

**CITY AND COUNTY OF DENVER  
DEPARTMENT OF PARKS AND RECREATION**

**CONCESSION LICENSE**

The City and County of Denver, hereinafter referred to as the “**City**”, acting by and through its Executive Director of Parks and Recreation, hereinafter referred to as the “**Executive Director**”, 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 in this license, hereby grants to Concessionaire hereinafter named the license or privilege of operating a concession for selling goods and providing services in the park or recreational facility hereinafter described (“**Concession License**”). Concessionaire, by execution of this Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same, including the obligations 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.

- I. CONCESSION SITE: Golf course food and beverage service facilities at the Clubhouse for Evergreen Golf Course, 29614 Upper Bear Creek Road, Evergreen, Colorado 80439. The **Concession Site** is defined as and shall consist of the kitchen, kitchen storage areas, dining area, restrooms, bar areas, office, patio dining areas, upstairs patio bar and other outside seating areas located just outside of the Clubhouse, all as depicted on **Exhibit A**. The “**Premises**” is as defined in the Terms and Conditions, and shall include the entire real property and structures covered by the Concession License, including the Concession Site, and any Improvements and Fixtures. The patio dining area and other outside seating areas just outside the Clubhouse shall be open for both concession operations and the general use of the golfing public and other patrons at the Clubhouse. The Concession Site shall not include the Pro Shop or the associated storage room used by the City, except for Pro Shop restrooms as noted in Section IV.D.7. below. The “**Golf Course**” is defined as the 18-hole turf and play area and the driving range.
  
- II. CONCESSIONAIRE:                    CONCESSIONAIRE’S ADDRESS:  
**M&P CONCESSIONS**                    300 Rowe Ave., Pierce, Colorado 80650
  
- III. CONCESSION: The Concession shall include the sale and service of food and beverages, to the golfing and other public at the Premises including the Golf Course and Concession Site as depicted in **Exhibit A**, and other services such as general maintenance, repair, and replacements as specified in this Concession License.
  
- IV. CONCESSIONAIRE’S RESPONSIBILITIES: The primary obligation of the Concessionaire is to serve the needs of the golfing public. All other customer service activities for which the Concessionaire may be engaged shall be secondary to this primary obligation. All responsibilities set forth below shall be performed at the sole expense of Concessionaire.

A. Notice of Occupancy and Concession Commencement: City shall provide express written notice of the first date that the Concessionaire may occupy the Concession Site (“**Occupancy Date**”). Concession operations must begin within forty-five (45) days of the Occupancy Date.

B. Food & Beverage Services:

1. *Basic Service*. The Concessionaire shall have the exclusive right to engage in the sale of food and beverages, including alcoholic beverages, within the Concession Site as depicted in **Exhibit A**. The Concessionaire shall provide good quality, fresh foods and good customer service; such food and beverage service shall be equal to or exceed in quality the service provided at other equivalent Denver metropolitan daily-fee golf courses. Menu items and prices are subject to pre-approval by the City’s Director of Golf or the Director’s designee (“**Director**”) for Denver Parks and Recreation. At a minimum, food and beverage services shall be available during Concession Operating Hours as defined in Section IV.K. below.

2. *Motorized Food-Cart Service*. The Concessionaire shall, as a condition of this License, be required to provide food and beverages, through motorized food and beverage cart(s) that shall be equal to or exceed in quality the service provided at other equivalent Denver metropolitan daily-fee golf courses, which shall be operated during Concession Operating Hours. Modifications of the expected hours of operations for the motorized food and beverage cart may be requested through the Director at least a week in advance. Concessionaire shall have the exclusive right to engage in motorized food and beverage cart sales on the Premises. The Concessionaire shall either: (1) purchase from the City and utilize the existing City-owned food and beverage cart; or (2) purchase a new food and beverage cart, subject to City approval. The food and beverage cart shall be owned or leased by the Concessionaire, and Concessionaire shall operate the food and beverage cart in a safe and reliable manner. Concessionaire may also propose to the City alternative purchase and ownership options regarding a food and beverage cart, subject to the City’s discretion and approval. The City’s golf maintenance department agrees to perform all of the annual preventative maintenance on the beverage carts and repairs according to the following:

- The City will perform annual preventative maintenance such as oil changes, adjustments, greasing, safety inspections, and pressure washing. Such maintenance will generally occur in the off-season, but can be performed as necessary throughout the golf season and at no cost to the Concessionaire.
- The City may perform minor repairs at no cost to the Concessionaire at the discretion of the Director.
- The City will perform all repairs to the beverage cart and the Concessionaire shall reimburse the City for all repairs. Labor for mechanic hours shall be billed at Forty Dollars (\$40.00) per hour, and all parts and shipping will be invoiced to the Concessionaire for reimbursement at cost, without markup by the City. The \$40.00 rate is subject to change with prior notice to the Concessionaire and at

the Director's discretion. The Concessionaire shall reimburse the City within thirty (30) days following receipt of an invoice from the City. Repairs will only occur during the City's golf course maintenance department's normal working hours. Callback rates may apply in emergencies.

- In the event the City cannot perform any repairs due to lack of expertise or time, the City will arrange for a vendor to perform the repairs and invoice the Concessionaire for reimbursement of the repairs at cost, without markup by the City. The Concessionaire shall reimburse the City within thirty (30) days following receipt of an invoice from the City.
- The City will use TRIMS software or other vehicle tracking software of the City's choosing to track repairs and maintenance of the beverage cart, and will utilize work orders generated through TRIMS as the basis for invoicing the Concessionaire for reimbursement. The City reserves the right to modify its choice of software at any time.
- The City will put forth its best effort to perform the repair and maintenance on the beverage cart and without delay so long as it does not detract from high priority equipment such as greens mowers and other exigencies.
- The Concessionaire must inform the City's maintenance staff of any problems with the beverage cart, and whether any warranties apply, providing the City's mechanic as much lead time as possible to acquire the parts, make repairs, or contract with a vendor to make repairs.
- The City maintenance department will be considered the subject matter expert and shall be granted broad discretion as it pertains to the repair and maintenance of the beverage cart. The City will adhere to industry and equipment standards for repair and maintenance of the beverage cart. If a repair is in excess of Seven Hundred Fifty Dollars (\$750.00), the City will notify the Concessionaire prior to performing the repair. The \$750.00 rate is subject to change with prior notice to the Concessionaire and at the Director's discretion.
- If the motorized food and beverage cart cannot be repaired, the Concessionaire must replace the cart at the Concessionaire's cost.

In the interests of safety and efficiency, the Concessionaire may use the off-road gas available from the City's maintenance department's off-road gas tanks under the condition that the Concessionaire shall reimburse the City for the fuel within thirty (30) days following receipt of an invoice from the City. Fuel reimbursement rates shall be based on average fuel cost per gallon for the respective month.

Concessionaire shall indemnify and hold the City harmless for any repairs, the costs thereof, and for any claims that may arise out of the repairs. The City shall not be responsible for violations of any warranties not caused by the City.

3. *Alcohol Beverages.* The sale and service of alcoholic beverages are allowed, subject to the following: 1) It is solely the responsibility of Concessionaire to secure a liquor license for the Premises including the Golf Course from the proper licensing authority; 2) Concessionaire shall comply with any and all terms and conditions of the licensing authority and the Executive Director. *See* Sub-section 3-4 of the Terms and Conditions (Section X below). For the purposes of liquor licensing, the entire Premises including the Golf Course may be regarded as part of the licensed premises. Concessionaire shall provide a copy of the liquor license upon the Director's request.

4. *Furniture, Fixtures and Equipment.* The Concessionaire must purchase, lease or supply any equipment that may be needed to operate the Concession and is not currently on site and available for use. The furniture and equipment on site and being made available for use are the Personal Property of the City, as defined in Section 2-5 of the Terms and Condition, unless otherwise notified or indicated. Any furniture, fixture and equipment newly purchased by the Concessionaire must be pre-approved by the Director to ensure quality and compatibility with facility. With approval from the Director, the City may in its discretion provide credits against Percentage Payments and/or GAMP (see Section VII. Compensation to be paid to the City) for furniture, fixtures and equipment purchased by the Concessionaire subject to proof of payment or purchase by the Concessionaire.

All furniture, fixtures and equipment, except for those items set forth in Sub-section 5 below, are property of the City. The Concessionaire shall maintain, repair and keep in good and safe condition all furniture, fixtures and equipment, and any other City-owned items, and maintain records of all preventative maintenance and repairs, which shall be provided to the Director upon request. The Concessionaire shall be responsible for replacing any furniture, fixtures and equipment that fails, and has not been properly maintained. Upon expiration or termination of this Concession License, any furniture, fixtures and equipment, whether purchased by the Concessionaire or the City, shall become and/or remain the property of the City.

5. *Smallwares.* The Concessionaire shall supply, and shall be responsible for repairing and replacing when necessary, all smallwares including but not limited to, plates, glasses, silverware, serving dishes, pots, pans, knives, measuring cups, cooking sheets, blenders, microwaves, small toaster ovens, toasters and any other similar items necessary for the operation of a good quality food and beverage service at the Concessionaire's expense. Upon expiration or termination of this Concession License, all smallwares will remain the property of the Concessionaire.

C. Merchandise Sale: The Concessionaire may engage in the sale of such merchandise and novelty items at the Concession Site as are appropriate for the needs and interests of the golfing public and other authorized recreational patrons of Evergreen Golf Course. Said merchandise and novelties will consist of such items as pre-approved in writing by the Director. The sale of merchandise and novelties that compete with sale of similar items at Evergreen Golf Course Pro Shop will not be allowed. The sale of the following is strictly prohibited: tobacco products; packaged liquor, wine, or beer intended for consumption off-

premises; marijuana; adult materials; fireworks; and food or beverages in glass bottles or glass containers that can be taken from the Clubhouse on to the Golf Course.

