RIGHT TO DISTURB THE SURFACE ESTATE FOR SAID PURPOSES.
- 2) THAT PORTION OF RESERVED PARCELS A AND C OCCUPIED BY 14 EXISTING VERTICAL SUPPORT COLUMNS, EACH OF WHICH ARE 2.0 FEET SQUARE, THE ORIGINAL CENTERLINE OF WHICH IS A LINE PARALLEL WITH THE SOUTHEASTERLY LOT LINE (ARAPAHOE STREET) OF SAID BLOCK 75 AND BEING 84 FEET NORTHWEST THEREFROM, AND THE CROSS CENTERLINES OF WHICH ARE LOCATED 1.10 FEET, 33.1 FEET, 63.1 FEET, 95.1 FEET, 125.1 FEET, 155.1 FEET, 185.1 FEET, 215.1 FEET, 245.1 FEET, 275.1 FEET, 305.1 FEET, 337.1 FEET, 367.1 FEET AND 399.1 FEET, RESPECTIVELY, FROM THE SOUTHWESTERLY LOT LINE (15TH STREET) OF SAID BLOCK 75 ALONG THE FIRST CENTERLINE ABOVE MENTIONED, TOGETHER WITH THE AIR SPACE WITHOUT LIMIT ABOVE THE PARCELS JUST DESCRIBED.
- 3) THAT PORTION OF RESERVED PARCEL C OCCUPIED BY EXISTING BEAMS WHICH ARE 4.7 FEET IN HEIGHT, 2.2 FEET IN WIDTH AND 15 FEET IN LENGTH, THE BOTTOM OF WHICH BEAMS ARE LOCATED AT AN ELEVATION OF 5220.7 FEET ABOVE MEAN SEA LEVEL, THE CENTERLINES OF WHICH ARE LOCATED, RESPECTIVELY 1.1 FEET, 63.1 FEET, 215.1 FEET AND 399.0 FEET FROM THE SOUTHWESTERLY (15TH STREET) SIDE OF SAID BLOCK 75 ALONG THE NORTHWESTERLY SIDE OF RESERVED PARCEL C WHICH BEAMS EXTEND APPROXIMATELY PARALLEL TO 15TH STREET.
- 4) THAT PORTION OF RESERVED PARCEL C OCCUPIED BY EXISTING BEAMS WHICH ARE 4.7 FEET IN HEIGHT, 2.2 FEET IN WIDTH, WHICH BEAMS EXTEND PARALLEL TO ARAPAHOE STREET WITH A CENTERLINE WHICH IS PARALLEL WITH THE SOUTHEASTERLY LOT LINE OF

SAID BLOCK 75 AND BEING 84 FEET NORTHWEST THEREFROM, AND THE BOTTOM OF WHICH BEAMS ARE LOCATED AT AN ELEVATION OF 5220.7 FEET ABOVE MEAN SEA LEVEL, WHICH BEAMS CONNECT BETWEEN CERTAIN OF THE 14 EXISTING VERTICAL COLUMNS MENTIONED AND DESCRIBED ABOVE, TO WIT:

