

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION

FOURTH AMENDMENT TO CONCESSION LICENSE

The City and County of Denver, hereinafter referred to as the “City,” acting by and through its Manager of Parks and Recreation, hereinafter referred to as the “Manager,” pursuant to the authority granted in Section 2.4.4(C) of the Charter of the City and County of Denver, and pursuant to the manner, terms and conditions fixed by the Mayor’s Cabinet, hereby amends the March 21, 2018 Concession License; the October 25, 2018 First Amendment; the June 11, 2019 Second Amendment; and the December 18, 2019 Third Amendment, with Concessionaire Flog, LLC, for the concession services at the Overland Golf Course (“Concession License”). Concessionaire, by execution of this Fourth 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 to read as follows:

“Pre-determined Capital Improvements. Subject to the terms of this Concession License and its Terms and Conditions, Pre-determined Capital Improvements for Overland Golf Course shall include carpet replacement in the restaurant and transition flooring into the hallway adjacent to the restaurant, which shall be completed by no later than August 1, 2018; a new patio which shall be completed by no later than December 31, 2018; replacement of the patio furniture; replacement of restaurant furniture, including tables, chairs, and barstools which shall be completed by no later than May 15, 2022, and other Capital Improvements equal to or greater than Eight Thousand Six Hundred Dollars and Zero Cents (\$8,600.00) that may be determined and agreed upon by the parties by no later than 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 nine percent (9%) 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 9%.

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

F. GAMP is due on May 1st 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 1st 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 31st 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. Except as herein amended, the Agreement continues in effect, and is affirmed and ratified in each and every particular.

5. 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-202054227/201738457-04
Contractor Name: Flog, LLC

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

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

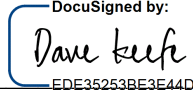
By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202054227/201738457-04
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

Overland Golf Course

Months	2019 Gross Revenues	95% of 2019 YTD Gross Revenues
January	9,161.58	8,704
February	3,497.75	12,026
March	17,413.01	28,569
April	39,450.79	66,047
May	52,947.42	116,347
June	74,723.84	187,335
July	73,907.88	257,547
August	75,174.73	328,963
September	56,635.83	382,767
October	25,727.81	407,209
November	15,815.84	422,234
December	7,782.96	429,627
Total	452,239.44	429,627.47