D. Maintenance: The Concessionaire shall retain, subcontract, or hire, at the Concessionaire's sole expense, contractors or staff to perform the following maintenance services at the Premises:

1. *General Interior Cleaning* – Structures at the Concession Site, including common areas, shall be maintained in good condition. All floors and floor coverings shall be vacuumed, swept, or mopped, and carpets cleaned, as appropriate, on a regular basis and when needed, and interior walls and interior wall coverings shall be cleaned on a regular basis and when needed. All floors and interior wall surfaces that are exposed to water or regular washing shall be sealed, and the seal maintained, so as to prevent any structural damage to the facilities. Furnishings and equipment shall be dusted or cleaned on a regular basis and when needed. All doors, windows, and window glass shall be cleaned on a regular basis and when needed. The Concessionaire shall arrange and pay for professional deep cleanings of the kitchen at least twice per year, and are subject to inspection and approval by the Director. Evidence of cleanings shall be provided to the Director within one (1) week of completion. Copies of the contracts or service agreements for kitchen cleaning shall be provided to the Director within thirty (30) days of signing and upon request. Concessionaire shall promptly notify the Director of any modification or cancellation of the contract or service agreement.

2. *Facilities & Equipment Maintenance* – Concession facilities and all equipment, must be maintained and repaired as needed to ensure proper function and appearance including but not limited to, appliances, hardware, and plumbing fixtures. Electrical fixtures, light bulbs (including replacement of light bulbs), and other electrical appliances shall be maintained in an operating and safe condition. Concessionaire shall arrange and pay for quarterly professional cleanings of the grease trap and twice per year cleanings of the Vent-A-Hood (spring and fall), and provide evidence of cleaning to the Director within one (1) week of completion. Copies of the contracts or service agreements for grease trap and Vent-A-Hood cleaning shall be provided to the Director within thirty (30) days of signing and upon request. Concessionaire shall promptly notify the Director of any modification or cancellation of the contract or service agreement. Adjustments can be made to this schedule based on seasonal operating hours with prior written approval by the Director. The City will perform fire extinguisher annual maintenance and inspections and Concessionaire is responsible for annual maintenance and inspection of the Vent-A-Hood and ANSUL cookline suppression system (if applicable).

3. *Cleaning Supplies* – All tools, equipment, and cleaning and janitorial supplies kept on site for maintaining the Concession Site shall be stored in a safe location, not accessible by the public and used in a manner that protects the public from any injury or harm. No hazardous or strongly acidic or caustic chemicals shall be used for such cleaning or graffiti removal unless pre-approved by the Director and proper storage, access control and usage standards are provided for.

4. *Garbage Removal* – Concessionaire shall enter into a contract or service agreement with a commercial waste removal company for the regularly scheduled removal of all garbage and trash from the Concession Site and trash collection from the entire Clubhouse. The Concessionaire or its vendor shall furnish the necessary dumpsters, trash receptacles and collection equipment, which shall be tamper resistant and equipped with tamper resistant and/or locking lids to prevent intrusions by rodents, animals and specifically bears. The dumpsters and other trash receptacles shall be located and maintained in an enclosed area away from public view approved by the Director. Copies of the waste removal contracts or service agreements shall be provided to the Director within thirty (30) days of signing and upon request. Concessionaire shall promptly provide notice to the Director of any modification or cancellation of the contract or service agreement.

5. *Recycling* – The Concessionaire shall enter into a contract or service agreement for and is required to provide and manage single stream recycling that adequately handles all of the recycling needs of the concession operations and the entire Clubhouse. This includes, but is not limited to, cardboard, paperboard, plastics, glass, aluminum cans, and steel cans. The Concessionaire or its vendor shall furnish all necessary recycling bins and collection equipment for recycling services. A copy of the contract or service agreement for recycling shall be provided to the Director within thirty (30) days of signing and upon request. Concessionaire shall promptly provide notice to the Director of any modification or cancellation of the contract or service agreement.

6. *Premises Maintenance* – Grounds within 100 feet of the Concession Site, including the parking lots and related support areas, shall be cleaned of litter on a daily basis. The Concessionaire is responsible for snow and ice removal as set forth in Section IV.L, below.

7. *Public Restrooms* – Restrooms in the Clubhouse shall be open to the use of the golfing public and patrons of the Concession. The Concessionaire shall retain a third-party service to clean and stock the Clubhouse restrooms daily. A copy of the contract or service agreement for cleaning shall be provided to the Director within thirty (30) days of signing and upon request. Concessionaire shall promptly provide the Director notice of any modification or cancellation of the contract or service agreement. Concessionaire shall be responsible for properly maintaining and repairing the restrooms in a manner that meets or exceeds the cosmetic and functional standards found in other equivalent Denver metropolitan daily-fee golf courses throughout any open days. All restrooms, including those located in the Clubhouse and the Pro Shop, are to be cleaned and supplied, including paper towels and toilet paper provided by the Concessionaire on a daily basis and when needed. Pro Shop restrooms will only be open during Pro Shop daily and seasonal opening hours. Trash and debris within the restrooms shall be regularly collected and properly disposed of. All surfaces shall be swept, washed, and sanitized at least daily.

8. *Rodent and Pest Control* – The Concession Site shall be maintained free of rodents and pests at all times. Concessionaire is responsible for hiring or retaining

exterminator and other pest and rodents control services. A copy of the contract or service agreement for pest control shall be provided to the Director within thirty (30) days of signing and upon request. Concessionaire shall promptly notify the Director of any modifications or cancellation of the contract or service agreement.

9. Otherwise, the terms of Sub-sections 2-4 and 3-2 of the Terms and Conditions (Section X below) shall be applicable.

10. The parties agree to the distribution of responsibilities regarding care and maintenance of the Premises as described in **Exhibit B – Maintenance and Repairs Matrix (“Matrix”)**, attached hereto and incorporated herein. **Exhibit B** may be modified upon the written authorization of the Director to correct minor, technical errors. The City will not be liable for any reason for any loss or damage resulting from an interruption of any of these services. Concessionaire shall have no right to make repairs to the Premises at City's expense. The City at its sole discretion reserves the right to undertake capital improvements during the Term of this License at its own expense. The City agrees that it will consult with the Concessionaire before undertaking any such improvements. The Concessionaire will notify the City of any major damage to the Premises to include, but not limited to, any life safety issues, structural issues, fires, and/or water issues. All requests for maintenance and repair to the City, if applicable, must be sent to the City through their preferred method of notification. In the case of conflict between **Exhibit B** and the Concession License, the Concession License shall supersede **Exhibit B**.

E. Utilities: The Concessionaire shall provide internet, Wi-Fi, and cable or satellite television services for the golfing and other public at the Concession Site. A copy of the contract or service agreement for Wi-Fi and cable or satellite television services shall be provided to the Director within thirty (30) days of signing or upon request. Concessionaire shall provide notice to the Director of any modifications or cancellation of the contract or service agreement. All service charges for internet, Wi-Fi, and cable or satellite television service shall be paid directly by the Concessionaire. The Concessionaire will be responsible for the following share of utility costs for the Clubhouse: 1) gas: one hundred percent (100%); 2) electricity: eighty-four percent (84%); 3) water and wastewater: eighty-four percent (84%). After receipt of utility bills, the City shall send an invoice monthly to Concessionaire for the Concessionaire's share of utility costs, which the Concessionaire shall pay to the City within thirty (30) days following receipt of invoice. The City provides, pays for and maintains the telephone land lines and the intrusion alarm system in the entire Clubhouse. The Concessionaire shall endeavor to take reasonable measures to avoid unnecessary or wasteful use of energy and water and will make every reasonable effort to participate in conservation programs that the City may sponsor or support.

F. Vehicles & Storage: Vehicles and trailers serving the Concession Site shall be parked, other than during short-term delivery of goods and materials, in a lawful manner and so as not to impede access or use of Evergreen Golf Course or Clubhouse by patrons. All storage of items shall be provided by the Concessionaire either within provided storage areas at the Concession Site or off-site in a lawful manner. Items not needed for the

performance of this Concession License shall not be kept or stored in the Concession Site or on adjoining City-owned property.

G. Contact: The Director will be designated to be Concessionaire's contact for the purposes of this Concession License. The Concessionaire shall provide the Director with telephone numbers and email addresses at which the Concessionaire can be reached. A full-time manager, including assistant managers or alternative contacts in the case managers cannot be reached, responsible for operations at the Concession Site must be designated and emergency contact telephone numbers for said manager provided to the Director. Whenever Concessionaire is not able to operate the Concession on a particular day, Concessionaire shall promptly contact the Director.

H. Special (Non-Golf) Events: Concessionaire may propose to schedule or hold special, non-golf events in or about the Clubhouse, including rental or use by other third-parties, subject to the City's approval. All non-golf events during Concession Operating Hours which Concessionaire may propose to schedule or hold in or about the Clubhouse must be approved, in writing, by the Director, prior to scheduling such events. In preparing the written request for approval, the Concessionaire must fully identify and describe the event, and the Director must expressly approve subject to any conditions or restrictions the Director may deem appropriate. The Director may, in the Director's sole discretion, approve or deny a request for a special, non-golf events for one or any of the following reasons:

1. Activities and uses that could interfere with the golfing public's access to and use of the Clubhouse, parking lots, and the surrounding area, including the golfing public's access to food and beverage services provided by the Concessionaire.
2. Activities utilizing public address or sound amplifying systems, live music, or other sounds or noise not typical to the operation of Evergreen Golf Course.
3. Activities or uses that would occur after 11:00 p.m. any day.

Notification and subsequent approval by the Director may be by electronic mail and shall be deemed sufficient.

I. Monitoring & Reporting: The Concessionaire shall monitor and record inappropriate or illegal activity that may occur in the Clubhouse or on the Golf Course on a regular basis and shall notify, in a prompt manner, the appropriate authorities, including the police or sheriff and the Director, of unlawful acts, dangerous or destructive activities, and unpermitted events. Furthermore, the Concessionaire shall timely notify the Director of any needed maintenance or repairs to the Concession Site that are outside of the Concessionaire's responsibilities. Any damage caused by the Concessionaire's failure to promptly notify the Director shall be the responsibility of the Concessionaire.

