

## **CONCESSION LICENSE WELLSHIRE**

Pursuant to sections 2.4.4(F), 2.4.5, and 3.2.6(B) of the City Charter for the City and County of Denver, the **CITY AND COUNTY OF DENVER** (“City”), acting by and through its Manager of the Department of Parks and Recreation (“Manager”), hereby grants as of January 1, 2014 (“Effective Date”), this concession license (“License”) to **WELLSHIRE, LLC**, a Delaware corporation (“Concessionaire”), for the exclusive right to operate the business of an event center, restaurant or both at what has been historically known as the Wellshire Inn (“Wellshire”) and to provide food and beverage and other services at the Premises as provided herein.

1. Grant. The grant under this License to the Concessionaire shall be subject to the terms, conditions, obligations and responsibilities set forth in this License. The rights or benefits granted in this License do not create or establish, nor shall they be construed to create or establish, an interest in real property. This License shall supersede and replace, as of the Effective Date, all prior concession licenses and other agreements and understandings between the City and the Concessionaire and any other entities related to the Concessionaire.

2. Premises. The “Premises” under this License shall consist of the following, as depicted in **Exhibit A**, attached hereto and incorporated herein by reference:

A) Clubhouse. The former clubhouse (“Clubhouse”), including the existing: (i) recent addition known as the Cambridge Room adjoining the Clubhouse to the west; (ii) uncovered front patio adjoining the Clubhouse to the south and west (“Front Patio”); (iii) the Golfers’ Pub and two adjoining bathrooms; (iv) the covered patio and grass covered area west of the covered patio (“Golfers’ Pub Patio”) adjoining the Golfers’ Pub; (v) but excluding that portion of the Clubhouse consisting of the pro shop and the hall between the Pro Shop and the Golfers’ Pub (collectively “Pro Shop”) which shall be operated and maintained by the City;

B) Concession Stand. The concession stand (“Concession Stand”) located on the Wellshire Golf Course at 2770 East Floyd Drive, for the provision of food and beverage to golfers at the Wellshire Golf Course;

C) 100 Parking Spaces. The north one hundred (100) parking spaces located in the parking lot immediately south of the Clubhouse, reserved for the use by of customers of the Wellshire in accordance with paragraph 3 hereof;

D) Sheds. Up to four (4) existing storage sheds, two (2) located on the north end of the north parking lot and two (2) adjoining the trash collection areas on the south end of the north parking lot; and

E) Pavilion. A Pavilion structure along with any future modifications or replacements thereof as approved by the Manager, collectively hereinafter referred to as the “Pavilion”, which is currently located in the area depicted in **Exhibit A**, shall be used for weddings, receptions, golf events and other events and activities authorized under paragraphs 4 and 5 of this License.

F) Other Exterior Additions or Changes to the Clubhouse. Any other permanent exterior changes to or near the Clubhouse which will visually alter the appearance of the Clubhouse and its surroundings, including but not limited to new façade and roof materials, structural additions and formal gardens, and situated outside of the play area of the Wellshire Golf Course, or the use of any of the grass areas not specified above, shall require the prior written approval of the Manager, which approval shall not be unreasonably conditioned or withheld provided the design is in harmony with the character of the Clubhouse and function of the Premises in accordance with this License. Upon approval, such exterior additions or changes shall be constructed or installed at the Concessionaire’s election and its sole expense. Complete and accurate design drawings for such proposed material exterior changes and additions must be prepared solely at the cost of the Concessionaire and submitted to the Manager for review. The Manager may elect, at his/her discretion, to submit such design drawings to a public review process and shall do so if required by ordinance. Within thirty (30) days of receipt of a complete and accurate set of design drawings, the Manager shall either in writing: (i) approve, approve with conditions, or disapprove the design drawings, with reasons stated for any disapproval, or (ii) notify the Concessionaire that said plans will be submitted to such public review process, and then within thirty (30) days following the completion of the public review process, which process shall not take more than 30 days, the Manager shall approve, approve with conditions, or disapprove the design drawings, with reasons stated for any disapproval. If submitted to public review, Concessionaire shall receive notice no later than the date when public meetings are

published and shall have adequate opportunity to make a presentation thereat. Within fifteen (15) days after the public review hearing, the Manager shall provide to Concessionaire all information provided to and by such review, process and decision.

G) Modification to License. Upon any changes approved by the Manager under this paragraph 2, approved as-built drawing(s) of any exterior changes shall be submitted to the Manager within ninety (90) days of the completion of the project and, if appropriate, substituted for or added to the existing drawings in **Exhibit A** to this License and a copy of the approved as-built drawing(s) shall be filed with the City Clerk by the City and attached to the License. Thereupon, the approved changes made under this paragraph 2 shall be regarded as part of the “Premises”.

H) Impairment of Premises. Concessionaire agrees that no improvements, changes, alterations, additions, or repairs shall be made to the Premises or any use of the Premises which might impair the structural soundness of the Premises; result in an overload of utility, plumbing, or HVAC systems serving the Premises or other City-owned ancillary facilities at the golf course; 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

3. Parking. The existing north and south parking lots next to the Clubhouse are for the common use and common ingress and egress of the customers of the Wellshire and the Wellshire Golf Course patrons, except for the northerly 100 Parking Spaces in the south parking lot identified in **Exhibit A** which are reserved when needed for Wellshire customers attending an event or are restaurant patrons at the Wellshire Inn. The City will not unreasonably restrict Concessionaire’s common use and common ingress and egress described herein. The City may continue, but has no obligation or liability, to remove snow from any parking lots. The Concessionaire may arrange, at the Concessionaire’s sole expense, to obtain all City regulatory approvals (including but not limited to Zoning and Public Works) and, subject to obtaining all of these approvals and the written approval of the Manager, to design and construct a parking lot and required appurtenances, including but not limited drainage facilities and driveways, in the far northeast corner of the Wellshire Golf Course so long as the parking lot and the appurtenants do not encroach upon or interfere with the operation of the Wellshire Golf Course.

4. Food and Beverage Concession. The Concessionaire shall have the exclusive right to provide food and beverage service to the customers of the Concession and the patrons of the Wellshire Golf Course. During all hours that the Wellshire Golf Course is open to golf play, the Concessionaire agrees and covenants to provide food and beverage service to the golfers at the Golfers' Pub, as described in paragraph 2, and, periodically at the Concessionaire's option by means of motorized food service cart(s) on the Wellshire Golf Course and the Concession Stand and that such food and beverage service to the golfers shall equal or exceed in quality such service provided to golfers at the City's other golf courses. At all times, the Concessionaire shall comply with and abide by all applicable state and local requirements regarding food and beverage service operations and shall maintain the Premises areas in a safe, clean and sanitary condition.

5. Permitted Uses.

A) Wellshire. The primary business shall be the provision of food, beverage (including alcoholic beverages as set forth in paragraph 5.C) and merchandise to the public, including but not limited to a facility for private events or a public restaurant, or both.

B) Ancillary Uses. The Concessionaire may also provide or arrange for the provision of catering, live entertainment (excluding adult entertainment), decorations and other support services for weddings, receptions, parties, corporate engagements, golf events and other private events and activities conducted at the Premises.

C) Alcohol Beverages. The sale and service of alcohol beverages are allowed for consumption on the Premises and the Wellshire Golf Course, subject to the following: i) it is solely the responsibility of the Concessionaire to secure and maintain, at the Concessionaire's sole expense, a liquor license for the Premises from the proper licensing authority; ii) the Concessionaire shall comply with and abide by all laws, rules, regulations, permits and orders of the licensing authority; and iii) the Concessionaire shall obtain and maintain liquor liability insurance during the entire Term of this License as specified in subparagraph 10.E)(6) below.

D) Merchandise. The Concessionaire may engage in the sale of such merchandise and novelty items at the Premises as appropriate for the needs or interests of the customers of the Wellshire and those of the Wellshire Golf Course. The sale of merchandise and novelties which compete with sale of similar items at the Pro Shop is not allowed. The City agrees that the Pro Shop shall not sell food and beverages which compete with this License. The

sale of the following is strictly prohibited: tobacco products; packaged liquor, packaged wine, or packaged beer except unused portions which the liquor law currently permits patrons to take from the Premises; adult materials; and fireworks.

