

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

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CONCESSION LICENSE

The City and County of Denver, hereinafter referred to as the “City”, acting by and through its Manager of Parks and Recreation, hereinafter referred to as the “Manager,” pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor’s Cabinet, hereby grants to Concessionaire hereinafter named the license or privilege of operating a concession for selling goods and providing services in the park or recreational facility hereinafter described. 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 the Overland Golf Course, 1801 South Huron St. Denver, CO 80223 (the “Overland Golf Course”). Within the Clubhouse, the Concession Site shall consist of the dining room, the meeting room, men and women restrooms off of the kitchen and dining room, the kitchen, kitchen storage and refrigeration/cold storage space in the basement, and the stairs from the kitchen to the basement as depicted on **Exhibit A**. The Concession Site shall not include the Pro Shop, the Pro Shop office, the men and women restrooms next to the Pro Shop, or the storage space and operational facilities used by the City in the basement of the Clubhouse. Just outside the Clubhouse, the patio dining area and other outside seating areas are included as part of the Concession Site. 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 golfers and other patrons of the Clubhouse and the Overland Golf Course.

II. CONCESSIONAIRE: CONCESSIONAIRE’S ADDRESS:
Flog, LLC; Attn: Dave Keefe 3435 Belcaro Drive, Denver, Colorado 80209

III. CONCESSION: Providing food and beverage service and merchandise sales to the golfing and other public at the Overland Golf Course and Clubhouse as well as general maintenance, repair and replacements as specified in this Concession License.

IV. CONCESSIONAIRE’S RESPONSIBILITIES: The primary obligation of 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. Food & Beverage Services:

1. *Basic Service*. Concessionaire shall have the exclusive right to engage in the sale of food and beverages, including alcohol beverages, at the Clubhouse, and on the golf course. Concessionaire shall provide good quality, fresh foods and good customer service. 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 all hours of operation of the golf course.

2. *Motorized Food-Cart Service.* Concessionaire shall have the exclusive right to engage in the sale of food and beverages, including alcohol beverages, through motorized food-cart(s) of the type and scale typically used for such services at golf courses. Concessionaire shall provide and maintain the motorized food-cart(s), which may be stored at locations designated by the Director. At least one motorized cart shall provide food and beverage service during such dates and times specified by the golf professional assigned to the Overland Golf Course in written notice provided to Concessionaire at least two (2) days in advance.

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

4. *Equipment, Furnishings and Wares.* Concessionaire shall provide all furniture, trade fixtures, furnishings, equipment, point of sale system, computers, entertainment equipment, stove, refrigerator, small appliances, ice machines, dishwasher, food preparation unit, tables and chairs, utensils, cookware, small wares, and related items ("Food Service System"), except for the equipment and furnishings provided by the City ("City Items"), necessary for the operation of a good quality food and beverage service. Concessionaire shall keep in good and safe repair the Food Service System and City Items. Upon expiration or termination of this Concession License, the Food Service System at the Concession Site shall be the property of Concessionaire. The City Items shall remain the property of the City. The City Items consist of the following currently existing in or at the Concession Site:

- All fixtures
- Panasonic Phone system processing units including any wall plugs, mounting, wiring, the phones and wall-external cords
- Qwest T1 system
- Clubhouse security system, recorders, and video cameras
- Safes
- Clubhouse stereo internal wall speakers, mounting and wiring
- Clubhouse bar and sinks
- Kitchen and basement walk-in cooler/refrigerator and freezer
- Any items used for the operation or care of the Golf Course or Pro Shop but stored or maintained in the Clubhouse.

B. Merchandise Sale: 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 at Overland 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 the

golf course Pro Shop will not be allowed. The sale of the following is strictly prohibited: tobacco products; packaged liquor, wine, or beer; marijuana; adult materials; fireworks; and food or beverages in glass bottles or glass containers that can be taken from the Clubhouse.

C. Maintenance: At the sole expense of the Concessionaire, maintenance of the Concession Site is to be provided by Concessionaire as follows:

1. *General Interior Cleaning* – Structures at the Concession Site 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.

2. *Facilities & Equipment Maintenance* – Concession facilities and all equipment must be maintained, repaired or replaced as needed to insure proper function and appearance including but not limited to appliances, hardware, kitchen vent hood and fire suppression system, walk-in refrigerators/freezers and plumbing fixtures. Electrical fixtures, light bulbs, and other electrical appliances shall be maintained in an operating and safe condition.

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* – All garbage and trash shall be removed by Concessionaire from the Concession Site on a regular basis. Concessionaire shall furnish the necessary dumpsters, trash receptacles and collection equipment and shall arrange for trash collection services. The dumpsters and other trash receptacles shall be maintained in an enclosed area away from public view and sealed so as to prevent intrusions by animals.

5. *Recycling* – Concessionaire is required to provide and manage single stream recycling that adequately handles all of the recycling needs of the concession operations. This includes, but is not limited to, cardboard, paperboard, plastics, glass, aluminum cans, and steel cans. Concessionaire shall furnish all necessary recycling bins and collection equipment and arrange for recycling services.

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 parking lots and public walkways shall be cleared of snow on a timely basis. Concessionaire shall be responsible for assuring that access to and from the Concession Site and Clubhouse is safe for walking and ice free.

