

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

**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 in this license, hereby grants to Concessionaire hereinafter named the license or privilege of operating a concession for selling goods and providing services in the park or recreational facility hereinafter described. Concessionaire, by execution of this Concession License, has accepted all of the terms and conditions thereof and agrees to comply with the same, including the obligations to pay such compensation to the City and to perform such duties and responsibilities for the Term of the Concession License, all as specified herein.

- I. CONCESSION SITE: Golf course food and beverage service facilities at the Clubhouse for the City Park Golf Course, 2500 York Street, Denver, Colorado 80205 (the “City Park Golf Course”). The “Concession Site” shall include the Clubhouse and within the Clubhouse, shall include the dining and meeting rooms; Bar and Grill areas; men’s and women’s restrooms; kitchen and kitchen storage; dry storage space in the basement; stairs from the kitchen to the basement; the patio dining area immediately outside of the Clubhouse; and other outside seating areas, including the event lawn, are included as part of the Concession Site, all as depicted in **Exhibit A**. The patio dining area and other outside seating areas immediately outside the Clubhouse shall be open for both concession operations and the general use of the golfers and other patrons of the Clubhouse and City Park Golf Course. The Concession Site shall not include the Pro Shop, Pro Shop offices, First Tee Offices, First Tee Program Room, First Tee Meeting Room, or First Tee and pro shop storage areas.
- A. Bond or Other Financings: The parties agree that, due to the Financings of this City facility, this Concession Agreement must be and has been approved by Bond Counsel, Stradling Yocca Carlson & Rauth, PC, 1400 16th Street, Suite 400, Denver, Colorado 80202. It is understood that the use of City facilities is restricted by the Bond Ordinances, and by all applicable rules, regulations, statutes or ordinances promulgated by any federal, state or municipal agency having jurisdiction over the City facilities. The parties agree that, the Bond Ordinances permit the terms of the Concession Agreement as written and that Concessionaire shall comply with this Concessionaire Agreement which allow compliance with all IRS regulations, and take no action that would jeopardize the tax-exempt status of the Bonds. This Concessionaire Agreement has been approved by Bond Counsel, attached hereto as **Exhibit B**. The Concessionaire agrees that in its activities and occupancy hereunder it will comply with all of the terms and conditions of this Agreement which conforms with the Financings as those requirements are stated in this Agreement and that it will

take no action, nor fail to act in any manner, which would cause the City to breach or be in default under the Financings.

- II. CONCESSIONAIRE: CONCESSIONAIRE’S ADDRESS:  
FLOG, LLC 3435 Belcaro Dr., Denver, CO 80209
  
- III. CONCESSION: Providing food and beverage service and merchandise sales to the golfing and other public at the City Park Golf Course and Concession Site as depicted in **Exhibit A**, as well as general maintenance, repair and replacements as specified in this Concession License.
  
- IV. CONCESSIONAIRE’S RESPONSIBILITIES: The primary obligation of Concessionaire is to serve the needs of the golfing public. All other customer service activities for which the Concessionaire may be engaged shall be secondary to this primary obligation. All responsibilities set forth below shall be performed at the sole expense of Concessionaire.
  - A. Right of Occupancy: City shall provide express written notice of the first date that the Concessionaire may occupy the Clubhouse and Concession Site. Except for Sections B, H and K, below, all other obligations of the Concessionaire shall commence upon Concessionaire’s occupancy of the Clubhouse and Concession Site.
  
  - B. Food & Beverage Services:
    - 1. *Basic Service.* The Concessionaire shall have the exclusive right to engage in the sale of food and beverages, including alcohol beverages, within the Concession Site as depicted in **Exhibit A**. The Concessionaire shall provide good quality, fresh foods and good customer service. Menu items and prices are subject to pre-approval by the City’s Director of Golf or the Director’s designee (“Director”) for Denver Parks and Recreation. At a minimum, food and beverage services shall be available during all hours of operation of the Golf Course.
  
    - 2. *Motorized Food-Cart Service.* The Concessionaire shall have the exclusive right to engage in the sale of food and beverages, including alcohol beverages, through motorized food-cart(s) of the type and scale typically used for such services at golf courses. While the beverage cart is owned by the Concessionaire, it is in the shared best interests of the City, the Concessionaire, and the golf patrons to have this equipment operating in a safe and reliable manner. As the City has the local resources to perform routine repair and maintenance of this equipment, the City’s

golf maintenance department will perform all of the annual preventative maintenance on the beverage carts and repairs according to the following:

- The City will perform annual preventative maintenance such as oil changes, adjustments, greasing, safety inspections, and pressure washing. Such maintenance will generally occur in the off-season, but can be performed as necessary throughout the golf season and at no cost to the Concessionaire.
- The City may perform minor repairs at no cost to the Concessionaire at the discretion of the Golf Course Superintendent or mechanic.
- The City will perform all repairs to the beverage cart and the Concessionaire shall reimburse the City for all repairs. Labor for mechanic hours shall be billed at \$32 per hour, and all parts and shipping will be invoiced to the Concessionaire for reimbursement at cost, without markup. The Concessionaire shall reimburse the City within thirty (30) days following receipt of an invoice from the City. Repairs will only occur during the City's golf course maintenance department's normal working hours. Callback rates may apply in emergencies.
- In the event the City cannot perform any repairs due to lack of expertise or time, the City will arrange for a vendor to perform the repairs and invoice the Concessionaire for reimbursement of the repairs at cost, without markup. The Concessionaire shall reimburse the City within thirty (30) days following receipt of an invoice from the City.
- The City will use TRIMS software to track repairs and maintenance of the beverage cart, and will utilize work orders generated through TRIMS as the basis for invoicing the Concessionaire for reimbursement. The City reserves the right to modify its choice of software at any time.
- The City will put forth its best effort to perform the repair and maintenance on the beverage cart and without delay so long as it does not detract from high priority equipment such as greens mowers and other exigencies.
- The Concessionaire must inform the City's maintenance staff of any problems with the beverage cart, providing the City's mechanic as much lead time as possible to acquire the parts, make repairs, or contract with a vendor to make repairs.
- The City maintenance department will be considered the subject matter expert and shall be granted broad discretion as it pertains to the repair and maintenance of the beverage cart. The City will adhere to industry and equipment standards for repair and maintenance of the beverage cart. If a repair is in excess of five hundred dollars (\$500.00), the City will notify the Concessionaire prior to performing the repair.