J. Capital Improvements:

1. **Initial Capital Improvements.** Within the first three (3) years of the Term, Concessionaire shall perform a minimum of **FIFTEEN THOUSAND DOLLARS AND ZERO CENTS (\$15,000.00)** of Capital Improvements ("**Initial Capital**

**Improvements**”). Subject to the limitations and requirements of this subparagraph J., as well as this Concession License and its Terms and Conditions (*See* Section X below). The cost or value of the Capital Improvements under this section shall not be performed in lieu of or used as a credit toward the GAMP, or Percentage Payment.

2. Annual Capital Improvements. In addition to the Initial Capital Improvements above, in each year of this Concession License, the Concessionaire shall perform Annual Capital Improvements, subject to the needs of the Premises or the Golf Course, in an amount equal to or greater than **FIVE THOUSAND DOLLARS AND ZERO CENTS (\$5,000.00)** (“**Annual Capital Improvements**”). Subject to the limitations and requirements of this subparagraph J., as well as the Concession License and its Terms and Conditions (*See* Section X below), the Concessionaire may perform the Annual Capital Improvements, or may contribute funds to the City in the amount of \$5,000.00 per year. The selected Annual Capital Improvements projects must be approved in advance by the Director. The cost or value of any Annual Capital Improvements shall not be performed in lieu of or used as a credit toward the GAMP or Percentage Payment.

3. In each year, if Annual Capital Improvements in an amount less than \$5,000.00 is performed, or an amount less than \$5,000.00 is expended under this subparagraph J., then any remaining work or amounts may be rolled over into the next contract year with prior written approval of the Director; except that all work must be performed, and all funds must be expended prior to the end of the term of the Concession License. If all work is not fully performed and all funds not expended by the end of the Term, then the City shall be entitled to payment of the Capital Improvements Contribution or the same value of the work from the Concessionaire. The Concessionaire shall provide an assessment of the facility and building needs, or shall coordinate with the Director to complete an assessment of Capital Improvement needs.

Promptly upon completion of all Capital Improvements Contribution projects, the Concessionaire shall submit final invoices or receipts documenting the actual costs of each project to the Director.

4. For any Capital Improvements under this subsection J., Concessionaire and the Director shall cooperate in developing the improvement design and construction plans and schedule, including selection of the design and construction professionals, to first develop an appropriate cost proposal for the Capital Improvements, then to cooperate and coordinate on further design and construction through completion of the improvements. By February 1<sup>st</sup> of each year, the Concessionaire shall submit a list of proposed projects and costs for which it proposes to apply the Capital Improvements Contribution towards, and/or its proposal to rollover the Capital Improvements Contribution to the next contract year. The Director shall either approve or disapprove the Concessionaire’s proposal, either in whole or in part, within thirty (30) days of submittal.

5. All Capital Improvements made are to be permanent in nature to enhance the value and utility of the Concession Site. All Concessionaire Improvements, including plans, are subject to the prior written approval of the Director and the requirements of Section 2-1 of the Terms and Conditions (*See* Section X below). All Concessionaire Improvements shall be the property of the City upon completion and acceptance by the

City. Other improvements may be proposed by Concessionaire to be constructed or installed, at Concessionaire's sole expense, subject to the requirements of Section 2-1 of the Terms and Conditions (*See Section X below*).

K. Dates & Hours of Operation: At a minimum, food and beverage services shall be available 30-minutes before the first tee time to 30-minutes after sunset during all hours of operation of Evergreen Golf Course ("**Concession Operating Hours**"). The typical operating season is May 1<sup>st</sup> to October 31<sup>st</sup> (weather dependent). When Evergreen Golf Course is not open for play, the Concession Site hours of operation are at the Concessionaire's discretion. The City Golf Professional shall communicate the Pro Shop hours to the Concessionaire. Maintenance and repair services are to be provided when and where needed, year-round.

L. Snow Removal: Concessionaire is responsible for snow removal within 100 feet of Clubhouse and all walkways during Concession Operating Hours and during any period Concessionaire is operating the Concession Site. City shall provide snow removal for the parking lot; however, Concessionaire shall provide prior notice to the City anytime parking lot snow removal is needed for Concession operations.

M. Terms & Conditions: The Concessionaire shall comply with and satisfy the duties and obligations of the Terms and Conditions (*See Section X below*).

V. CITY'S RESPONSIBILITIES: The overall operation of the Golf Course and the Concession Site is conducted under the supervision and authority of the City. The following responsibilities will remain solely with the City:

A. Golf Course Maintenance: Maintenance of the Golf Course and decisions relating to maintenance of the Golf Course, including but not limited to the periodic mowing and other routine maintenance of all turf areas and routine maintenance of the driving range irrigation system, including landscaping around the Clubhouse.

B. Golf Course Operations: Operations of the Golf Course and Pro Shop, including but not limited to hours of operation of the Golf Course and Pro Shop, reservation and tournament scheduling and policies, retention of course fees, and establishment and enforcement of rules and regulations for play and use of Golf Course facilities.

C. Enforcement of Concession License: The monitoring, evaluation and enforcement of the Concession License and assuring Concessionaire complies with the Concession License.

D. City Improvements: The City intends, at the sole discretion of the Executive Director, to make certain improvements to or about the Clubhouse, subject to prior appropriation and availability of funds ("**City Improvements**"). The Concessionaire shall cooperate with the City in making these City Improvements and shall provide access to the Concession Site to the City or its contractors when needed for the City Improvements to be made, as provided in the applicable Terms and Conditions (*See Section X below*).

E. Concessionaire Option to Maintain or Repair: For any repair or maintenance that is the City's responsibility under this Concession License, the Concessionaire may request to

perform or arrange to have a third-party contractor perform the maintenance or repair. The City may in its sole discretion accept or deny such a request. If the City decides to consider a request, the City will prepare or obtain a price and time estimate or quote for the proposed repair or maintenance and will provide it to the Concessionaire. The Concessionaire will be directed to obtain its own estimate or quote for the same repair or maintenance work, and propose to perform the work or arrange for performance of the work. The Concessionaire’s proposal must include a work plan or designs, and the work must be executed as required under this Concession License, including use of acceptable materials and installation methods; properly certified, licensed, qualified, bonded, and insured contractors; properly selected contractors; and other requirements under this Concession License. If the Director agrees to proceed with the Concessionaire’s proposal, and the work is satisfactorily executed, the Director will agree to apply the cost or value of the work as a credit toward the GAMP, the Percentage Payment, or may agree to split the cost with the Concessionaire.

F. Terms & Conditions: The City shall have the right to exercise all authority set forth in the applicable Terms and Conditions (Section X below).

VI.	<u>TERM:</u>	<u>EFFECTIVE DATE:</u>	<u>EXPIRATION DATE:</u>
		Date Concession License is executed by City	Tenth (10 <sup>th</sup> ) year anniversary of Effective Date

Unless revoked in accordance with Section 7 of the Terms and Conditions (*See* Section X below).

VII. COMPENSATION TO BE PAID TO CITY: Compensation shall be paid to the City and financial records shall be maintained in accordance with Section 4 of the Terms and Conditions (*See* Section X below) and as follows:

Starting on the effective date of this Concession License, all Concession sales and receipts shall be recorded on a Point-of-Sale system designed to accurately record all sales and receipts. Electronic records (and, if requested by the City, paper copies) of all transactions and bank deposits shall be maintained along with appropriate bookkeeping and accounting practices to document Gross Revenues.

A. Percentage Payment of fifteen percent (15%) of all Gross Revenues, to be paid to the City by the 20<sup>th</sup> day of the month following the month in which the Gross Revenues were received or due (subject to proration from the date of occupancy for the first partial year). Interest on late payments shall accrue in accordance with Section 4-1 c. of the Terms and Conditions beginning the 21<sup>st</sup> of the month. If operations have commenced but Concessionaire has not yet obtained a liquor license, the Percentage Payment shall be seven and a half percent (7.5%) if all Gross Revenues until Concessionaire obtains a liquor license, or until July 30, whichever is earlier. Afterwards, the Percent Payment shall be 15%.

B. Monthly revenue reports, in a form prescribed by the Director, shall be provided to the Director by the 10<sup>th</sup> of each month for Gross Revenues received in the previous month.

- C. Each year, the January through February monthly percentage payments, due the 20<sup>th</sup> of the following month, are calculated by multiplying the monthly gross revenue by 15%.
  - D. Guaranteed Annual Minimum Payment (“GAMP”) of **ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS AND ZERO CENTS (\$125,000.00)**, to be paid by April 1<sup>st</sup> each year during the Term of the Concession License. For the first year of the Term, however, GAMP will be waived. After GAMP has been paid starting in 2027, no Percentage Payments will be due until the Percentage Payment exceeds the GAMP amount for that year.
  - E. The first GAMP payment shall be due April 1<sup>st</sup>, 2027. Afterwards, GAMP shall be due on April 1<sup>st</sup> of each year of the Term. Interest on late payments shall accrue in accordance with Section 4-1 c. beginning April 2<sup>nd</sup>. GAMP must be paid between March 21<sup>st</sup> and April 1<sup>st</sup> each year. To calculate the current year’s GAMP payment, total the current year’s January through February percentage payments to arrive at the total current year percentage payments; subtract the total current year percentage payments from the year’s GAMP to arrive at the current year GAMP payment. If the current year GAMP payment is negative, no GAMP payment is due for the current year. If the current year GAMP payment is positive, the GAMP payment is due on April 1<sup>st</sup> of the current year.
  - F. Each year, the March through December current monthly percentage payments are calculated as follows: If a current year GAMP payment was required then no payment is due until the total of all percentage payments for the year exceeds the year’s GAMP amount. If no current year GAMP payment was required, then a percentage payment is due each month, March through December, on the 20<sup>th</sup> of the following month.
  - G. An annual revenue report, in a form prescribed by the Director, shall be provided to the Director by no later than March 31<sup>st</sup> of each year for Gross Revenues received in the previous year. The Concessionaire shall provide, at minimum, an annual statement of Gross Revenues with Point-of-Sale back-up reports, audited and certified by a Certified Public Accountant, as well as the prior year’s tax returns (which do not need to be certified), and annual income statement.
- VIII. PAYMENT AND PERFORMANCE BOND: Concessionaire shall deliver to the Executive Director a satisfactory performance bond or letter of credit to assure performance under this Concession License in the amount of Fifty Thousand Dollars (\$50,000.00), as specified in Sub-section 5-4 of the Terms and Conditions (*See Section X below*); and a satisfactory performance and payment bond or letter of credit to assure all contracted maintenance and repair work and all financial obligations associated with said work, as specified in paragraph f. of Sub-section 2-4 of the Terms and Conditions (*See Section X below*), in the amount of Ten Thousand Dollars (\$10,000.00). Concessionaire shall have until one hundred twenty (120) days after execution of the Concession License to deliver satisfactory

