

**CITY AND COUNTY OF DENVER**

**DEPARTMENT OF PARKS AND RECREATION**

**SECOND AMENDMENT TO CONCESSION LICENSE**

The City and County of Denver, hereinafter referred to as the “City”, acting by and through its Manager of Parks and Recreation, hereinafter referred to as the “Manager,” pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor’s Cabinet, hereby amends the March 21, 2018 Concession License, and the October 24, 2018 First Amendment to Concession License, with Concessionaire Flog, LLC, for the concession services at the Kennedy Golf Course (“Concession License”). Concessionaire, by execution of this Second Amendment of Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same.

These amended provisions shall be effective as of January 1, 2020.

1. Section IV.J.1. of the Concession License entitled “**CONCESSIONAIRE’S RESPONSIBILITIES**” is hereby amended as follows:

“Pre-determined Capital Improvements. Subject to the terms of this Concession License and its Terms and Conditions, Pre-determined Capital Improvements for Kennedy Golf Course shall include carpet replacement on the first floor of the restaurant building and in the café area of the Clubhouse up to the Pro Shop door, which shall be completed by August 1, 2018; replacement of patio furniture and restaurant barstools; and replacement of restaurant tables and chairs, which shall be completed by no later than May 15, 2022. Prior to commencing the Pre-determined Capital Improvements, the Concessionaire shall submit its proposal and costs for each project to the Director. The Director shall either approve or disapprove the Concessionaire’s proposal, either in whole or in part, within thirty (30) days of submittal. The Concessionaire shall be entitled to a credit against the future Guaranteed Annual Minimum Payment and/or Percentage Payment(s) of Gross Revenues in the amount of the verified actual costs incurred by the Concessionaire for the Pre-determined Capital Improvements projects. Promptly upon completion of all Pre-Determined Capital Improvement projects, the Concessionaire shall submit final invoices or receipts documenting the actual costs of each project to the Director.”

2. Section VI of the Concession License entitled “**TERM**” is hereby amended to read as follows:

EFFECTIVE DATE:

EXPIRATION DATE:

Date Concession License

January 1, 2029

is executed by City

3. Section VII of the Concession License entitled “**COMPENSATION TO BE PAID TO CITY**” is hereby amended to read as follows:

“A. 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.

B. Monthly revenue reports, in a form prescribed by the Manager, shall be provided to the Manager on the 20th of each month for the Gross revenues received in the previous month.

C. Monthly Percentage Payment of eleven percent (11%) 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.

D. Each year, the January through March monthly percentage payments, due the 20th of the following month, are calculated by multiplying the monthly gross revenue by 11%.

E. The Guaranteed Annual Minimum Payment (“GAMP”) is Fifteen Thousand Dollars (\$15,000.00).

F. GAMP is due on May 1<sup>st</sup> each year during the Term of the Concession License, with the first GAMP payment due May 1, 2018. To calculate the current year’s GAMP payment, total the current year’s January through March percentage payments to arrive at the total current year first quarter percentage payments; subtract the total current year first quarter percentage payments from the year’s GAMP to arrive at the current year GAMP payment. If the current year GAMP payment is negative, no GAMP payment is due for the current year. If the current year GAMP payment is positive, the GAMP payment is due on May 1<sup>st</sup> of the current year. GAMP due May 1, 2020 and May 1, 2021 were waived due to the COVID-19 pandemic.

G. Each year, the April through December current monthly percentage payments are calculated as follows: If a current year GAMP payment was required then no payment is due until the total of all percentage payments for the year exceeds the year’s GAMP amount. If no current year GAMP payment was required, then a percentage payment is due each month, April through December, on the 20th of the following month.

H. In accordance with Paragraph IV.J.1. above, the concessionaire shall be entitled to an offset against the GAMP and /or Percentage Payment(s) of Gross revenues equal to the verified actual costs incurred by the Concessionaire for the completed Pre-determined Capital Improvements projects.

I. Notwithstanding the compensation requirements of this Article VII, for Percentage Payments beginning with May 2020 Gross Revenues through April 2021 Gross Revenues, the Percentage Payment is waived if the year-to-date Gross Revenues for the current month

are less than 95% of the 2019 year-to-date Gross Revenues for that same month. If the current year-to-date Gross Revenues are equal to or greater than 95% of 2019 year-to-date Gross Revenues for that same month, then the Percentage Payment is due in accordance with this Article VII. The projected 95% of monthly 2019 year-to-date Gross Revenues are set forth in Attachment 1, attached hereto.

J. An annual revenue report, in the form prescribed by the Manager, shall be provided to the Manager by no later than March 31<sup>st</sup> of each year for Gross Revenues received in the previous year. The Concessionaire shall provide, at minimum, an annual statement of Gross Revenues, audited and certified by a Certified Public Accountant, as well as the prior year's tax returns (with do not need to be certified), and annual income statement.

K. Neither the Compensation under this Part VIII, nor the Services or Contributions provided to the City under paragraph IV, above, may be amended without approval of Bond counsel.”

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

“Gross Revenues” shall mean the aggregate of fees, receipts, sales, and income of any kind derived directly or indirectly from the operation of the Concession, after deducting any discounts provided to customers or employees at the point of sale; taxes collected at the point of sale on behalf of government agencies; tips; gratuities; and deposits for a rental (excluding events), but only if such deposit is recorded as a liability upon receipt of payment and then recorded as revenue upon completion of the rental, or that portion of the deposit retained after cancellation of the rental, function or event. No other costs, expenses or losses may be deducted. If Concessionaire provides discounts the amount of which the Concessionaire is later reimbursed, then the discount shall not be deducted from Gross Revenues, but shall be included in the reported Gross Revenues.”

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

“k. Minimum Wage Requirements:

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

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

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

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

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

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

**[SIGNATURES PAGES TO FOLLOW]**

**Contract Control Number:** PARKS-202054222/201738451-02  
**Contractor Name:** Flog, LLC

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

**SEAL**

**CITY AND COUNTY OF DENVER:**

**ATTEST:**

By:

\_\_\_\_\_

\_\_\_\_\_

**APPROVED AS TO FORM:**

**REGISTERED AND COUNTERSIGNED:**

Attorney for the City and County of Denver

By:

By:

\_\_\_\_\_

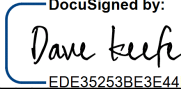
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By:

\_\_\_\_\_

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

PARKS-202054222/201738451-02  
Flog, LLC

By:  \_\_\_\_\_  
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Name: Dave Keefe  
(please print)

Title: president  
(please print)

ATTEST: [if required]

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

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

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

## Attachment 1

**Kennedy Golf Course**

<b>Months</b>	<b>2019 Gross Revenues</b>	<b>95% of 2019 YTD Gross Revenues</b>
January	1,844.63	1,752
February	45.83	1,796
March	15,164.90	16,203
April	38,355.39	52,640
May	57,467.74	107,235
June	91,075.03	193,756
July	85,183.27	274,680
August	84,853.96	355,291
September	50,443.38	403,212
October	24,697.70	426,675
November	8,608.47	434,853
December	3,533.93	438,211
<b>Total</b>	<b>461,274.23</b>	<b>438,210.52</b>