7. *Public Rest Rooms* – Rest rooms in the Clubhouse shall be open to the use of the golfing public and patrons of the concession. All rest rooms in the Clubhouse, including

those which are not part of the Concession Site, are to be cleaned, including sweeping, washing and sanitation, by Concessionaire, and adequate supplies, including paper towels and toilet paper, are to be provided by Concessionaire on a daily basis and when needed. Trash and debris within the rest rooms shall be regularly collected and disposed of.

8. *Rodent and Pest Control* – The Concession Site shall be maintained free of rodents and pests at all times.

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

D. Utilities: Concessionaire is required to timely and fully pay utility charges, service charges and related taxes for utilities for the Concession Site, with Concessionaire paying the following share of utility costs for the Clubhouse: 1) gas: 100%; 2) electricity: \$1,550.00 per month, to be increased or decreased on January 1st of each year of the Term of this Concession License in proportion to increases or decreases in electricity rates for the Clubhouse, starting with 2014 electricity rates; 3) water and wastewater: 80%; 4) land-line telephone: 0% except for long distance charges and telephone services not authorized by the Director; and 5) internet and cable or satellite television service for the concession: 100%. 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 the invoice. With respect to the water and wastewater bill, Denver Parks Department may elect, after written notice to Concessionaire, to put the water and wastewater service for the Clubhouse in the name of Concessionaire, in which case the water and wastewater bill for the Concession Site is to be paid in full by Concessionaire. After payment of the full water and wastewater bill, Concessionaire shall be entitled to reduce a subsequent Percentage Payment due and owing to the City under Section VII.B of this Concession License to recover the 20% of the water and wastewater bill owed by the City for the Clubhouse. Concessionaire hereby agrees to have the water and wastewater service put in its name, if the Denver Parks Department so elects, and also agrees to put the water and wastewater service back into the name of the City if the Denver Parks Department requests Concessionaire to do so, in writing. 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.

E. 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 the Golf Course or Clubhouse by patrons. All storage of items shall be provided by Concessionaire either within provided storage areas of 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.

F. Contact: The Director will be designated to be Concessionaire's contact for the purposes of this Concession License. Concessionaire shall provide the Director with a telephone number(s) and email addresses at which Concessionaire can be reached. A full-time manager responsible for operations at the Concession Site must be designated and emergency contact telephone number(s) 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.

G. Special Events: All non-golf events 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, 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:

1. All 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 Concessionaire.
2. All public address or sound amplifying systems, live music, or other sounds or noise not typical to the operation of the Golf Course.
3. Any activities or uses that would occur after 11:00 p.m. any day.

H. Monitoring & Reporting: Concessionaire shall monitor and record inappropriate or illegal activity 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 and the Director, of unlawful acts, dangerous or destructive activities, and unpermitted events. Furthermore, Concessionaire shall timely notify the Director of any needed maintenance or repairs to the Concession Site that are outside of Concessionaire's responsibilities.

I. Concessionaire Improvements: No capital improvements by Concessionaire are expected as part of this Concession License. Concessionaire shall not make any structural or systems changes or improvements to Concession Site without the advance written approval of the Manager, and any approved changes are subject to Section 2 of the Terms and Conditions (Section X below).

J. Dates & Hours of Operation: Sales and services to the public are to be provided seven days a week, year round (weather permitting), during (at a minimum) all hours that the golf course is open. Maintenance and repair services are to be provided when and where needed, year round.

K. Terms & Conditions: Concessionaire shall comply with and satisfy the duties and obligations in the Terms and Conditions (Section X below).

V. CITY'S RESPONSIBILITIES: The overall operation of the Overland Golf Course and its concession facilities 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. Utilities: The City shall pay its share of the utility charges, service charges, and related taxes for gas, electric, water and wastewater for the Pro Shop in the Clubhouse as well as land-line telephone service charges for the Clubhouse. All service charges and related taxes for internet and cable or satellite television service not associated with the food and beverage concession facilities shall be paid by the City.

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

E. 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>
		February 1, 2014	October 31, 2017

Unless revoked in accordance with Section 7 of the Terms and Conditions (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 (Section X below) and as follows:

A. Guaranteed Annual Minimum Payment (“GAMP”) of Fifteen Thousand Dollars (\$15,000.00), to be paid on or before January 1st each year during Term of Concession License.

B. Percentage Payment of seven percent (7%) of all Gross Revenues, to be paid by the 20th day of the month following the month in which the Gross Revenues were received or due.

C. No Percentage Payment need be paid until the total amount of Percentage Payment otherwise due and payable in the calendar year exceeds GAMP for that year.

D. Starting the effective date of this Concession License, all Concession sales and receipts shall be recorded on a cash register or computer system designed to accurately record all sales and receipts. Paper and electronic records of all transactions and bank deposits shall be maintained along with appropriate bookkeeping and accounting practices to document Gross Revenues. Monthly revenue reports, in a form prescribed by the Manager, shall be provided to the Manager on the 20th of each month for Gross Revenues received in the previous month.

VIII. PAYMENT AND PERFORMANCE BOND: The Concession License shall not be effective until Concessionaire delivers to the Manager a satisfactory performance bond or letter of credit to assure performance under this Concession License in the amount of Thirty Thousand Dollars (\$30,000.00), as specified in Sub-section 5-4 of the Terms and Conditions (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 (Section X below), in the amount of Ten Thousand Dollars (\$10,000.00).

IX. INSURANCE COVERAGE: In accordance with Sub-section 5-2 of the Terms and Conditions (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
Personal 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 Risk Administration for the City 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.