bonds. If satisfactory bonds are not delivered by the 120<sup>th</sup> day, the City in its option may extend the delivery date an additional sixty (60) days. The City shall have the option of suspending Concessionaire’s operations or suspending certain work if satisfactory bonds are not timely delivered; and shall have the option to exercise any remedies under this Concession License if the failure to deliver satisfactory bonds cannot be reasonably resolved.

IX. INSURANCE COVERAGE: In accordance with Sub-section 5-2 of the Terms and Conditions (*See Section X below*), the following amounts of insurance coverage are required:

Commercial General Liability	\$1,000,000.00 per occurrence
	\$2,000,000.00 general aggregate limit
	\$1,000,000.00 products-completed operations aggregate limit
	\$1,000,000.00 personal & advertising injury
	\$300,000.00 fire damage legal
Worker’s Compensation	Colorado statutory requirements
Business Auto Liability	\$1,000,000.00 per occurrence
Liquor Liability Insurance	\$1,000,000.00

The amounts and types of insurance coverage required above shall be subject to review every four (4) years during the term of this Concession License and upon any renewal of this Concession License. If it is determined by the City’s Risk Management Office that changes in the amounts or types of insurance coverage are needed in order to address changed conditions or inflationary conditions, Concessionaire shall be notified, in writing, to make the required changes in insurance coverage within ninety (90) days of notification. The City has the option to require Concessionaire to carry property insurance on the Concession Site, including business interruption coverage, with the City named as a Loss Payee.

X. TERMS AND CONDITIONS: All sections and sub-sections of the Terms and Conditions, hereto attached and hereby incorporated into this Concession License, are applicable to this Concession License, except as otherwise provided in this Concession License. In the event of any conflicts or inconsistencies between the specific provisions of the Concession License set out above and the attached Terms and Conditions, the specific provisions above shall control.

- XI. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Concessionaire as set forth in Section 4 of the Terms and Conditions.
- XII. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Concessionaire consents to the use of electronic signatures by the City. The Concession License, and any other documents requiring a signature under the Concession License, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Concession License solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Concession License in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

**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 X.

**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 to 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 in the Concession License and the Concessionaire’s successors and approved assigns, subcontractors, and transferees.
- 1-5. “Concession” shall mean the right to operate sales, service and other concession activities as expressly authorized by the Concession License.
- 1-6. “Concession License” shall mean the concession license agreement to which these Terms and Conditions are attached and any exhibits and other attachments to that Concession License and any duly approved and executed amendments to the Concession License.
- 1-7. “Concession Site” shall mean the kitchen, kitchen storage areas, dining area, and bar areas and office as defined in the Concession License.
- 1-8. “Executive Director” shall mean the Executive Director of the Department of Parks and Recreation, City and County of Denver, or the Executive Director’s authorized representative.
- 1-9. “Fixture” shall mean any goods, items and other articles, other than Improvements, which are affixed to the Concession Site and which ultimately becomes the property of the City because they cannot be removed without damage to the Concession Site.

- 1-10. "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 after deducting any discount at the point of sale, but before deducting any costs, expenses, or losses, except applicable excise taxes collected from customers on behalf of government agencies, tips and gratuities, and deposits for a rental, function or event, but only if all of the revenue from the rental, function or event including the deposit is reported together after completion of the rental, function or event, may be deducted. If Concessionaire provides discounts the amount of which the Concessionaire is later reimbursed, then the discount shall not be deducted from Gross Revenues, but shall be included in the reported Gross Revenues.
- 1-11. "Guaranteed Annual Minimum Payment" ("GAMP") shall mean a minimum dollar amount, which the Concessionaire agrees to annually pay, as specified in the Concession License.
- 1-12. "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.
- 1-13 "Premises" shall mean the entire real property and structures covered by the Concession License, including the Concession Site, and any Improvements and Fixtures.
- 1-14. "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 approved by amendment to the Concession License.

**SECTION 2 – IMPROVEMENTS; OWNERSHIP AND USE; MAINTENANCE AND REPAIR; PERSONAL PROPERTY**

2-1. CONSTRUCTION OF IMPROVEMENTS BY CONCESSIONAIRE:

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 Capital Improvements as set forth in the Concession License, IV.J.

a. Concessionaire agrees that any proposed permanent improvement to the Concession Site, unless otherwise expressly provided in the Concession License, must receive the prior written approval of the Executive Director, which will not be unreasonably withheld provided the proposed improvement serves the stated purposes of the Concession License. Concessionaire further acknowledges and agrees that, except as expressly provided in the Concession License, the Concessionaire shall not be entitled to any reimbursement, reduction in Compensation paid to the City, or any additional extension of the Term or increase in rights or privileges under the Concession License based on any improvements made by Concessionaire to the Concession Site. Upon construction or installation, the additional improvement shall be regarded as an Improvement or Fixture, as appropriate under the Concession License.

1) In accordance with City Charter §2.3.3, §20-56, D.R.M.C., and Executive Order 8, and with the City's approval, the Concessionaire's construction contractor shall be selected by competitive selection, either to a lowest, qualified, responsive bidder, or through a request for qualification (RFQ) or request for proposal (RFP).

2) **MWBE Participation Requirement:** If any construction is to be performed by the Concessionaire through a construction contractor, then such work shall be subject to all applicable provisions of Divisions 1 and 3 of Article III, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 – 29-36 and 28-51 – 28-90 D.R.M.C. and referred to as the “MWBE Ordinance”. In accordance with the requirements of the MWBE Ordinance, the Concessionaire’s construction contractor shall obtain a minimum participation goal to utilize properly certified MWBE subcontractors and suppliers, if that contractor intends to retain subcontractors for the proposed construction. In addition to the applicable provisions of the MWBE Ordinance, the Concessionaire’s construction contractor shall agree, as an express condition of its performance, to comply with the requirements of any approved Division of Small Business Opportunity (“**DSBO**”) Utilization Plan, if applicable. The Concessionaire’s construction contractor shall acknowledge its continuing duty, pursuant to Sections 28-73, 28-74 and 28-75 D.R.M.C. and the MWBE Program, to meet and maintain throughout the duration of the construction its participation and compliance commitments and to ensure that all subcontractors subject to the MWBE Ordinance or the MWBE Program also maintain such commitments and compliance. Failure to comply with these requirements may result, at the discretion of the Director of DSBO, in the imposition of sanctions against the construction contractor in accordance with Section 28-76, D.R.M.C.

b. With respect to any construction or installation work that may be performed on the Concession Site, Concessionaire shall obtain and maintain, or require the contractor(s) and subcontractor(s) to obtain and maintain, 1) insurance in the amounts and types of coverages appropriate for the work, substantially as specified in Sub-Section 5.2, unless otherwise agreed in writing by the City’s Risk Management Office, and b) one hundred percent (100%) payment and performance bonds as specified in paragraph a. of Sub-Section 5.4. The City shall be named as additional insured on insurance coverages, and Concessionaire shall be named as the obligee on bonds. Bonds and insurance shall be subject to review and approval by the City prior to the initiation of any work on the Concession Site. In addition, all contractor(s) and subcontractor(s) shall be required to include an indemnification and “hold harmless” clause, approved by and for the benefit of the City, to protect the City against claims, actions, and demands arising from or related to the work performed by the contractor(s) and subcontractor(s). Evidence that such insurance and bonds have been obtained, satisfy the requirements of this paragraph c. of this Sub-Section 2-1, and have been continuously maintained shall be provided by Concessionaire to the Executive Director. Copies of any construction contracts shall be provided by Concessionaire upon request by the Executive Director. Concessionaire or its contractor(s) and subcontractor(s) shall pay the costs of the bonds and insurance.

c. Prior to the commencement of any work on the Concession Site, 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 Executive Director and, if required, from the Department of Transportation and Infrastructure (“**DOTI**”). Any substantive changes in the work schedule, plans, drawings, and specifications must likewise obtain prior approval by the Executive Director and, if required, from DOTI. 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, keep current, and pay for all necessary licenses, permits, fees, and taxes for its construction and related operations on the Concession Site, including but not limited to site development permits, water and sewer connection fees, building permits, zoning permits, and any other necessary approvals, as required, 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, federal and other local laws. To the extent applicable, Concessionaire shall conform with the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations. Concessionaire shall require its contractors and subcontractors to comply, to the extent applicable, with the environmental requirements of Section 3-12.

e. Depending on the scale of the construction project, the Executive Director 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 one hundred percent (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 two percent (2%) of the total value of the Improvements or Fixtures being made or installed, or Ten Thousand Dollars (\$10,000), whichever is the greater or at an amount agreed to by the City's Risk Management Office. The City and County of Denver, its employees and officers shall be named as loss payee and additional insured.

f. Prevailing Wage Requirements:

1) 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.