E) Outdoor Signage. The Manager approves the existing signs to the extent they comply with all applicable laws. The Concessionaire may install and shall maintain and replace as needed, at the Concessionaire's sole expense and subject to the prior written approval of the Manager, signs identifying the Wellshire Inn and the services therein subject to the applicable City sign codes, and the Concessionaire shall be responsible, at the Concessionaire's sole expense, for obtaining and maintaining required permits.

F) Restrictions on Uses. Subject to the uses granted by this License, the Concessionaire shall make no use of the Premises that interferes with the operation of or impedes the public's access to and enjoyment of the Wellshire Golf Course, causes damage to the Wellshire Golf Course, causes injury to patrons or City employees at the Wellshire Golf Course, or causes damage to City property or the personal property of patrons or City employees at the Wellshire Golf Course. Likewise, the Concessionaire shall not make any use of the Premises which is unlawful or during construction by Concessionaire which is the cause of damage to properties neighboring the Wellshire Golf Course. The Concessionaire shall comply with and abide by all applicable federal, state, and local laws, ordinances, rules, regulations, permits, and orders in connection with the occupancy and use of the Premises. The Concessionaire shall require its employees, contractors, agents, and invitees to comply with all provisions of this paragraph.

Concessionaire shall not utilize the Wellshire Golf Course or other areas outside the Premises for any of its business activities except as specifically provided for in paragraph 4.

G) Quiet Enjoyment. Subject to the timely payment of the compensation required in paragraph 7 of this License and the faithful performance of all obligations of the Concessionaire under this License, the Concessionaire is entitled to peacefully and quietly enjoy the Concession rights and permitted uses of the Premises throughout the Term of this License, and any extensions thereto, as provided in paragraph 6 of this License or until the License is revoked as provided in paragraph 19 of this License.

H) City Right of Entry. 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 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 License. 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.

6. Term and Extensions.

A) Term. The Term of this License shall start on the Effective Date of this License and shall expire at the end of thirty (30) years thereafter (“Term”), unless the License is revoked or extended.

B) Extensions. In the Manager’s sole and absolute discretion the Term may be extended for up to two (2) additional ten (10) year periods.

7. Compensation. The Concessionaire agrees and covenants to remit to the Manager the following Compensation for the License, due in advance and payable on the first day of each month:

Effective Date - December 31, 2023	=	\$50,000 paid in 12 equal installments of \$4,166.67 per month
January 1, 2024 - December 31, 2033	=	\$100,000 paid in 12 equal installments of \$8,333.33 per month
January 1, 2034 - December 31, 2043	=	\$200,000 paid in 12 equal installments of \$16,666.67 per month

Concessionaire may deduct from its Compensation the amount of the City’s Utility Responsibility set forth in paragraph 9.B) and if so deducted Concessionaire shall submit backup copies of all corresponding utility bills with the Compensation payment.

Compensation associated with extensions, if any, will be determined by the Manager at the time the extensions are granted.

8. Condition of Premises; Improvements; Maintenance and Repairs; and Related Provisions.

A) Condition of Premises. The City will diligently continue to endeavor to eliminate the odor issue in the Premises until resolved and will repair the sidewalk that surrounds the perimeter of the Clubhouse. Subject to the foregoing and the contents of **Exhibit C**, the Concessionaire agrees and covenants to accept the current condition of the Premises “as is, where is,” and to make no claims or demands against the City with respect to the condition of the Premises. The City makes no representations and gives no warranties or guarantees as to the condition of the Premises or their suitability for the Concessionaire’s permitted uses; however, all third party warranties shall be simultaneously assigned to Concessionaire upon receipt by the City.

B) Improvements. As of the Effective Date of this License, the Concessionaire agrees and covenants to be solely responsible for the construction or installation of Improvements of any kind on the Premises and paying all costs and expenses associated with such Improvements of any kind on the Premises. These Improvements shall include any fixtures permanently affixed to the structure of the Premises or the ground, i.e., installed in such a manner that removal of the fixtures would cause significant or structural damage to the Premises. There are no specific Improvements required to be made by the Concessionaire on the Premises under this License; however, the Concessionaire agrees and covenants to make such Improvements as it deems necessary to adequately perform its obligations under paragraphs 4 and 5 of this License. Improvements to be made to the interior of the Clubhouse that require no building permits will likewise not require approval by the Manager. Other Improvements to be made to or around the exterior of Clubhouse shall not be initiated until such approval of the Manager as required under paragraph 3 is obtained.

C) Maintenance, Repairs and Replacement.

(1) By the Concessionaire:

As of the Effective Date of this License, the Concessionaire agrees and covenants to be solely responsible, and at its sole cost and expense, for all maintenance, repairs and replacements of all of the Operational Expenses set forth on **Exhibit B**, attached hereto and incorporated herein by this reference. All maintenance shall be performed in compliance with manufacturer specifications by licensed professionals, when licensed professionals are customarily used in the

normal course of business. In addition, the Concessionaire shall arrange, at its sole expense and as the Concessionaire deems warranted, but not less than every five (5) years from the Effective Date and by every five (5) year anniversary thereof, to have qualified and licensed professionals inspect and recommend repairs or replacements to all of the Operational Expenses set forth on **Exhibit B**, and provide a written report (“Inspector’s Report”) to the City within sixty (60) days of each inspection. All findings of deficient repair, maintenance or replacement required in accordance with the Inspector’s Report shall be completed by Concessionaire within ninety (90) days of date of the Inspector’s Report. Concessionaire’s failure to substantially comply with the Inspection Report shall be deemed a material breach of this License. Notwithstanding, however, excluded from the foregoing obligations of the Concessionaire are the Parking Lots, Pro Shop and Concession Stand. This exclusion does not create any obligation on the part of the City to maintain, repair or replace the Parking Lots, Pro Shop or the Concession Stand.

In addition to the foregoing, the City reserves the right to engage an independent third party licensed contractor (“City Contractor”) with expertise in the areas that the City Contractor is engaged to comment upon to perform annual inspections (“Annual Inspection(s)”) of the Premises. In accordance with Section 22.H) hereof, the City shall notify the Concessionaire of its desire to have the City Contractor perform an Annual Inspection. In order to not have the Annual Inspection disrupt the Concessionaire’s business, the City Contractor and Concessionaire shall schedule, at a mutually agreeable time and date, an Annual Inspection that will occur within fourteen (14) days after receipt of written notice to the Concessionaire of the City’s desire to schedule such Annual Inspection. The findings identified by the City Contractor (“Contractor’s Report”) will be shared with the Concessionaire in writing with a request to address the identified item(s) in the Contractor’s Report within thirty (30) days of receipt of the Contractor’s Report by the Concessionaire. If after the thirty (30) days the requested item(s) in the Contractor’s Report have not been addressed or objected to by the Concessionaire in writing to the Manager, the City may place the Concessionaire on notice to cure the Material Maintenance Item(s), as defined below, within ninety (90) days or, if not cured or resolved by Concessionaire’s written objection to the Manager, the City may declare the Concessionaire in material breach of this License.



Material Maintenance Item(s) are maintenance obligations that, if performed, help prevent capital failure or are necessary to maintain the physical and structural integrity of the building and the mechanical, electrical, and plumbing systems.

A cosmetic finding is not a Material Maintenance Item(s). However, significant cosmetic issues, defined as fifteen (15) or more of the same items (not including Concessionaire's furniture, fixtures and equipment) whose reasonable total costs to repair or replace exceeds \$25,000.00, that are reported in two (2) consecutive annual reports, may be considered Material Maintenance Item(s) by the City's Contractor.

Door locks for the Wellshire shall not be replaced or re-keyed without copies of the new keys being promptly provided to the Manager. The Concessionaire shall keep the Premises free and clear of all debris, garbage, and rubbish (which shall be properly stored in a screened area and regularly dispose of such waste in a lawful manner).

