

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION

THIRD AMENDMENT TO CONCESSION LICENSE

The City and County of Denver, hereinafter referred to as the “City,” acting by and through its Manager of Parks and Recreation, hereinafter referred to as the “Manager,” pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor’s Cabinet, hereby amends the March 21, 2018 Concession License, the October 25, 2018 First Amendment, and the June 11, 2019 Second Amendment with Concessionaire Flog, LLC, for the concession services at the Overland Golf Course (“Concession License”). Concessionaire, by execution of this Second Amendment of Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same.

1. Section IV subsection J (1) of the Concession License entitled “**PRE-DETERMINED CAPITAL IMPROVEMENTS**” is hereby amended to read as follows:

“1. Pre-determined Capital Improvements. Subject to the terms of this Concession License and its Terms and Conditions, Pre-determined Capital Improvements for Overland Golf Course shall include carpet replacement in the restaurant and transition flooring into the hallway adjacent to the restaurant, which shall be completed by no later than August 1, 2018; a new patio which shall be completed by no later than December 31, 2018; replacement of the patio furniture, which shall be completed by no later than May 1, 2019; replacement of restaurant furniture, including tables, chairs, and barstools which shall be completed by no later than May 1, 2020, and other Capital Improvements equal to or greater than Eight Thousand Six Hundred Dollars and Zero Cents (\$8,600.00) that may be determined and agreed upon by the parties by no later than December 31, 2019. Prior to commencing the Pre-determined Capital Improvements, the Concessionaire shall submit its proposal and costs for each project to the Director. The Director shall either approve or disapprove the Concessionaire’s proposal, either in whole or in part, within thirty (30) days of submittal. The Concessionaire shall be entitled to a credit against the future Guaranteed Annual Minimum Payment and/or Percentage Payment(s) of Gross Revenues in the amount of the verified actual costs incurred by the Concessionaire for the Pre-determined Capital Improvements projects. Promptly upon completion of all Pre-determined Capital Improvement projects, the Concessionaire shall submit final invoices or receipts documenting the actual costs of each project to the Director.”

2. Section VII of the Concession License entitled “**COMPENSATION TO BE PAID TO CITY**” subsections (B) and (D) is hereby amended to read as follows:

“B. Percentage Payment of Nine Percent (9%) of all Gross Revenues, (consistent with

IV(B)(7)), to be paid by the 20th day of the month following the month in which the Gross Revenues were received or due. Percentage payments under this Subsection B shall be due and payable without regard to the due date or payment of GAMP.”

“ D. [Reserved.]”

3. Section 1-9 of the Terms and Conditions to the Agreement is hereby amended to read as follows:

“„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 discounts provided to customers or employees at the point of sale; taxes collected at the point of sale on behalf of government agencies; tips; gratuities; and deposits for a rental, function, or event but only if such deposit is recorded as a liability upon receipt of payment and then recorded as revenue upon completion of the rental, function or event or that portion of the deposit retained after cancellation of the rental, function or event. No other costs, expenses or losses 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.”

4. Section 2-1 of the Terms and Conditions to the Concession License entitled “**CONSTRUCTION OF IMPROVEMENTS BY CONCESSIONAIRE**” is hereby amended to add the following:

“k. Minimum Wage Requirements:

1) Concessionaire shall comply with, and agrees to be bound by, all requirements, conditions, and City determinations regarding the City’s Minimum Wage Ordinance, Sections 20-82 through 20-84 D.R.M.C., including, but not limited to, the requirement that every covered worker shall be paid no less than the City Minimum Wage in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, Concessionaire expressly acknowledges that Concessionaire is aware of the requirements of the City’s Minimum Wage Ordinance and that any failure by Concessionaire, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein.

2) Nothing in this License and Terms and Conditions shall be deemed to lessen any obligations of Concessionaire to comply with the payment of prevailing wage to covered workers. Should a prevailing wage requirement for covered work be greater than the city minimum wage requirement, the greater wage rate shall be paid. If the city minimum wage requires payment of a higher wage rate than an applicable prevailing wage requirement for covered work, the city minimum wage shall be paid to any covered worker for all covered work.”

5. Section 2-4 of the Terms and Conditions to Concession License entitled “**MAINTENANCE & REPAIR OF FACILITIES**” is hereby amended to add the following:

“k. For any applicable work performed under Sub-Section 2-4, Concessionaire shall comply with paragraph k. of Sub-Section 2-1 regarding payment of minimum 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. Nothing in this subsection shall be deemed to lessen any obligations of Concessionaire to comply with the payment of prevailing wage to covered workers. Should a prevailing wage requirement for covered work be greater than the city minimum wage requirement, the greater wage rate shall be paid. If the city minimum wage requires payment of a higher wage rate than an applicable prevailing wage requirement for covered work, the city minimum wage shall be paid to any covered worker for all covered work.”

6. Except as herein amended, the Agreement continues in effect, and is affirmed and ratified in each and every particular.

7. This Amendatory Agreement will not be effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

[ELECTRONIC SIGNATURES FOLLOW]

Contract Control Number: PARKS-201738457-03 / 201951193
Contractor Name: Flog, LLC

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

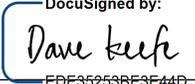
By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-201738457-03 / 201951193
Flog, LLC

By:  _____
EDE35253BE3E44D...

Name: Dave Keefe
(please print)

Title: president
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)