2) 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.*, D.R.M.C., including but not limited to 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, D.R.M.C. 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 Section 20-76, D.R.M.C., which is part of the Concession License.

3) In accordance with Section 20-76(b), D.R.M.C., 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, D.R.M.C., 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.

4) 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 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.

g. Compliance with Denver Wage Laws: To the extent applicable to the Contractor's provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City's Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Concession License, the Concessionaire expressly acknowledges that the Concessionaire is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Concessionaire, or any other individual or entity acting subject to this Concession License, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

h. 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, replacements or repairs 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.

i. 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, by DOTI. The City shall have the right, at any time during the construction period, for its inspector(s) to access the Premises and inspect and monitor 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, by DOTI.

j. 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. In the event the City should determine, in its discretion, that it is necessary or appropriate for the City to pay any claim made by a contractor, subcontractor, supplier, manufacturer and dealer for all labor, equipment and material used or furnished for improvements under this Sub-Section 2-1, the City shall have a right to recover this payment from Concessionaire or its contractor and to seek any other remedies, legal or equitable, available under law to assure the City is reimbursed.

## 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, if any, 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 Executive Director in writing. Concessionaire may not sell or offer goods or provide or offer services on Department of Parks and Recreation property outside of the Premises, unless otherwise so permitted in the Concession License or authorized by the Executive Director in writing. Concessionaire shall use the Premises in a careful, safe, and proper manner and shall not use or permit the Premises to be used for any purpose prohibited by the laws of the United States of America, the State of Colorado, the Charter or ordinances of the City and County of Denver, or the written policies and rules and regulations of the Denver Department of Parks and Recreation.

c. 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 Premises.

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. The Premises are accepted by Concessionaire in an “AS IS, WHERE IS” condition, with all faults and defects. No additional work will be performed by the City and Concessionaire hereby accepts the Premises in its as-is condition. The City does not make and disclaims any warranty or representation whatsoever, express or implied, and shall have no obligation or liability whatsoever, express or implied, as to the condition of or any other matter or circumstance affecting the Premises

b. The City reserves a full right of entry on and into the Premises 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 Premises 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:

a. Unless otherwise provided in the Concession License and subject to the terms and conditions of this Sub-Section 2-4 and the availability of appropriated funds, the City will maintain and repair existing structural elements of the building or other structures at the Premises, 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 Sub-Section 2-4 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 Premises or used by the Concession. The City may, at its sole discretion, improve, expand, or replace said Systems. If any facility, structure, element, item, equipment, or fixture, and any repair, maintenance or care thereof, is not addressed in the Concession License or these Terms and Conditions, then the City may in its sole option and discretion address the matter as it deems fit.

c. The City or its contractors and agents shall have the right to enter upon the 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 operations. 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 Executive Director, 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. Notwithstanding any other provision in this Sub-Section 2-4 but subject to any modifications specified 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 (subject to Section 3-7.c., below); 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 as well as blocks to those 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, kitchen hood, and fire suppression system; 12) refrigerators or refrigeration units and freezers or freezing units; 13) stoves, ovens, cooktops, ranges and grills; 14) drinking fountains; 15) televisions, video games, and computer systems; 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.

f. Upon execution of the Concession License, 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 Executive Director. This bond or letter of credit shall be in the amount specified in the Concession License and shall comply with the requirements of Section 20-53, D.R.M.C. If the cost of any work under paragraph e. of Sub-Section 2-4 is anticipated to exceed the amount specified in the Concession License, then any supplemental bond, letter of credit or other financial assurance acceptable to the Executive Director must be provided prior to commencement of work.

g. For any work performed under paragraph e. of Sub-Section 2-4, Concessionaire shall comply with paragraph g. of Sub-Section 2-1 regarding payment of prevailing wages and may be required to comply with paragraph j. of Sub-Section 2-1. regarding lien waiver or release and the City's right of recovery and other remedies should the City have to pay a claim.

h. 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.

i. 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, in carrying out these obligations, with paragraph g. of Sub-Section 2-1 regarding payment of prevailing wages and any applicable wage laws and requirements set forth in the D.R.M.C.

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

k. For any applicable work performed under Sub-Section 2-4, Concessionaire shall comply with paragraph h. of Sub-Section 2-1 regarding payment of minimum wages and may be required to comply with paragraph k. of Sub-Section 2-1. regarding lien waiver or release and the City's right of recovery and other remedies should the City have to pay a claim. Nothing in this subsection shall be deemed to lessen any obligations of Concessionaire to comply with the payment of prevailing wages to covered workers. Should a prevailing wage requirement for covered work be greater than the City's minimum wage requirement, the greater wage rate shall be paid. If the City's minimum wage requires payment of a higher wage rate than an applicable prevailing wage requirement for covered work, the City's minimum wage shall be paid to any covered worker for all covered work.

2-5. PERSONAL PROPERTY:

a. Concessionaire shall supply all personal property, including furnishings 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, including furnishings and equipment, used by Concessionaire 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, including furnishings 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 Executive Director 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. 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 Three Hundred Dollars (\$300.00) 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. 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) Three Hundred Dollars (\$300.00) 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 (6) 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, unforeseen and unpreventable natural events that disrupt or prevent operations, 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 Executive Director.

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 Premises 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 or maintain 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. Concessionaire shall not commit or suffer to be committed any waste or damage upon the Premises or the adjoining City-owned property.

d. Concessionaire agrees that no improvements, changes, alterations, additions, or repairs shall be made to the Concession Site or any use of 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.

e. Amusement or vending machines and ATM machines may be installed or maintained in or on the Premises, provided that the Executive Director may set reasonable requirements and restrictions regarding quantity, placement, appearance, and type of machines.

f. 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 equal to or greater 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 Executive Director unless the Executive Director 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 by the licensing authority 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 suspension or revocation of the Concession License.

3-5. ALCOHOL & DRUGS POLICY; SMOKING POLICY; SALE OF TOBACCO PRODUCTS

a. Concessionaire and its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring Concessionaire or any offending directors, officers, agents, and employees from City facilities or participating in City operations. Concessionaire, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug use. Concessionaire shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations.

b. Concessionaire agrees to adopt and enforce a “no smoking” policy in all areas of the Premises. Concessionaire’s written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Executive Director and generally applicable to specified facilities under the auspices of Parks and Recreation. Concessionaire shall comply with D.R.M.C. Section 24-301 *et seq.* concerning Environmental Tobacco Smoke Control.

c. 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.

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 an authorized 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 Executive Director. Such signage shall conform to any standards established by the Executive Director and to all zoning and other code requirements for signs. Any sign promoting the Concession shall recognize, in a manner acceptable to the Executive Director, the Denver Department of Parks and Recreation 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, whether standard lock, combination lock, or electronic lock, 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, combination, or any codes, therefore are maintained on the Concession Site and copies of all keys, combinations, and codes are provided to the Director, nor refuse, upon the expiration, revocation, or termination of the Concession License, to surrender to the City any and all keys, combinations, and codes to windows and doors in and on the Concession Site, whether said keys, combinations, and codes were furnished to or otherwise procured by Concessionaire. If any keys, combinations, or codes 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 (5) 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 (21) 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 Executive Director 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 (10) year period *or* the conviction for a lesser crime appears, based on competent 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 Executive Director 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. CRIMINAL ACTS:

During the Term of the Concession License, a conviction of 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, 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. PATENTS, TRADEMARKS, COPYRIGHT, AND LICENSES:

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, equipment, articles, business programs, computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans used by it in its operations under or in any way connected with this Concession. Any and all services, processes, equipment, articles, business programs, computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans owned or authorized for use by Concessionaire prior to the execution of the Concession License shall remain the sole property of Concessionaire. Any computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans created or developed by the Concessionaire with respect to the operation of the Concession or provided or authorized by the City for the Concessionaire’s use shall be promptly returned to the City upon the expiration, revocation or termination of this Concession License and all rights and interests thereto released by 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 or violation of any patent, trademark, copyright, or license or 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. If the City determines that Concessionaire is in violation of this Section 3-10, the City may seek any remedy available at law or equity or under this Concession License, including suspension or revocation of the Concession License and any remedy consistent with United States patent, trademark, or copyright laws or applicable licensing restrictions.

3-11. 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.

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, contractors 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 3-12.

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 Concession 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 Executive Director.

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 Executive Director. 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 Public Health & Environment or the Environmental Protection Agency.

l. Concessionaire must notify the Executive Director 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 Executive Director may impose such requirements, including prohibition of possession, use, or storage, as the Executive Director deems necessary to adequately protect health and the human environment. Thereafter, Concessionaire must notify the Executive Director 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 Executive Director 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.

3-12. 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.

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.

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 Executive Director of Finance. In the alternative, and in lieu of payment at the above location, Concessionaire shall make payments electronically as directed by the City.

c. Upon failure to make prescribed payments by the date provided in the Concession License, interest of eighteen percent (18%) per annum, or the maximum interest rate allowed by law, shall accumulate and be paid for all amounts past due.