In addition to the foregoing, Concessionaire shall be responsible for any repairs or replacements of any Capital Improvements as defined in **Exhibit C** 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 the aforesaid uses of the interior and exterior of the Premises that result in such damage. Such repairs or replacements shall be performed and paid for by Concessionaire within a reasonable time period specified in a written notice from the City.

(2) By the City:

The City, at its sole cost and expense and subject to the Manager's approval, shall replace the Capital Improvements set forth on **Exhibit C**, attached hereto and incorporated herein by this reference.

It is understood and agreed that any payment obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council for the purpose of this Agreement, encumbered for the purpose of the Agreement and paid into the Treasury of the City. The Concessionaire acknowledges that (i) the City does not by this Agreement, irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

(3) Roof and HVAC Systems:

Notwithstanding anything to the contrary herein, the City agrees it will replace the entire roof system the earlier of its failure or within twenty-four (24) months from the Effective Date. As required in paragraph 8.C)(1), the Concessionaire shall conduct at its expense all preventative and predictive maintenance for the HVAC system. The Concessionaire shall have an annual obligation to provide the City with written documentation of all preventative and predictive maintenance conducted on the HVAC system. Any repairs or replacement to the HVAC system required below Five Thousand Dollars (\$5,000.00) shall be at Concessionaire's sole expense. If an HVAC replacement item is above Five Thousand Dollars (\$5,000.00), the parties will determine if such replacement item is a Capital Improvement or Operational Expense. In such a case, the Concessionaire shall notify the City and the City shall expeditiously deploy an on-call certified HVAC engineer to determine the extent of the problem. If the HVAC engineer determines that the problem is a Capital Improvement, the City will expeditiously engage an HVAC contractor to rectify the problem. At the time of deployment of the HVAC contractor, the City shall notify the Concessionaire if it is unable to pay for the required Capital Improvement to the HVAC system. In such event, the Concessionaire shall pay the HVAC contractor and shall offset such cost from the next Compensation owed to the City.

D) Retention of Professionals. The Concessionaire agrees and covenants to be solely responsible for retaining and paying all certified or 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 and for arranging, reviewing, obtaining regulatory approvals for, and paying the costs of all plans, drawings, and specifications prepared under the direction of said professionals.

E) Independent Contractor. Any contractor, subcontractor, consultant, supplier, materialman, workman, or other person, firm, or corporation hired by the Concessionaire who engages in or participates in any work identified under this paragraph 8 shall be an independent contractor to whom the City shall have no obligation, responsibility, or relation.

F) Compliance with Permits and Laws. For all work to be performed by the Concessionaire under this paragraph 8, as applicable, the Concessionaire shall secure, pay for, and keep current all necessary licenses, fees and taxes for all construction, installations, and

repairs, as required by law. The Concessionaire shall obtain, pay for, and keep current any and all site development permits, building permits, zoning permits, sign permits, and any other necessary approvals prior to the commencement of each applicable component of construction, installation, or repair, and shall comply with and abide by the applicable provisions of the Charter, ordinances, rules and regulations, and executive orders of the City as well as applicable state and federal laws.

G) Prevailing Wages. In performance of work under this paragraph 8, the Concessionaire agrees and covenants to comply with and be bound by all requirements and conditions of the City's Payment of Prevailing Wages Ordinance, Sections 20-76 *et seq.*, Denver Revised Municipal Code ("DRMC"), including any revisions or replacement of said Ordinance. The Concessionaire shall require every contractor and subcontractor of any tier performing work under this paragraph 8 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, DRMC, and require that employees be paid weekly. The Concessionaire shall require every contractor and subcontractor to fully familiarize themselves with all the terms, conditions, and requirements of Section 20-76, DRMC, which is incorporated herein as a part of this License. In accordance with Section 20-76(b), DRMC, the prevailing wage rate schedule applicable to any work performed under this paragraph 8 shall be the most current schedule available at the time the 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 Improvements work. The Concessionaire shall require every contractor and subcontractor of any tier performing work that is covered by the Section 20-76, DRMC, 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. The original shall be transmitted to the Auditor of the City and copies to appropriate City departments and agencies. If any laborer, mechanic, or worker employed by any contractor or any subcontractor to perform work for the Concessionaire on the Premises has been or is being paid less than the rate of wages required by the applicable prevailing wage rate schedule, the City may suspend the License until the deficiency is resolved to the reasonable satisfaction of the City and may revoke the License if the Concessionaire or its contractor or subcontractor fails or refuses to satisfactorily resolve the deficiency.

H) Surety. Payment and performance bonds or letter(s) of credit shall be a prerequisite for any construction, installation, repair, or maintenance work performed by a contractor or tradesman on the Premises under this paragraph 8 and Section 10) E). Upon execution of the License, the Concessionaire agrees and covenants to promptly procure, pay for and maintain during the Term of the License, a payment bond or a 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 and repair work shall be paid. The form of the bond or letter(s) of credit must be acceptable to the Denver City Attorney's Office. This bond or letter(s) of credit shall be in the amount of Fifty Thousand Dollars (\$50,000.00) and shall comply with the requirements of Section 20-53, DRMC.

I) Right of Inspection. During the time of construction, work that is being performed on the Premises to install or construct Improvements which require the approval of the Manager under this License and upon being notified by the Concessionaire that said work is completed, the Manager or the Manager's designated representative(s) shall be entitled to enter the Premises, upon reasonable notice to the Concessionaire, and conduct such inspections and tests, at the City's expense, as is necessary to confirm that the work is being performed in accordance with the Manager's approval and the requirements of this paragraph 8 and, after reasonable notice to Concessionaire and adequate time to remedy the same but fails to do so, the Manager may issue a cease and desist order if it is determined that the work is not substantially in compliance with said approval or the requirements of this paragraph 8. This right of inspection shall be in addition to, and shall in no way limit, the right of other City departments and agencies, in the exercise of their regulatory authority, such as building and fire code inspections,

to enter and inspect the Premises and to engage in such enforcement action as is within their authority under law.

9. Utilities.

A) Concessionaire's Responsibility. As of the Effective Date of this License, except as provided in subparagraph 9.B), the Concessionaire agrees and covenants to pay for the costs for the installation, repair, maintenance, development and special fees, surcharges, service charges, and all other fees and charges, as applicable, for all utilities and communication systems serving the Premises, including but not limited to gas, electricity, water, sewer, telephone, television, and computer services. The Concessionaire shall, through systems serving the Clubhouse, allow delivery of gas, electricity, water and sewer service for the City's use in the Pro Shop as defined in subparagraph 2.A) of this License.

B) City's Utility Responsibility. The City shall reimburse the Concessionaire for the City's pro rata share of the costs for gas, electricity, water and sewer services at the Pro Shop on a monthly basis pursuant to the following formula:

1,574 sq.ft. for the Pro Shop area divided by 18,721 sq.ft. for the entire Clubhouse or 8.41%. (The denominator will be increased by any approved additional square footage constructed by Concessionaire, excluding any separately metered additions, if any, and the Pavilion.)

The Concessionaire shall provide, upon request of the Manager, one set of copies of all bills received and paid by the Concessionaire for gas, electrical, water, and sewer service for the Premises during the prior twelve month period. The City may reduce future reimbursement payments to the extent of any overpayment the City determines and documents to Concessionaire was made to the Concessionaire under this subparagraph 9.B).

10. Insurance:

A) General Conditions. The Concessionaire agrees and covenants to secure, at the time of execution of the License, insurance covering the risks identified in this License except for those risks related to construction activities, which shall be secured before any construction activities begin. The Concessionaire shall keep the required insurance coverage in force at all times during the Term of the License: coverage to be placed with an insurer licensed and authorized to do business in Colorado and rated by A.M. Best Company as "A-"VIII or better. The Concessionaire shall endeavor to obtain from the insurer cancellation/non-renewal terms providing thirty (30) days notice of cancellation, except ten (10) days for non-payment of

premium, or will provide such statutory notice as required by the State of Colorado. The Concessionaire shall provide written notice of cancellation, non-renewal or reduction in coverage terms to the City by certified mail, return receipt requested. If any policy has a deductible or self-insured retention, the Concessionaire must notify the City. The Concessionaire shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the License do not lessen or limit the liability of the Concessionaire. The City reserves the right to review with the Concessionaire the adequacy of the insurance coverage under this paragraph 10 every three (3) years and may require an adjustment in the kind or amount of coverage, to be obtained and paid by the Concessionaire, based on the circumstances and needs of the Concessionaire and the City at that time as mutually determined by the Parties (the "Triennial Insurance Review"). Any such adjustments from a Triennial Insurance Review will be memorialized in a written revision to this paragraph 10 of this License which will not require an amendment to this License and which will be placed in the City Clerk file for this License. The Concessionaire shall maintain, at its own expense, any additional kinds or amounts of insurance that it may deem necessary to cover its obligations and liabilities under the License.