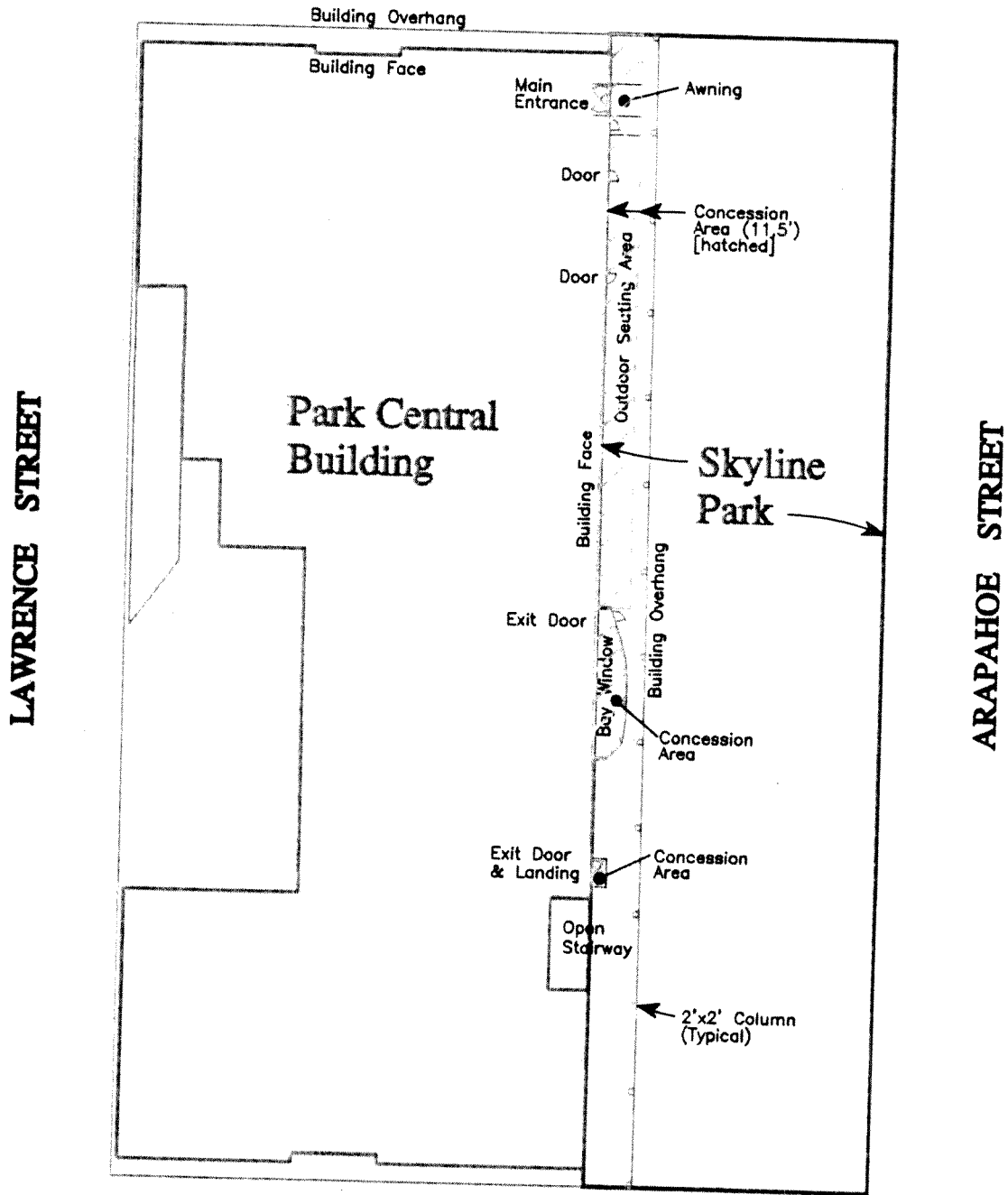
THOSE EXISTING VERTICAL SUPPORT COLUMNS HAVING CROSS CENTERLINES OF 63.1 FEET AND 125.1 FEET, AND THOSE HAVING CROSS CENTERLINES OF 275.1 FEET AND 367.1 FEET, RESPECTIVELY NORTHEASTERLY FROM THE SOUTHWESTERLY LOT LINE (15TH STREET) OF SAID BLOCK 75.

5) THE PERMANENT RIGHT TO ENCROACH UPON THE AIR SPACE DESCRIBED IN RESERVED PARCELS B AND C FOR THE PURPOSE OF INSTALLATION THEREIN AND OCCUPANCY THEREIN BY ANY PORTION OF THE FOUNDATION OR CURTAIN WALLS AND FINISH OF THAT CERTAIN BUILDING EXISTING ADJACENT TO SAID RESERVED PARCELS, AND ANY MULLIONS PROJECTING THEREFROM, PROVIDED SAID ENCROACHMENTS DO NOT EXTEND MORE THAN ONE FOOT INTO THE AIR SPACE DESCRIBED, TOGETHER WITH THE RIGHT OF INGRESS AND EGRESS INTO AIR SPACE TO MAINTAIN AND REPAIR SAID ADJACENT BUILDING.

6) THAT PORTION OF RESERVED PARCEL A FOR USE FOR ACCESS TO AND FROM THE EXISTING UNDERGROUND PARKING GARAGE CONSTRUCTED BELOW THE SURFACE OF THE ABOVE DESCRIBED RESERVED PARCEL A, DESCRIBED AS COMMENCING AT A POINT ON THE SOUTHEASTERLY LOT LINE (ARAPAHOE STREET) OF SAID BLOCK 75, 205 FEET NORTHEASTERLY FROM THE MOST SOUTHERLY CORNER (15TH STREET AND ARAPAHOE STREET) OF SAID BLOCK 75, THENCE DUE NORTH 25 FEET, THENCE NORTHEASTERLY PARALLEL WITH THE SOUTHEASTERLY LOT LINE (ARAPAHOE STREET) OF SAID BLOCK 75, A DISTANCE OF 110 FEET, THENCE AT A RIGHT ANGLE TO THE SOUTHEASTERLY LOT LINE (ARAPAHOE STREET) OF SAID BLOCK 75, THENCE SOUTHWESTERLY ALONG SAID SOUTHEASTERLY LOT LINE (ARAPAHOE STREET) OF SAID BLOCK 75 TO THE POINT OF BEGINNING.

Exhibit B Skyline Park

16TH STREET MALL



15TH STREET



Date: December 21, 2010
By: Gregory S. Neitzke PLS