4-2. BOOKS OF ACCOUNT AND AUDITING:

a. Bookkeeping System. Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the Auditor. Such system shall be kept in a manner that distinguishes each Concession that is operated by Concessionaire from all other Concessions operated by Concessionaire.

b. Records Maintenance. Concessionaire shall maintain, in accordance with GAAP, accurate books and records in connection with the business conducted by Concessionaire hereunder. Concessionaire shall retain such books and records for a period in accordance with this Concession License and shall make such books and records available for inspection by representatives of the City, including, without limitation, the Auditor and independent auditors hired by the City. Such books and records shall include, without limitation, all sales slips, cash register tapes, stand sheets, sales books, bank books or duplicate deposit slips, and all other evidence of total receipts, Gross Receipts, Direct Operating Expenses, Net Operating Profits, Net Operating Losses, Minimum Guaranteed Payments, City Commissions, Monthly Reports, Weekly Reports, Annual Reports, and CCC Business Incentive Fund, Marketing Fund, Additional Expenditures, and Reserve Fund balances (collectively, the “**Financial Records**”).

c. Examination of Records. Any authorized agent of the City, including the Auditor, his or her representative, or independent auditors hired by the City, has the right to access and the right to examine and/or audit any Financial Records and other pertinent books, documents, papers and records of Concessionaire (together with the Financial Records, the “**Records**”), involving transactions related to this Concession License until the later of three (3) years after the final payment under this Concession License or expiration of any applicable statute of limitations. Concessionaire shall make its Records available to the City within fourteen (14) calendar days of its receipt of a written request from the City for the same. Concessionaire may satisfy this requirement by either: (i) making the Records available for examination within the Denver metropolitan area; or (ii) paying the City, in full and in advance, travel and related expenses for a City representative to travel to any location outside the Denver metropolitan area for such examination. Upon completing such 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.

d. Audit Deficiencies. If the City determines after an audit for any Term Year of the Concession License that any payment(s) made to the City were understated or materially misstated in the Annual Report, Concessionaire shall pay the amount of the deficiency plus interest at two percent (2%) per month compounded daily computed from the date due until the date paid. If such payments were understated or materially misstated by more than one percent (1%), Concessionaire shall pay to the City the cost of the audit in addition to the deficiency and interest. If the City determines after an audit that the City was overpaid, the City shall have the option to either credit an overpayment against a subsequent amount due or provide a refund to Concessionaire.

e. Inspection of Records. Concessionaire agrees that the City, and any of the City’s agents including the Auditor or an authorized representative of 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 (or Executive Director) of Finance and any related reports, document, data or other information generated by the City’s Executive Director of Finance or employees under the control of the Manager of Finance in connection with any investigation or audit of Concessionaire by the City’s Department of Finance. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the City and any of its agents, including but not limited to the Auditor or an authorized representative of the Auditor, and waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

f. Required Onsite Records. Concessionaire shall keep within the Concessionaire proper, adequate, and accurate accounting books and records prepared in accordance with a bookkeeping system approved in writing by the City documenting all business and transactions engaged in by Concessionaire pursuant to this Concession License. Such onsite books and records shall include, without limitation, daily receipts and expenses, daily bank deposits, daily sales records, and copies of all business tax returns filed with the State of Colorado and all federal income tax returns.

g. Cash Registers and Inventory Sheets. At each location where cash registers are used, cash register tapes shall be balanced with the inventory to determine the Gross Receipts from that location. At each location where cash registers are not used, the Inventory Method shall be used to determine Gross Receipts. Concessionaire shall retain all cash register receipts and stand inventory sheets in accordance with this Concession License; and these documents are subject to audit by the City in accordance with this Concession License.

h. 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 31<sup>st</sup> of each and every year during the Term of the Concession License, Concessionaire shall furnish to the Executive Director 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 Executive Director, in the Executive Director's discretion, if such modification is in the best interests of the City.

i. 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 (3) 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 Executive Director 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.

j. 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 eighteen percent (18%) per annum interest, or the maximum interest rate allowed by law, for being past due. If the Gross Revenues are understated by more than three percent (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.

k. Concessionaire agrees that the Executive Director 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 Executive Director of Finance and any related reports, document, data or other information generated by the City's Executive Director of Finance or employees under the control of such Executive Director of Finance in connection with any investigation or audit of Concessionaire by the City's Department of Finance. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the Executive Director 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, SURETIES AND FINANCIAL OBLIGATIONS**

### **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, contractors or 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, its appointed and elected officials, agents or employees.

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.

f. 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 Concession License, 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 the time period specified in Sub-Section 8-8. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties as provided in Sub-Section 8-1. Such notice shall reference the City contract number listed on the signature page of this Concession License. Said 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. If such written notice is unavailable from the insurer, Concessionaire shall provide written notice of cancellation or non-renewal as well as any reduction in coverage to the parties as provided in Sub-Section 8-1 within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. 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, including these insurance requirements, to its insurance agent or broker. Concessionaire certifies that the certificate of insurance provided to the City, preferably an ACORD certificate, shall comply with all insurance requirements of the Concession License. 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. 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, Business Automobile Liability, Liquor Liability and Contractor's Pollution 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. Contractors and Consultants: All Contractors and Consultants (including independent contractors, subcontractors, sub-consultants, suppliers or other entities providing goods or services required by this Concession License) 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 Contractors and Consultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such Contractors and Consultants maintain the required coverages. Concessionaire agrees to provide proof of

insurance for all such Contractors and Consultants 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 Concession License, 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 shall maintain 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. Contractors Pollution Liability: Concessionaire shall require any construction contractor to maintain limits of \$1,000,000 per occurrence and \$2,000,000 policy aggregate. Policy to include bodily injury; property damage including loss of use of damaged property; defense costs including costs and expenses incurred in the investigation, defense or settlement of claims; and clean up costs (Construction Contractors only).

j. Professional Liability (Errors & Omissions): Concessionaire shall require any design professional for construction to maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit (Design Professionals only).

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

l. 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 revocation of the Concession License, as provided in Sub-Section 7-1, 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, including furnishings 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 unforeseen and unpreventable natural events or acts by third persons that disrupt or prevent operations. 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 and any losses or damages are not the direct result of the gross negligence or willful or wanton acts of Concessionaire or Concessionaire's officers, employees, contractors or agents, 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 or surety 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, or other surety, acceptable to and approved by the Executive Director and, if DOTI is managing the project, the Executive Director of DOTI, each in the amount equal to one hundred percent (100%) 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, D.R.M.C. Satisfactory proof of renewal must be provided at least sixty (60) days prior to the date of expiration of the bond or other surety if the construction is not completed and accepted by the City. The bond or other surety shall remain in effect or be promptly renewed or replaced by another bond or other surety acceptable to the City throughout the course of the Improvement or Fixtures work and for a ninety (90) day period after the completion of the work and any warranty period or other period prescribed by law.

b. Performance Assurances for Operations: Concessionaire shall deliver to the Executive Director, 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 Executive Director, 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 Executive Director 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 the revocation of the Concession License under Sub-Section 7-1, upon failure to provide proof that the required sureties 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 sureties are not available or have not been provided.

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 municipal, state or federal licenses or permits, required for the conduct of the concession, and further shall not permit any of said taxes, excises, or license or permit fees to become delinquent and shall pay any fine or penalty should there be a delinquency or violation of law. Upon request, Concessionaire shall provide proof to the City of payment of all taxes, excises, license and permit fees, fines or penalties.

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.

e. If Concessionaire elects, in good faith, to defend against or legally contest any claims, demands, liens or orders that arise under this Sub-Section 5-5, Concessionaire shall take prompt and sufficient measures to do so, shall at all times protect the interests of the City in the Premises and in this Concession License, shall notify the Executive Director of what measures and other actions Concessionaire is taking in this regard, and, if Concessionaire is not completely successful in its efforts, shall promptly and fully pay any financial obligations as specified by

order, judgment, decree or as otherwise provided in this Sub-Section 5-5.

5-6. UTILITIES:

All charges, connection fees, 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.

**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 Executive Director may require documented evidence that the proposed assignee, subcontractor, sub-concessionaire, or transferee has the skills and financial ability to fully perform the Concession License and may require that the proposed assignee, subcontractor, sub-concessionaire, or transferee unequivocally agree, in a signed document satisfactory to the Executive Director and in compliance with the City Charter, (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, sub-concession, or transfer may be permitted only if Concessionaire pays all amounts due and owing to the City before any assignment, subcontract, sub-concession, or transfer is effective. Any assignment, subcontract, sub-concession, or transfer shall be by formal amendment executed in the same manner as the Concession License. Concessionaire shall be responsible in all respects for the work assigned, subcontracted, or transferred unless a release is consented to by the City in writing. Every assignment, subcontract, sub-concession, or transfer shall make the Concession License subject to suspension unless and until the City consents in writing thereto and subject to revocation if the City does not consent. The consent of the City shall be evidenced by City Council approval and the signature of the Mayor.

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 transfer of such stock or equity interest to an existing shareholder or owner resulting from the death of another shareholder or owner with a fifty percent (50%) or more interest shall not constitute a Transfer of Control under this Sub-Section 6-2. Concessionaire shall promptly notify the Executive Director of any proposed Transfer of Control. The Executive Director 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 Executive Director, (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. Any agreement required as a result of a Transfer of Control shall be by

formal agreement or amendment executed in the same manner as the Concession License. Every Transfer of Control shall make the Concession License subject to suspension unless and until the City consents in writing thereto and subject to revocation if the City does not consent. The consent of the City shall be evidenced by City Council approval and the signature of the Mayor.

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, furnishings 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 Executive Director may, at the Executive Director’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 refuses 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 or more when no exclusions or exceptions under the Concession License are applicable or no time extension or waiver has been granted by the Executive Director; or

9. Concessionaire is in violation of Sub-Section 3-9; or

10. The Concessionaire notifies the City or takes action to abandon or vacate the Concession prior to the expiration of the Term of the Concession License; or

11. 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, unforeseen or unpreventable natural events that disrupt or prevent operations, 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

12. Concessionaire fails or refuses 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 Executive Director's reasonable satisfaction; or

13. Concessionaire fails or refuses to comply with or perform any obligations set forth in Section 5 regarding defense and indemnification, insurance, financial assurances, and financial and liability obligations despite notification from the City; 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 substantially 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 or breaches 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 so that the Executive Director 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, unless a shorter time period is otherwise provided in the Concession License and 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 Executive Director. If the Non-Performance cannot be cured within the thirty (30) day time period through the exercise of reasonable diligence, Concessionaire shall 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 Executive Director, 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 Executive Director 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 foregoing 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, 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 affect, alter or diminish any of the obligations of Concessionaire under the Concession License, shall in no event constitute an acceptance of surrender, and shall not affect any other remedies, equitable or legal, available to the City under law.