B) Proof of Insurance. The Concessionaire shall provide a copy of this License (and amendments thereto and any revisions to this paragraph 10 following a Triennial Insurance Review) to its insurance agent or broker. The Concessionaire agrees to provide to the City's one copy of proof of insurance for itself and each of its contractors and consultants and any renewals or replacements thereof. Concessionaire may not commence or allow its contractors or consultants to commence services or work relating to this License prior to evidencing the required insurance coverage. The City requests that the City's contract number be referenced on the evidence of insurance coverage. The City's acceptance of a certificate of insurance or other proof of insurance that does not comply with all insurance requirements set forth in this License shall not act as a waiver of Concessionaire's breach of this License or of any of the City's rights or remedies under this 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 all liability coverages except Workers' Compensation/Employer's Liability Insurance, the Concessionaire's and its contractor's and consultant's insurer shall name the City, its elected and appointed officials, employees and volunteers as an additional insured.

D) Waiver of Subrogation. For all coverages, the Concessionaire's and its contractor's and consultant's insurers shall waive subrogation rights against the City.

E) Contractors and Consultants: Concessionaire shall ensure that all Contractors and Consultants (including independent contractors, subcontractors, sub-consultants, suppliers or other entities providing goods or services required by this Agreement) carry the following liability insurance requirements: Workers' Compensation/Employer's Liability (if required per State of Colorado law), Commercial General Liability and Auto Liability in the same coverage amounts required of the Concessionaire. Concessionaire agrees to provide proof of insurance for all such Contractors and Consultants upon request by the City.

F) Liability Insurance.

(1) Workers' Compensation/Employer's Liability Insurance. The 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. The Concessionaire expressly represents to the City, as a material representation upon which the City is relying in entering into this License, that none of the 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 License, and that any such rejections previously effected, have been revoked as of the date Concessionaire signs the License.

(2) Commercial General Liability. The Concessionaire shall maintain a Commercial General Liability policy with limits of \$1,000,000 for each occurrence claim, \$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 License.

(3) Business Automobile Liability. 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.

(4) 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)

(5) Professional Liability. Concessionaire shall maintain or require any third party providing professional services to maintain the limits of \$1,000,000 per claim and \$1,000,000 policy aggregate.

(6) Liquor Liability. The Concessionaire shall maintain a Liquor Liability policy with limits of \$1,000,000 for each occurrence claim.

(7) Excess/Umbrella Liability. Concessionaire shall maintain excess liability limits of \$3,000,000. Excess coverage must be written on a “follow form” basis to provide excess coverage over the commercial general liability, business automobile, liquor liability and employer’s liability policies. Any combination of primary and excess coverage may be used to achieve the required limits of \$3,000,000.

(8) Additional Provisions:

8.1) For Commercial General Liability and Contractors Pollution Liability, the policies must provide the following:

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

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

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



G) Property Insurance. The Concessionaire agrees and covenants to secure and maintain, during the Term of the License, All-Risks Property Insurance on a replacement cost basis in a form and in an original amount of FIVE MILLION NINE HUNDRED TEN DOLLARS AND ZERO CENTS (\$5,910,000.00) for the entire Premises, including additions thereto and the Pro Shop (herein referred to as the “Insured Property”). The Insured Property shall be reappraised, at the sole cost of the Concessionaire, every three (3) years, beginning on the three (3) year anniversary of the Effective Date. Within fifteen (15) days of receipt of the updated appraisal the Concessionaire shall adjust the amount of the All-Risks Property Insurance to reflect the updated appraisal amount of the Insured Property. Such insurance shall include coverage for contents/personal property of the Concessionaire and business interruption. The Concession Stand and all equipment, machinery, furnishings, supplies, contents and loss of revenue in and of the Pro Shop are excluded from the Insured Property. The Concessionaire shall strictly comply with all requirements and conditions imposed by the insurer as a condition of coverage under the Property Insurance. For the sole purpose of insurance, this document shall be conclusively deemed a lease.

H) Builder’s Risk Insurance Coverage. During construction, Concessionaire shall maintain limits equal to the completed value of the improvements as determined by the Concessionaire’s insurance carrier and approved by the City. Coverage shall be written on an all risk, replacement cost basis including coverage for soft costs, flood and earth movement, if in a flood or quake zone, and, if applicable, equipment breakdown including testing. Coverage shall remain in force until acceptance of the project by the Concessionaire and the City.

I) Use of Insurance Proceeds.

(1) Replacement and Repair. Upon the occurrence of any insured damage or destruction of the Insured Property, the proceeds from the Property Insurance or Builder’s Risk shall be used solely for the costs of designing and rehabilitating and/or replacing the damaged or destroyed Insured Property to substantially the same condition and for the same purpose as the Insured Property prior to any damage or destruction and for related and Concessionaire’s reasonable administration costs agreed to by the Parties, including professional design, engineering and accounting services. Concessionaire shall have the responsibility, and shall bear the expense, for designing and constructing the repairs and replacements and providing sealed as-built drawings upon completion of the construction to the Manager. All design

drawings require the reasonable written approval of the Manager prior to work beginning. The Manager shall approve or deny all design drawings in accordance with the procedures set forth in paragraph 2.F) herein. Notwithstanding the foregoing, nothing herein shall waive the regulatory powers of the City, and Concessionaire agrees to comply with all building, zoning or other laws applicable. Subject to force majeure, riot, civil unrest, unavailability of materials and/or equipment necessary for the replacement or repairs, delays occasioned by the City, or labor strikes, failure by the Concessionaire to timely rebuild will be deemed a material default under paragraph 18 herein. If the insurance proceeds are inadequate to repair or replace the Insured Property, Concessionaire, at its sole cost and expense, may elect to provide the deficient funds necessary to rebuild or replace the Insured Property with no change of terms to the Concession License.

(2) Distribution if no Replacement or Repair. If the proceeds are not sufficient to rebuild substantially the same Insured Premises for the same purposes and the Concessionaire does not agree to fund the deficiency, the Parties agree to terminate the License and to divide the proceeds based upon their insured interests as follows: the City will receive the insured value of the Insured Property and the Concessionaire shall receive the balance of any insurance proceeds. The insured value of the Insured Property and, consequently, the amount of Property Insurance coverage to be secured and maintained by Concessionaire, may be subject to written revision, upon mutual agreement of the Parties and without amendment to this License, when the Triennial Insurance Review is conducted. Any agreed written revision will be placed in the City Clerk file for this License. In the event of any distribution of insurance proceeds under this subparagraph 10.I)(2), any increase in the insured value of the Insured Property resulting from improvements made by the Concessionaire shall entitle the Concessionaire to the insurance proceeds attributable to these improvements, provided that the Concessionaire has secured and maintained the additional Property Insurance coverage attributable to this increase in insured value.

11. Failure to Obtain or Maintain Insurance or Sureties. After written notice by the City and a five (5) day right to cure, any failure by the Concessionaire to obtain, maintain, renew, or replace, or pay premiums for, insurance policies or sureties required under this License will be deemed a material default under paragraph 18 herein. In addition to the remedies for such material default in paragraph 19 herein, the City reserves the right to suspend all activities

and operations by the Concessionaire under this License, to close the Premises, and/or order the cessation of construction or other work activities, at the Concessionaire's sole cost, during any time period that the required insurance policies or sureties are not in force.

12. Indemnification; Costs of Defense.

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 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 \$350,000 per person, \$990,000 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

13. Taxes, Licenses, Liens, Employee Taxes and Insurance and Liens.

A) Taxes and Licenses. The Concessionaire agrees and covenants to promptly pay all taxes, excises, and license or permit fees of whatever nature applicable to the Concessionaire's business or operations on the Premises, and take out and keep current all licenses or permits, municipal, state or federal, required for the conduct of the business, and further shall not permit any of said taxes, excises, or license or permit fees to become delinquent. Upon request, Concessionaire shall provide, one time per year, proof to the City of payment of all taxes, excises, and license and permit fees.

B) Liens. The Concessionaire agrees and covenants to not permit any lien, mortgage, judgment, execution or adjudication which will in any way impair the rights and title of the City to become attached to or be foreclosed upon the Premises or any Addition or improvements thereto, or any part or parcel thereof, except as expressly provided in paragraph 13.D). and 16.C). of this License.

C) Employee Taxes and Worker's Compensation. Within 15 days after the City's request, the 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 the Concessionaire.

D) Legal Challenges. If the Concessionaire elects, in good faith, to defend against or legally contest any claims, demands, liens or orders that arise under this paragraph 13, the 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 License, shall notify the Manager of what measures and other actions the Concessionaire is taking in this regard, and shall provide adequate protection of the City's interest by a title insurance policy, bond, escrowed dollars, letter of credit or otherwise security reasonably satisfactory to the City.

14. Examination of Records. The Concessionaire agrees that any duly authorized representative of the City, including the City Auditor or his representative, during the Term of this License and any extensions thereto and for three (3) years after the expiration or revocation

of this License, shall, during reasonable business hours, have access to and the right to examine any directly pertinent books, documents, papers and records of the Concessionaire related to the Concessionaire's business's gross revenues, City sales tax payments and the cost of the remodeling. The Concessionaire waives any claim of confidentiality that it may have in connection therewith.

15. Assignments and Encumbrances of Interests.

A) Exempt Transfer. Without prior approval of either the Manager or City Council, the Concessionaire is granted the right to assign or assign by operation of law, this License or the ownership of Concessionaire's entity or any interest in either, from time to time, to any individual(s), legal entity or entities or to replace owners of Concessionaire as long as any one or more of the following shall own, individually or in aggregate, a majority interest of fifty-one percent (51%), namely Howard H. Torgove, Lawrence A. Atler and/or Chris Schild, or members of such individuals' respective immediate families or trusts for the benefit of any or all of them or by entities so owned by one or more of them. The previously described permitted transfers that do not require having to obtain approval of the City are hereinafter termed "Exempt Transfers". Upon an Exempt Transfer, Concessionaire shall provide such documentation to the Manager, which reasonably demonstrates that Concessionaire is in compliance with this subparagraph 15.A).

B) Other Assignments or Transfers. Except for Exempt Transfers and as provided in subparagraph 15.C) below, Concessionaire agrees not to assign or transfer majority rights, obligations, or interests in the License or the Concessionaire's entity without the prior written consent of the Manager which shall not be unreasonably withheld. The Manager may reasonably withhold consent if the Concessionaire is in material breach or default under this License. As a condition of the City's consent to the transfer of a majority interest, information, reasonably satisfactory to the Manager, shall be provided that any proposed assignee or transferee which is a legal entity has a good reputation and the skills and financial ability commensurate with Concessionaire's original capacity to fully perform this License and that the proposed entity assignee or transferee unequivocally agrees, in a signed document reasonably satisfactory to the Manager, (1) to assume the obligations and duties of Concessionaire under this License; and (2) to be bound by all of the terms, covenants and conditions contained in this License. If the City consents, then any assignment or transfer may be permitted only if

Concessionaire, assignee, or a combination thereof, pay all amounts due and owing to the City before any assignment or transfer is effective. Any assignment or transfer unauthorized under this subparagraph 15B) shall make this License subject to termination unless and until the City consents in writing thereto. The consent of the City shall be evidenced by City Council approval and the signature of the Manager.

C) Financial Interests. Provided that Concessionaire is not in material breach or default under this License, Concessionaire is granted the right to pledge or hypothecate its rights and interests in this License in order to secure financing for the Concessionaire's remodeling or improvements of the Premises or any portion thereof. Such pledge or hypothecation shall not create, recognize, promise, or portend that any encumbrance or claim exists or will exist with respect to or affecting any title or interest in the real property of the Premises or any other part of the Clubhouse or Golf Course property and shall create no new liability or financial responsibility on the part of the City. The pledge or hypothecation shall only entitle the lender to assume control of the Concession in accordance with this License in the event of an uncured default by Concessionaire on the loan. The pledge or hypothecation shall provide that within one hundred and eighty (180) calendar days of assuming such control, the lender shall designate a new prospective concessionaire for the Concession. Documented evidence, reasonably satisfactory to the Manager, shall be provided by said lender that any proposed new concessionaire has a good reputation, skills and comparable financial ability to Concessionaire to fully perform this License and that the proposed new concessionaire unequivocally agrees, in a signed document reasonably satisfactory to the Manager, (1) to assume the obligations and duties of Concessionaire under this License for the period in which it has possession; and (2) for the period in which it has possession, to be bound by all of the terms, covenants and conditions contained in this License. In addition, all amounts owed by Concessionaire to the City under this License shall be fully paid as a pre-condition of the new concessionaire taking over the Concession and material breaches or defaults under this License by Concessionaire, if any, are remedied to the reasonable satisfaction of the Manager. Prior to executing said pledge or hypothecation and after execution, Concessionaire shall provide to the Manager complete and accurate copies of all loan documents showing that said documents conform to the requirements of this subparagraph 15C). In the event the lender does not designate a prospective concessionaire within said one hundred and eighty days, said

hypothecation shall be voidable by the City or the lender and, if exercised in writing and sent to the other party, lender and Concessionaire, the lender shall have no future rights or obligations hereunder as of the date of receipt of said notice by the addressees. Failure by the lender or the new concessionaire to substantially comply with the terms and conditions of this subparagraph 15C) shall be regarded as a material breach or default under the License, for which the City shall have the right to terminate the License and to seek such other remedies and recourse under law.

D) Leasing. Concessionaire shall have the right to finance the acquisition of or to lease furnishings, trade fixtures, and equipment purchased or obtained by Concessionaire. Such financing shall not be secured by the License. Concessionaire shall be solely liable for making all finance or lease payments and solely responsible for complying with the terms and conditions of such financing or lease. Upon expiration or termination of this License, Concessionaire shall promptly take all measures necessary, including execution of appropriate instruments, to pay off any financing or to conclude or terminate any leases. Unless other arrangements are made in writing with the City, all leased items shall be promptly removed from the Premises, and any damages to the Premises resulting from said removal shall be promptly repaired in a good and workmanlike manner at Concessionaire's own expense.

E) Effect of Noncompliance. Upon determination that the Concessionaire is not in compliance with this paragraph 15, the Manager shall notify the Concessionaire in writing of the non-compliance and require that the Concessionaire come into strict compliance within thirty (30) days following receipt of the Manager's notice. Failure or refusal by the Concessionaire to come into compliance within the prescribed thirty (30) days shall result in the revocation of the License effective immediately upon written notice of revocation being provided by the Manager.

16. Applicable Law; Compliance with Laws.

A) General Compliance with Laws. The Concessionaire shall comply with and abide by all Applicable Law, defined below, in connection with this License. The Concessionaire shall use reasonable efforts to ensure that all employees, agents, contractors, invitees, and other parties allowed by the Concessionaire to enter the Premises to comply with and abide by all Applicable Law. The City shall not be required to take any action which is inconsistent with Applicable Law. "Applicable Law" shall mean any federal, state, or local law, governmental rule, regulation or ordinance, or judicial order or decree, including without

limitation the Denver Charter; Denver Revised Municipal Code; rules, regulations, and policies of the City departments and agencies; and executive orders of the City's Mayor, as the same may be amended from time to time.

B) No Discrimination in Employment. In connection with the performance of this License, the Concessionaire agrees not to refuse to hire, discharge, promote, or demote, or to discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability; and the Concessionaire further agrees to insert the foregoing provision in all contracts hereunder.