#### 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 Executive Director, the Concession License may be terminated. "Good cause shown" shall be limited to circumstances where it is impossible for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of sixty (60) days or more for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, unforeseen or unpreventable natural events that disrupt or prevent

operations, 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, and destruction or significant damage to the Premises not caused by Concessionaire or its employees, agents or contractors.

c. For such other reasons and upon such conditions expressly stated in the Concession License, the Concession License may be terminated.

d. Subject to any adjustments the Executive Director may deem appropriate, all Compensation and other payments due and owing the City and any other financial obligations arising from the Concession 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 unforeseen or unpreventable natural events. 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 or any other financial obligations of the Concessionaire arising out of the Concession which remain unpaid. If said removal causes any damage to the Premises, 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, Concessionaire's occupancy thereafter shall be deemed a periodic tenancy from month-to-month at a monthly rental equal to 1) twice the amount of Compensation provided in the Concession License which is in effect as of the final month of the Term; or 2) twice the amount of the highest amount of Compensation paid for any equivalent month during the last year of the Term; or 3) one hundred fifty percent (150%) of the highest amount of Compensation paid to the City for any month during the Term, whichever is higher. Concessionaire shall be subject to all other terms and conditions of the Concession License. Upon ten (10) days written 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:

In addition to other specific remedies provided elsewhere in this Concession License:

a. The equitable remedy of specific performance or declaratory judgment may be sought by either the City or Concessionaire due to a material breach or default by the other party under this Concession License for which the equitable remedy would provide substantial relief.

b. Both the City and the Concessionaire expressly acknowledge and agree that any damages sought for a material violation or default of this Concession License are limited to actual damages and reasonable attorney fees, and both parties hereby expressly waive any rights to consequential, incidental and punitive damages arising from a violation or breach of this Concession License, unless otherwise expressly provided in this Concession License. Actual damages shall include the costs to the City of finding and contracting with a new concessionaire or operator for the Concession.

c. The remedies or other rights of recovery provided in this Concession License shall be cumulative and shall in no way affect any other remedy available to the City under law or equity.

**SECTION 8 – GENERAL PROVISIONS**

8-1. NOTICES:

a. Any notice from the City to Concessionaire shall be deemed validly and sufficiently rendered or given if the same be in writing and personally delivered, by the Executive Director'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 Executive Director. 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 and sufficiently rendered or given if the same be in writing and personally delivered, by Concessionaire's representative or a courier, to the Executive Director or sent by registered or certified return receipt mail addressed to the Executive Director, 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 a copy of the same upon the agent registered by Concessionaire with the Colorado Secretary of State at the Secretary's office in Denver, Colorado or serving a copy of the same upon Concessionaire's legal counsel, if such counsel is known to the Executive Director, and by mailing by registered or certified return request 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 Executive Director shall determine, in the Executive Director's sole discretion, that the purpose and 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 connection with the performance of work under the Concession License, Concessionaire agrees to comply with all applicable laws concerning non-discrimination against persons with respect to hiring, discharging, promoting or demoting, and with respect to matters of compensation, and shall not discriminate against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity or gender expression, marital status, source of income, military status, protective hairstyle, or disability; and Concessionaire further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter with respect to the Concession. Concessionaire further agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity or gender expression, marital status, source of income, military status, protective hairstyle, or disability in connection with such persons' access to and use of the Concession and the provision of any services at the Concession.

8-5. STATUS AND AUTHORITY OF CONCESSIONAIRE:

a. 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.

b. Limited Authority. The scope of authority Concessionaire may exercise shall be as expressly allowed under, or necessarily implied in, this Concession License. Concessionaire shall have no authority to avoid, modify, or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

c. Contracts. This Concession License shall not be construed to grant Concessionaire the right or power to bind, or to impose liability upon, the City through any contracts or agreements Concessionaire may make, unless expressly provided herein or unless the prior, written approval of the Executive Director is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by Concessionaire shall be in its own name and not in the name of the City, and Concessionaire shall be solely liable for assuring that Concessionaire does not breach or default under such contracts and that all moneys owed to vendors and other contracting parties are timely and fully paid.

8-6. 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.

8-7. THIRD PARTIES:

The Concession License does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties, except as permitted for assignments or transfers of control under Section 6, 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.

8-8. SURVIVAL OF CERTAIN PROVISIONS:

The City and the Concessionaire understand and agree that all terms and conditions of this Concession License which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or revocation of this Concession License shall survive such expiration or revocation and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, the Concessionaire's obligations for the provision of insurance and

sureties and to indemnify the City shall survive for a period equal to any and all relevant statutes of limitation, plus the time necessary to fully resolve any claims, matters, or actions begun within that period. All remedies available to the City under this Concession License shall likewise survive the expiration or revocation of this Concession License.

8-9. APPROPRIATION:

Notwithstanding any provision of this Concession License to the contrary, any financial obligation of the City, if any, under this Concession License is contingent upon all funds necessary for performance under this Concession License being budgeted, appropriated and otherwise made available. It is acknowledged and agreed that this Concession License is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

8-10. LOSS OR DAMAGE:

The City shall not be liable or responsible to the Concessionaire for any loss or damage to any property or person occasioned by theft, fire, unforeseeable or unanticipated natural act or force, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, or order of any governmental entity other than the City. In the event of a fire or other casualty in or to the Premises, the Concessionaire shall immediately give notice thereof to the City. If the Premises, through no fault or neglect of the Concessionaire, its agents, employees, invitees or visitors shall be partially destroyed by fire or other casualty so as to render the Premises uninhabitable for the purposes of this Concession License, and the City elects to repair the same, the Compensation provided for herein shall abate until such time as the Premises is made habitable by the City.

In the event of the total destruction of the Premises without fault or neglect of the Concessionaire, its agents, employees, invitees or visitors, or if from any cause the Premises shall be so damaged that the City shall decide not to rebuild (which decision the City may make in its sole discretion), then all Compensation owed up to the time of such destruction or termination shall be paid by the Concessionaire and this Concession Agreement shall be considered terminated.

8-11. DISPUTES:

All disputes between the City and the Concessionaire arising out of or regarding this Concession License will be resolved by administrative hearing pursuant to the procedure established by D.R.M.C. § 56-106(b)-(f). For the purposes of that administrative procedure, the City official rendering a final determination shall be \_\_\_\_\_.

8-12. TIME IS OF THE ESSENCE:

The parties agree that in the performance of the terms, conditions, and requirements of this Concession License, time is of the essence. The parties further acknowledge, affirms, and agree that it is imperative that the Concessionaire exercise due diligence and actively and expeditiously undertake all measures necessary to perform in accordance with this Concession License.

8-13. NO PERSONAL LIABILITY:

No official, officer, director, agent, or employee of either party shall be charged personally or held contractually liable to the other party or its officials, officers, agents, or employees under any term or condition of this Concession License or for any breach, default, or violation under this Concession License.

8-14. COUNTERPARTS:

This Concession License shall be executed in counterparts, each of which shall be deemed to be an original but all of which shall together constitute one and the same instrument.

8-15. 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.

8-16. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Concessionaire consents to the use of electronic signatures by the City. The Concession License, and any other documents requiring a signature hereunder, may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Concession License solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Concession License in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

8-17. LEGAL AUTHORITY:

Concessionaire assures and guarantees that Concessionaire possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to execute this Concession License. The person or persons signing and executing this Concession License on behalf of Concessionaire, does hereby warrant and guarantee that he/she or they have been fully authorized to execute this Concession License on behalf of Concessionaire and to validly and legally bind Concessionaire to all the terms, performances and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Concession License, if there is a dispute as to the legal authority of either Concessionaire or the person(s) signing the Concession License to execute this Concession License.

8-18. CITY EXECUTION OF AGREEMENT:

This Concession License shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.

**Contract Control Number:** PARKS-202582640-00  
**Contractor Name:** M&P CONCESSIONS

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

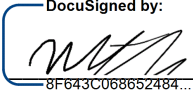
\_\_\_\_\_

By:

\_\_\_\_\_

**Contract Control Number:**  
**Contractor Name:**

PARKS-202582640-00  
M&P CONCESSIONS

By:  \_\_\_\_\_

Name: Megan Gunter  
(please print)

Title: Owner  
(please print)