C) Colorado Governmental Immunity Act. The Concessionaire understands and agrees that the City 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. and other law. All notice requirements provided by such laws shall be strictly complied with.

D) Ethics. The Concessionaire agrees that no employee of the City shall have any personal or beneficial interest whatsoever in the License or the Concessionaire's business or operations described herein. The Concessionaire further agrees not to hire, or contract for services with, any employee or officer of the City in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics or Denver City Charter provisions 1.2.9 and 1.2.12.

E) Environmental Compliance.

1) The Concessionaire shall obtain all federal, state, and local environmental permits necessary for any work or operations under this License and shall comply with all applicable federal, state, and local environmental permit requirements. The Concessionaire shall comply with all applicable local, state, and federal environmental guidelines, rules, regulations, statutes, laws, and orders (collectively, "Environmental Requirements"), including but not limited to Environmental Requirements regarding the storage, use, transportation, and disposal of Hazardous Materials and regarding releases or threatened releases of Hazardous Materials to the environment.

2) Without the prior written permission of the Manager, the Concessionaire shall not cause or permit any Hazardous Materials to be brought upon, kept or used in or about the Premises by the Concessionaire, its employees, agents, contractors, or



invitees. If the Concessionaire breaches this obligation, or if the presence of Hazardous Materials on the Premises caused or permitted by the Concessionaire results in contamination of the Premises, or if contamination of the Premises by Hazardous Materials otherwise occurs for which the Concessionaire, its employees, agents, contractors, or invitees are responsible, then the Concessionaire shall be responsible to the City for the resulting damage and the Concessionaire shall indemnify, defend, and hold harmless the City from any and all resulting claims, judgments, orders, damages, penalties, fines, costs, liabilities or losses.

3) The term “Hazardous Materials” shall mean asbestos, asbestos-containing soils, and asbestos-containing materials, special wastes, polychlorinated biphenyls (PCBs), any petroleum products, natural gas, radioactive source material, pesticides, any hazardous waste as defined at 42 U.S.C. § 6903(5) of the Solid Waste Disposal Act, any hazardous substance as defined at 42 U.S.C. § 9601(14) of the Comprehensive Environmental Response, Compensation and Liability Act, and chemical substance as defined at 15 U.S.C. § 2602(2) of the Toxic Substances Control Act, any Colorado statutes serving a similar purpose for environmental regulation, and any guidelines issued and rules or regulations promulgated pursuant to such statutes or any other applicable federal or state statute.

F) ADA Compliance. The Concessionaire shall not cause or permit any violation of the Americans with Disabilities Act or related federal, state or local law (“ADA”) to occur on or about the Premises by the Concessionaire or its employees agents, contractors or invitees.

G) Prohibition Against Employment Of Illegal Aliens:

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

2. The Concessionaire certifies that:

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

b) It will participate in either the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., or the employment verification program established by the Colorado Department of Labor and Employment under § 8-17.5-102(5)(c), C.R.S. (the “Department

Program”), to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

3. The Concessionaire also agrees and represents that:

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

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

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

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

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

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

D. The Concessionaire is liable for any violations as provided in the Certification Ordinance. If Concessionaire violates any provision of this section or the Certification Ordinance, the City may terminate this License for a breach of the License. If the License is so terminated, the Concessionaire shall be liable for actual and consequential damages to the City. Any such termination of a contract due to a violation of this section or the Certification

Ordinance may also, at the discretion of the City, constitute grounds for disqualifying Concessionaire from submitting bids or proposals for future contracts with the City.

17. Default; Cure; Suspension or Revocation; Non-waiver.

A) Concessionaire Default. A material default or breach by the Concessionaire under this License may result in suspension or revocation of the License under these circumstances:

1) Where provisions of this License set out an express process for notice, cure, suspension, and/or revocation of the License for certain breaches or defaults, the processes and requirements specified in said provisions shall control.

2) For violation of federal, state, or local laws, ordinances, rules and regulations, or orders, the Concessionaire shall cure such violations in such manner and in such timeframe as specified in the notice or order issued by the regulatory authority to the Concessionaire or to the City. This License and operations on the Premises shall be suspended if so ordered by the regulatory authority or if there is any imminent threat of danger to the health or safety of the public or any employees, agents, or contractors of the Concessionaire or any employees or agents of the City. The License may be revoked by the Manager upon written notice to the Concessionaire, after affording the Concessionaire reasonable opportunity to comply, if the Manager determines after a reasonable investigation, that the violation is substantial and the Concessionaire or the Concessionaire's employees, agents, or contractors have refused or have failed to comply with any notice or order or to appeal such notice or order, if such appeal is authorized by law.

3) Subject to express provisions to the contrary, which provide more notice and/or remedial times or "reasonable time", for a material breach of any covenant or prohibition or other default set forth in this License, the Concessionaire shall have the longer of thirty (30) days or such longer period as is reasonably necessary, following the Concessionaire's receipt of a notice of breach sent by the Manager to cure said breach or to provide compelling evidence to the Manager that there is no breach. The Manager may extend, in the Manager's discretion, the time to cure if the Concessionaire submits a request for additional time and a compelling justification for the additional cure time. The failure or refusal by the Concessionaire to perform the prescribed cure within whatever timeframe is allowed herein may result, in the discretion of the Manager, in the issuance of a notice of revocation. Notwithstanding any

provisions to the contrary elsewhere provided in this Concession License, all time limitations in which a party hereto must perform or comply are subject to delays occasioned by civil riot, adverse weather conditions, unavailability of materials, parts or equipment, war, labor strikes, casualty losses and other events which could impede, prevent or delay said party from timely and full performance.

4) A conviction of the Concessionaire or any of its owners, shareholders, members, officers or management employees 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 the Concessionaire's business may result in the revocation of the License unless, upon knowledge of the Concessionaire, such owner, shareholder, member, officer or employee is promptly terminated or the relation with the Concessionaire's business is promptly severed. A "conviction" as used herein shall mean a plea of guilty, a plea of nolo contendere, a finding of guilty, a default judgment, or a deferred judgment and sentence.

5) In the event that the interests of or rights of the Concessionaire, as identified in subparagraph 15.B) of this License, are transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, other than those specified in subparagraphs 15.A), C) or D), by, in connection with or as a result of any Concessionaire's bankruptcy, insolvency, trusteeship, liquidation, or similar proceeding or occurrence, the notice, cure, and revocation provisions of subparagraph 15.E) shall be applicable.

B) City Default. For any material breach or default under this License, the City shall have thirty (30) days, or such longer period as is reasonably necessary, following the City's receipt of a notice of breach or default sent by the Concessionaire to cure such breach or default or to provide compelling evidence to the Concessionaire that there is no breach or default. The Concessionaire may extend, in the Concessionaire's discretion, the time to cure if the Manager submits a request for additional time and a compelling justification for the additional cure time. The failure or refusal by the Manager to perform the prescribed cure within whatever timeframe is allowed herein may result, in the discretion of the Concessionaire, in the issuance of a notice of termination of the License.

C) Non-waiver. No party shall be excused from complying with any provision of this License by the failure of the other party to insist upon or to seek compliance.

No assent, expressed or implied, to any failure by a party to comply with a provision of this License shall be deemed or taken to be a waiver of any other failure to comply by said party.

18. Remedies. In addition to other specific remedies provided elsewhere in this License:

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

B) Damages. 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 and agree not to 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) Cumulative Remedies. 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.

D) Right of Re-Entry. The City shall, as an additional remedy upon revocation, have the right to re-enter the Premises and every part thereof pursuant to the process and procedure provided in the Forcible Entry and Detainer Statutes of Colorado, notwithstanding the fact that this License is not a lease. Such re-entry, or regaining or resumption of possession, however, shall not in any manner effect, alter or diminish any of the obligations of the Concessionaire under the License.

19. Remise of Premises. At the expiration of the Term of the License or upon revocation of the License:

A) Delivery. The Concessionaire shall promptly deliver the Premises and any Improvements thereon to the City in good condition and state of repair except for ordinary wear and tear or loss or damage. Delivery shall include turning over all keys and security codes for the Premises. The Concessionaire shall deliver the Premises and all Improvements installed or constructed by or behalf of the Concessionaire on the Premises unencumbered by any financial interests (other than the City's) and liens. Upon written request by the City and for no additional

consideration, the Concessionaire shall execute and deliver any instruments necessary and appropriate to convey all title and interest, completely unencumbered, to the Improvements.

B) Removal. The Concessionaire shall promptly remove from the Premises all personal property, fixtures and equipment which are not Improvements or not otherwise owned by the City and which are currently owned by the Concessionaire; subject however, to any valid lien or claim which the City may have for unpaid Compensation, other amounts owed to the City under the License, and any unpaid debts of the Concessionaire for which the City may have potential liability. If said removal causes any damage to the Premises, the 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, fixtures and equipment upon expiration or revocation of the License, the City may, at its option, keep and retain said items or dispose of the same in a commercially reasonable transaction and retain any proceeds therefrom to the extent of any financial obligations of the Concessionaire to the City, and the City shall be entitled to recover from the Concessionaire any reasonable, necessary and actual costs of the City in removing the same and in restoring the Premises in excess of the actual proceeds, if any, received by the City from the disposition thereof.

20. Survival of Certain Provisions. The City and the Concessionaire understand and agree that 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.

21. Release and Waiver. Both the City and the Concessionaire hereby release, acquit, and forever discharge each other, and each entities' officials, officers, directors, employees, principals, partners, agents, and other related persons and entities, both past and present, of and from any and all liabilities, claims, demands, rights, damages, losses, lost profits, lost business opportunities, expenses, costs, fees, actions, causes of action, attorney's fees, interests, penalties, judgments, and any and all actual, consequential, incidental, or punitive damages or claims thereto, of whatsoever kind and nature, either in law or equity, which exist and are known, on or before the Effective Date of this License, arising under or associated with the Concession License Agreement dated July 18, 2003 (Clerk Filing # 03-552), the Concession License Agreement Amendment dated January 13, 2008 (Clerk Filing # 03-552-A), and any prior concession licenses or agreements involving the parties, based on any alleged or actual acts or

omissions of either the City or the Concessionaire, or with respect to the operation of or events occurring at or near the Wellshire in the City and County of Denver, Colorado. Both the City and the Concessionaire acknowledge and agree that the release and waiver set forth in this paragraph 21 is absolute and final and shall be binding on their officials, officers, directors, employees, principals, partners, agents, insurers, sureties, lenders, successors, assigns, subrogees, and any and all other persons or entities which have or may have any claim on behalf of themselves or be entitled to share in any settlement thereof.

22. General Provisions.

A) Legal Authority. The signatories hereto, on behalf of their respective entities, assure and guarantee that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this License. Either party shall have the right, at its option, to utilize its remedy(ies) if there is a reasonable basis for disputing the legal authority of either the Concessionaire or the person signing the License to enter into this License and to revoke the License if it is legally established that there is a lack of legal authority.

B) City Financial Obligations. It is understood and agreed that any payment or performance obligation of the City hereunder, whether direct or contingent, shall extend only to funds appropriated by the Denver City Council in each year in which the License is in effect, encumbered, paid into the Treasury of the City, and available for the purposes of this License. The Concessionaire acknowledges that the (i) the City does not by this License irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this License is not intended to create a multiple-fiscal year direct or indirect financial obligation of the City.

C) No Third Party Beneficiary. It is expressly understood and agreed that enforcement of the terms and conditions of this License, and all rights of action relating to such enforcement, shall be strictly reserved to the City and the Concessionaire, and nothing contained in this License shall give or allow any such claim or right of action by any other third person. It is the express intention of the City and the Concessionaire that any person or entity other than the City or the Concessionaire receiving services or benefits under this License shall be deemed to be an incidental beneficiary only.

D) Relationship. Nothing in this License is intended nor shall be deemed to create an agency, partnership or joint venture between the Concessionaire and the City. Nothing

in this License is intended nor shall be deemed to grant to the Concessionaire any power, right or authority to bind or otherwise contractually obligate the City. Nothing in this License is intended nor shall be deemed to grant to the City any power, right or authority to bind or otherwise contractually obligate the Concessionaire, The granting of the License to the Concessionaire allows the use of the Premises for the purposes stated in this License. The License does not create or recognize, nor shall it be construed to create or recognize, any obligation on the part of either party that the Concession will be a success.

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

F) Disputes and Venue. It is mutually agreed by the City and the Concessionaire that should any dispute arise regarding this License and a judicial action or suit is deemed necessary by either party, venue for such action shall solely be in the District Court in and for the City and County of Denver, Colorado, and notices and summons and complaints may be served upon the Concessionaire by delivery of notices and service of process for summons and complaints to the address of the Concessionaire shown in this License.

G) Governing Law. This License shall be construed and enforced pursuant to the laws of the State of Colorado and any applicable federal law, without regard to any statute or rule of law specifying a different choice of law, and pursuant to the City Charter, Denver Revised Municipal Code, the applicable rules, regulations, and policies of the City's departments and agencies, and executive orders of the City's Mayor.

H) Notices. All notices, demands or other communications required or permitted to be given under this License shall be in writing and any and all such items shall be deemed to have been duly delivered and received:

- (i) upon personal delivery, evidenced by a receipt signed by the addressee or an affidavit signed by the server: or
- (ii) as evidenced by a receipt from a mailing in United States mail, certified, return receipt requested, postage prepaid, addressed as follows.



If to City, to: Mayor  
City and County of Denver  
City and County Building  
1437 Bannock Street, Room 350  
Denver, CO 80202

With copies to: Manager of Parks and Recreation  
City and County of Denver  
201 W. Colfax Ave., Dept. 601  
Denver, CO 80202

City Attorney  
City and County of Denver  
City and County Building  
1437 Bannock Street, Room 353  
Denver, CO 80202

If to the Concessionaire, to: Wellshire, LLC  
3333 South Colorado Boulevard  
Denver, Colorado 80222

With copies to: Howard H. Torgove  
6 Martin Lane  
Englewood, Co 80113

Lawrence A. Adler  
501 S Cherry Street Suite 920  
Denver, Co 80246

Chris Schild  
46 Bantala Place  
Castle Rock, Co 80108

I) Construction of this License.

1) Paragraph Headings. The captions and headings set forth in this License are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

2) Time. The City and the Concessionaire agree that in the performance of the terms, conditions and requirements of this License, time is of the essence.

3) Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

4) Construction. This License is the result of arms-length negotiation and contains the mutual wording of the parties. Therefore, any ambiguity shall not be construed against any party. The City and the Concessionaire expressly waive any and all applicable common law and statutory rules of construction that any provision of this License should be construed against the drafter, and agree and affirm that the License and all provisions thereof shall in all cases be construed as a whole, according to the fair meaning of the language used.

J) Severability. It is understood and agreed by the City and the Concessionaire that if any part, term, or provision of this License is held by a court of law to be illegal or in conflict with any law of the State of Colorado or the City Charter or City ordinance, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the City and the Concessionaire shall be construed and enforced as if the License did not contain the particular part, term, or provision held to be invalid; provided, however, if the invalidated term or provision was a critical or material consideration of either party in executing this License or if such exercised provisions result in any new or additional costs or burdens of or to either Party, such Party may terminate this License or work together, in good faith, to execute an amendment to this License that substantially satisfies the previously intended consideration while being in compliance with applicable law and the judgment of the court.

K) License as Complete Integration; Amendments. This License is intended as the complete integration of all understandings between the City and the Concessionaire pertaining to the subject matter of this License. No prior or contemporaneous addition, deletion, oral representation, or other amendment hereto shall have any force or effect whatsoever, unless embodied in a written amendment to the License and executed in the same manner as the License.

L) Final Approval. This License is expressly subject to and shall not be or become effective or binding on the City until approved by the City Council and fully executed by all required signatures of the City and County of Denver.

M) Counterparts. This 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.

N) Electronic Signatures and Electronic Records. Concessionaire consents to the use of electronic signatures by the City. The 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 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 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.