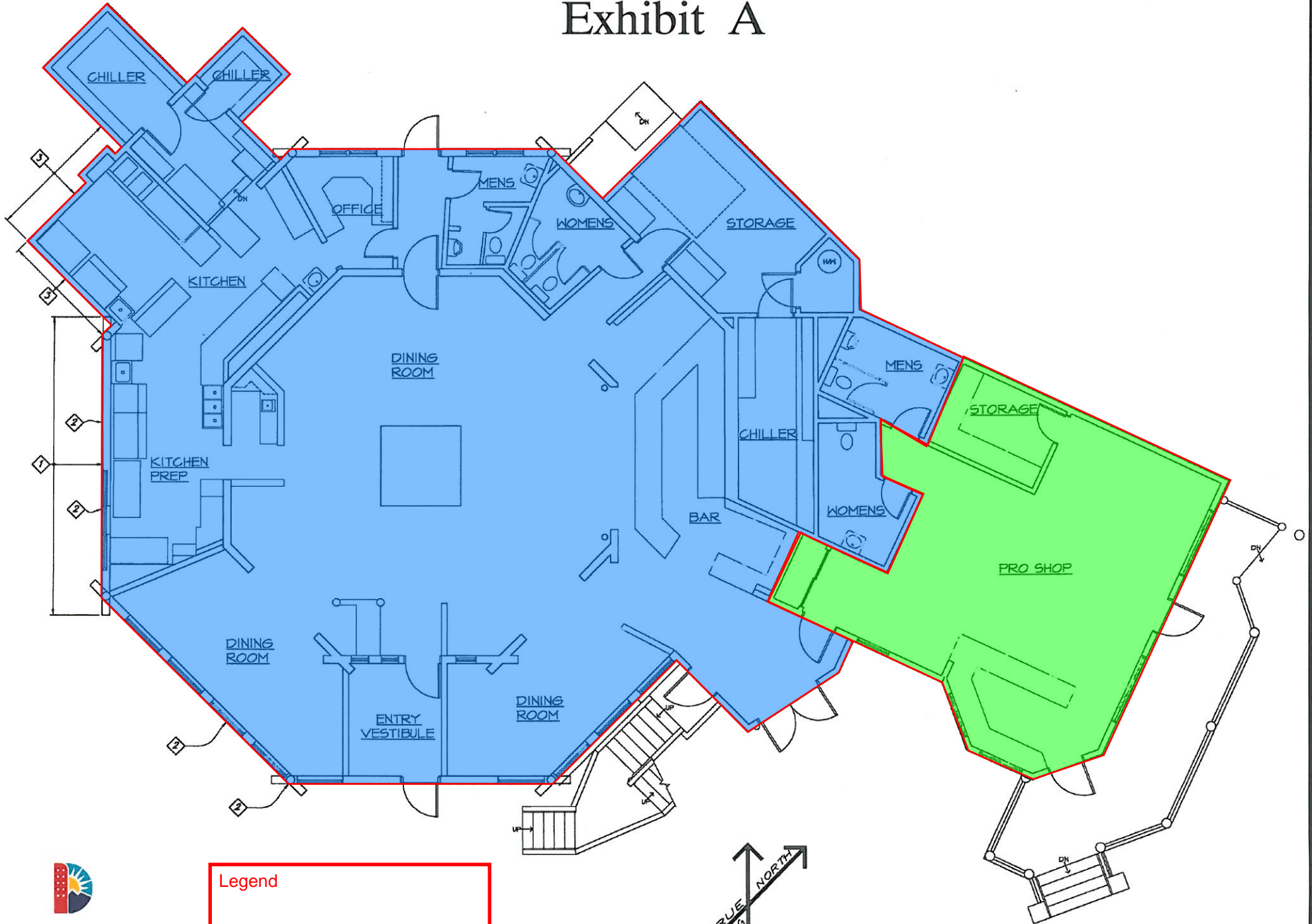
ATTEST: [if required]

By: \_\_\_\_\_

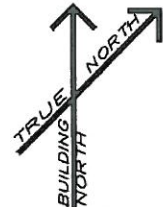
Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)

# Exhibit A



Legend



Storage

Upper/ lower patio  
and exterior bar  
area

Trash/ Recycling

Evergreen Golf Course



## **EXHIBIT B**

### **Maintenance and Repairs Matrix**

This Matrix is a summary of the maintenance responsibilities. Always refer to the Concession License including the Terms and Conditions for details.

<b>ITEM</b>	<b>SECTION</b>	<b>RESPONSIBLE PARTY</b>
<b>UTILITIES</b>		
Electricity and Gas	IV.E., T&C 5-6.	Concessionaire to reimburse City for their percentage
Water and Wastewater	IV.E., T&C 5-6.	Concessionaire to reimburse City for their percentage
Garbage Removal Services	IV.D.4., T&C 3-2. b.	Concessionaire
Recycling Services	IV.D.5.	Concessionaire
Telecom - Internet, Wi-Fi, Cable or Satellite	IV.E.	Concessionaire
Telecom - Land Lines	IV.E.	City
Intrusion Alarm System	IV.E.	City
Rodent and Pest Control – Concession Site	IV.D.8.	Concessionaire
<b>MAINTENANCE</b>		
<b><i>General</i></b>		
Motorized Food-Cart - Annual Preventative	B.2.	Concessionaire - City will provide service at no cost
Motorized Food-Cart - Repairs	B.2.	Concessionaire - City will provide service and Concessionaire reimburses City. Minor repairs may be done at no cost at Director’s discretion
Payment Bond or Letter of Credit to ensure pay for laborer(s) at \$10,000	VIII., T&Cs 5-4. a.	Concessionaire
Furniture, Fixtures, and Equipment	IV.B.4., T&Cs 2-4. e.	Concessionaire
Existing Mechanical, Electrical & Utility Systems, associated equipment and appurtenances	T&Cs 2-4 b.	City*
<b><i>Building Exterior</i></b>		
Structural Elements	2-4 a.	City*
Windows and frames, doors and door frames, handles and locks	T&Cs 2-4. e., 3-7. c.	Concessionaire
<b><i>Grounds</i></b>		
Driveways and parking lots (including snow, ice removal)	IV.L.	City
Snow and Ice Removal within 100’ of Clubhouse	IV.L.	Concessionaire
Clubhouse Landscaping	V.A.	City
Golf Course Maintenance Operations	V.A.	City
Daily Exterior litter within 100’ of Clubhouse	IV.D.6	Concessionaire
Concession Site Signage	T&Cs 3-6.	Concessionaire with City approval
<b><i>Building Interior</i></b>		

Cabinets, counters, bars, carpet, floor tiles, and other floor coverings	T&Cs 2-4. e.	Concessionaire
Paints and stains, woodwork, wall paneling and tiles, drywall and plastering, ceiling tiles	IV.D.2., T&Cs 2-4. e.	Concessionaire
Interior lighting (bulbs, ballasts and switches)	T&Cs 2-4. e.	Concessionaire
All floors and wall surfaces exposed to water regularly to be sealed and maintained	IV.D.1.	Concessionaire
Fire extinguisher annual maintenance and inspection	IV.D.2.	City
ANSUL cookline fire suppression system and Vent-A-Hood annual inspection and maintenance	IV.D.2., T&Cs 2-4. e.	Concessionaire
<b><i>Electrical</i></b>		
Built-in or electrical fans, kitchen hood	T&Cs 2-4. e.	Concessionaire
Electrical wires, mains, conduits, meters, panels	T&Cs 2-4. b.	City
Televisions, video games and computer systems	T&Cs 2-4. e.	Concessionaire
<b><i>Plumbing</i></b>		
Fixtures - Sinks, toilets, urinals, stalls, mirrors, garbage disposals, dishwasher, above-floor or below-ceiling pipes and drains, drinking fountains	T&Cs 2-4. e.	Concessionaire
Systems for water, sewer, drainage, pipes, lines	T&Cs 2-4. e.	City
<b><i>Janitorial &amp; Cleaning</i></b>		
General Interior Cleaning of Concession Site	IV.D.1.	Concessionaire
Doors, window and window glass	IV.D.1., T&Cs 2-4. i.	Concessionaire
Professional Kitchen Cleaning - twice per year	IV.D.1.	Concessionaire
Professional Cleaning grease trap - quarterly	IV.D.2.	Concessionaire
Professional Cleaning Vent-A-Hood - twice per year (spring and fall)	IV.D.2.	Concessionaire
Garbage, Trash and Recycling removal - Concession Site	IV.D.4.	Concessionaire
Clubhouse & Pro Shop Public Restroom clean & stock	IV.D.7.	Concessionaire must hire 3 <sup>rd</sup> party
<b>SUPPLIES</b>		
Cleaning – tools, equipment, product	IV.D.3.	Concessionaire
Clubhouse Garbage, Trash and Recycling receptacles and collection equipment	IV.D.5.	Concessionaire
Smallwares	IV.B.5.	Concessionaire
<b>FF&amp;E OWNERSHIP</b>		
Motorized Food-Cart - may be leased or owned	IV.2.	Concessionaire
Furniture, Fixtures and Equipment purchase and replacement	IV.4., T&Cs 2-2. a., 2-2. c.	Concessionaire – all FF&E becomes the property of the City. Compensation credits against

		FF&E purchase may be provided at the Director's discretion
Smallwares	IV.B.5.	Concessionaire
<b>MISCELLANEOUS</b>		
Motorized Food-Cart - Fuel	B.2.	Concessionaire may use and reimburse City within 30-days of City invoice
Concession Site Access	T&Cs 3-7, 3-11. d.	City may enter at any time with or without notice
Vehicles & Storage	IV.D.F., T&Cs 2-5. d.	Concessionaire vehicles to park in lawful manner not to impede access to Golf Course or Clubhouse. No personal storage on Premises
Performance Bond or Letter of Credit for license at \$50,000	VIII., T&Cs 5-4. a.	Concessionaire
<b>CONCESSIONAIRE-FUNDED CONSTRUCTION IMPROVEMENTS</b>		
Annual improvement requirement	IV.J. 1-5.	Concessionaire
Permanent Improvement	T&Cs 2-1. a., 2-1. c.	Concessionaire to obtain written approval
3 <sup>rd</sup> Party Selection	T&Cs 2-1. a. 1)	Concessionaire & City competitive selection (RFQ or RFP)
MWBE Ordinance & DSBO Utilization Plan	T&Cs 2-1. a. 2)	Concessionaire's Contractor
Contractor's Insurance	T&Cs 2-1. b., 2-1. e.	Concessionaire's Contractor
Denver Prevailing Wages	T&Cs 2-1. f.	Concessionaire's Contractor
Denver Wage Laws	T&Cs 2-1. g.	
Inspection	T&Cs 2-1. i.	DPR and/or DOTI
Lien release or unconditional waiver	T&Cs 2-1. j.	Concessionaire
Improvements and Fixture Title	T&Cs 2-2. a.	Concessionaire to execute and deliver upon request
Performance Bond or Letter of Credit equal to 100% project cost	T&Cs 2-1. b.	Concessionaire
Site Development Permits	T&Cs 2-1. d.	Concessionaire
Building and Zoning Permits	T&Cs 2-1. d.	Concessionaire
Construction licenses, permits, fees, taxes	T&Cs 2-1. d.	Concessionaire
Water and Sewer Connection Fees	T&Cs 2-1. d.	Concessionaire
<b>LICENSES &amp; PERMITS</b>		
Liquor, Beer and Wine	IV.B.3., T&Cs 3-4.	Concessionaire
Food Service and Operations	T&Cs 3-11. a. 3-11. b.	Concessionaire

\*Unless damage is caused by Concessionaire or its invitees in which case Concessionaire pays for repair and/or replacement