**[Signatures appear on the following pages]**

IN WITNESS WHEREOF, the parties have executed this Concession License as  
12-17-2013.

**CONCESSIONAIRE:**

**WELLSHIRE, LLC,**  
a Delaware corporation

By: Howard H. Torgovir  
Printed Name: HOWARD H. TORGOVIR  
Title: MANAGING MEMBER

**WELLSHIRE, LLC,**  
a Delaware corporation

By: Lawrence H. Adler  
Printed Name: LAWRENCE H ADLER  
Title: Member

**Contract Control Number:**      PARKS-201414844-00

**Contractor Name:**                Wellshire, LLC

By: See page \*36 for signature

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

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

**ATTEST: [if required]**

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

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

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



**Contract Control Number:**

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:

By \_\_\_\_\_

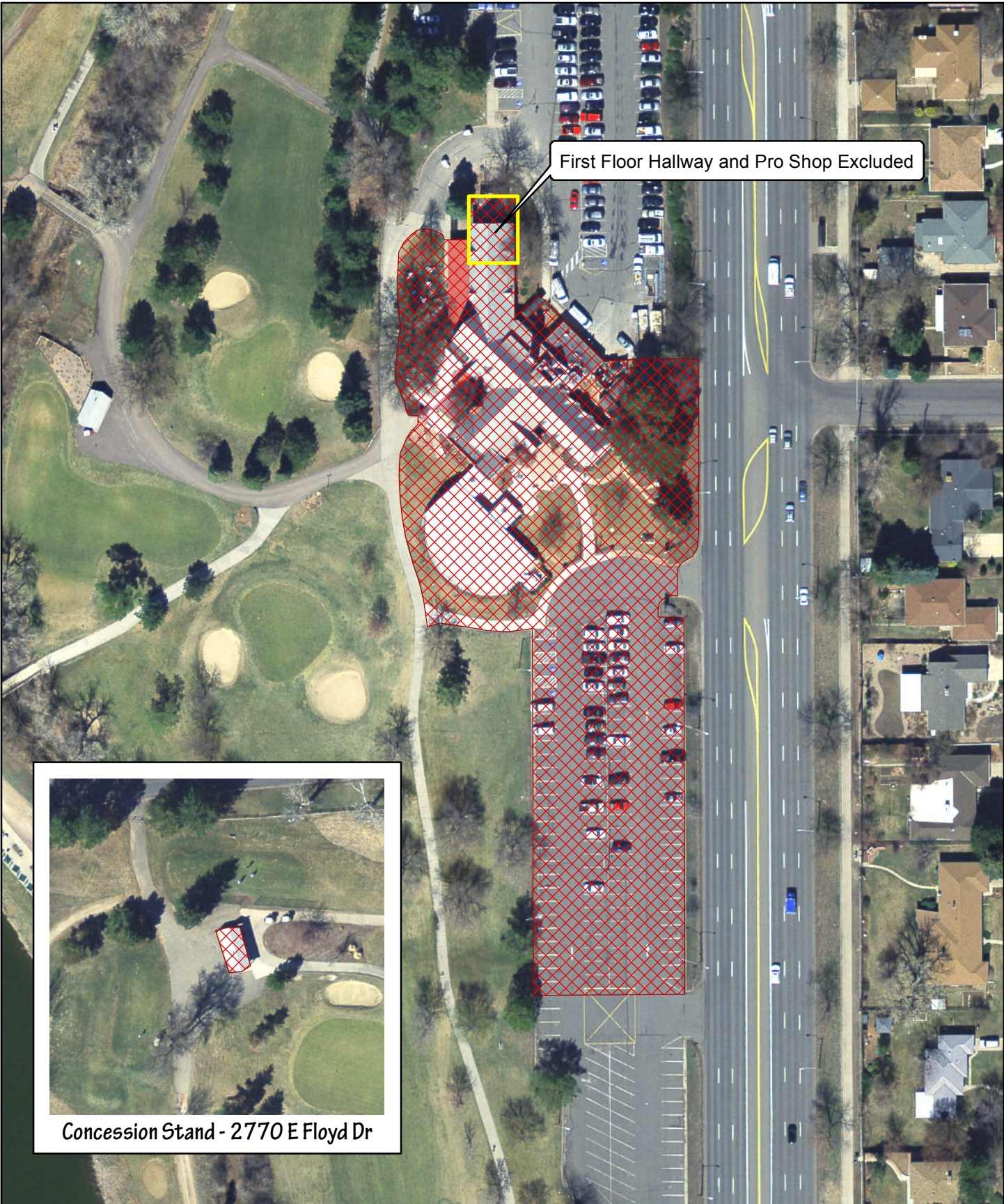
By \_\_\_\_\_

By \_\_\_\_\_



**Exhibit A**

**(Exhibit on Following Page)**



First Floor Hallway and Pro Shop Excluded

Concession Stand - 2770 E Floyd Dr

# Wellshire Golf Course

Premises for the Concessionaire Maintenance Agreement





**Exhibit B**

**(Exhibit on Following Page)**

<b>Exhibit B - Operational Expenses</b>	<b>Responsible Party</b>
<b>Concessionaire is responsible for preventative and predictive maintenance and repair, for all items listed unless otherwise noted.</b>	
<b><u>Building Exterior:</u></b>	
Wood Trim (including painting)	Concessionaire
Foundation - Non-Structural	Concessionaire
Gutters, Downspouts, Underground Pipes and Drains	Concessionaire
Roof - repairs only	Concessionaire
All doors and windows including associated hardware	Concessionaire
<b><u>Grounds</u></b>	
Wellshire Inn Landscaping (per Exhibit A, however, the City will maintain the irrigation system in this area and cut the grass)	Concessionaire
<b><u>HVAC</u></b>	
Preventative and Predictive Maintenance per Manufacturers Requirements	Concessionaire
Boiler	Concessionaire
AC Condenser	Concessionaire
Coils	Concessionaire
Other	Concessionaire
<b><u>Restrooms</u></b>	
Toilets, Sinks, Stalls, Mirrors, Floors, etc.	Concessionaire
Fixtures	Concessionaire
Plumbing	Concessionaire
<b><u>Electrical</u></b>	
Electronic HVAC Controls	Concessionaire
Panel (s)	Concessionaire
Light Fixtures, Bulbs, Ballasts, Wiring, etc.	Concessionaire
<b><u>Plumbing:</u></b>	
Lines	Concessionaire
Fixtures	Concessionaire
Chilled Water/Evaporator Coils- Maintain and Repair	Concessionaire
Fire Suppression System-Inspections, Maintain and Repair	Concessionaire
Internal Plumbing Repairs, Blocked Lines, Clogged Toilets	Concessionaire
<b><u>Miscellaneous Operating Expenses</u></b>	Concessionaire
Sidewalks (per Exhibit A)	Concessionaire
All kitchen and restaurant equipment including but not limited to Walk-In Refrigerators/Freezers, compressors, hoods, grease interceptor, etc.	Concessionaire
Pest Control	Concessionaire
Concessionaire Project Improvements	Concessionaire
All Flooring - Maintain and Repair, Replace if Incidental to Concessionaire's Damage	Concessionaire

Non-Golf Course, Wellshire Inn Related Signage	Concessionaire
Concession Stand Interior Maintenance, Repairs and Replacement - Excluding Rest Rooms	Concessionaire

**Exhibit C**

**(Exhibit on Following Page)**

**Exhibit C - Capital Improvements**

**Responsible Party**

**The performance of all items listed are at the sole discretion of the Manager**

<b><u>Structural/Building Envelope</u></b>		
Roof Replacement		City
Gutter Replacement, downspouts and drains		City
Concession Stand Envelope and Restrooms		City
<b><u>Foundation Repairs</u></b>		
Safety related Masonry and Structural Matters		City
Foundation Repairs Mandated by Code		City
<b><u>Mechanical/Plumbing</u></b>		
Plumbing i.e. crack in pipe to sewer, failed plumbing lines		City
Main Line Electrical matters- not internal wiring related to issues caused by tenant load usage		City

<b><u>Parking Lot</u></b>		
Parking Lot Maintenance, plowing and striping		City