In the interests of safety and efficiency, the Concessionaire may use the off-road gas available from the City's maintenance department's off-road gas tanks under

the condition that the Concessionaire shall reimburse the City for the fuel within thirty (30) days following receipt of an invoice from the City. Fuel reimbursement rates shall be based on average fuel cost per gallon for the respective month.

At least one motorized cart shall provide food and beverage service at any time there are more than 40 players on the Golf Course, unless the City Golf Professional determines the beverage cart is not necessary. The City Golf Professional shall determine the number of players on the Golf Course.

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

4. *Furniture, Fixtures and Equipment.* All furniture, fixtures and equipment, except for those items set forth in Sub-section 5 below, are property of the City. The Concessionaire shall maintain, repair and keep in good and safe condition all furniture, fixtures and equipment, and any other City-owned items. The Concessionaire shall be responsible for replacing or repairing any furniture, fixtures and equipment that is not properly maintained. Upon expiration or termination of this Concession License, any furniture, fixtures and equipment, whether purchased by the Concessionaire or the City, shall become and/or remain the property of the City.

5. *Smallwares.* The Concessionaire shall supply, and shall be responsible for repairing and replacing when necessary, all smallwares including but not limited to, plates, glasses, silverware, serving dishes, pots, pans, knives, measuring cups, cooking sheets, blenders, microwaves, small toaster ovens, toasters and any other similar items necessary for the operation of a good quality food and beverage service at the Concessionaire's expense. Upon expiration or termination of this Concession License, all smallwares will remain the property of the Concessionaire.

C. Merchandise Sale: The Concessionaire may engage in the sale of such merchandise and novelty items at the Concession Site as are appropriate for the needs and interests of the golfing public and other authorized recreational patrons at City Park Golf Course. Said merchandise and novelties will consist of such items as pre-approved in writing by the Director. The sale of merchandise and novelties that compete with sale of similar items at the Golf Course Pro Shop will not be allowed. The sale of the following is strictly prohibited: tobacco products; packaged liquor, wine, or beer intended for consumption

off-premises; marijuana; adult materials; fireworks; and food or beverages in glass bottles or glass containers that can be taken from the Clubhouse on to the Golf Course.

D. Maintenance: The Concessionaire shall retain, subcontract, or hire, at the Concessionaire's sole expense, contractors or staff to perform the following maintenance services at the Golf Course and its buildings:

1. *General Interior Cleaning* – Structures at the Concession Site, including common areas, shall be maintained in good condition. All floors and floor coverings shall be vacuumed, swept, or mopped, and carpets cleaned, as appropriate, on a regular basis and when needed, and interior walls and interior wall coverings shall be cleaned on a regular basis and when needed. All floors and interior wall surfaces that are exposed to water or regular washing shall be sealed, and the seal maintained, so as to prevent any structural damage to the facilities. Furnishings and equipment shall be dusted or cleaned on a regular basis and when needed. All doors, windows, and window glass shall be cleaned on a regular basis and when needed. The Concessionaire shall clean the kitchen at least twice per year, subject to inspection and approval by the Director.

2. *Facilities & Equipment Maintenance* – Concession facilities and all equipment must be maintained and repaired as needed to ensure proper function and appearance including but not limited to, appliances, hardware, and plumbing fixtures. Electrical fixtures, light bulbs, and other electrical appliances shall be maintained in an operating and safe condition.

3. *Cleaning Supplies* – All tools, equipment, and cleaning and janitorial supplies kept on site for maintaining the Concession Site shall be stored in a safe location, not accessible by the public and used in a manner that protects the public from any injury or harm. No hazardous or strongly acidic or caustic chemicals shall be used for such cleaning or graffiti removal unless pre-approved by the Director and proper storage, access control and usage standards are provided for.

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

5. *Recycling* – The Concessionaire is required to provide and manage single stream recycling that adequately handles all of the recycling needs of the

concession operations. This includes, but is not limited to, cardboard, paperboard, plastics, glass, aluminum cans, and steel cans. The Concessionaire shall furnish all necessary recycling bins and collection equipment and arrange for recycling services.

6. *Premises Maintenance* – Grounds within 100 feet of the Concession Site, including the parking lots and related support areas, shall be cleaned of litter on a daily basis. The Concessionaire is responsible for snow and ice removal as set forth in Section V(C), below.

7. *Public Restrooms* – Restrooms in the Clubhouse shall be open to the use of the golfing public and patrons of the concession. The Concessionaire shall retain a third-party service to clean and stock the Clubhouse restrooms daily, and shall be responsible for properly maintaining the restrooms throughout any open days. All restrooms, including those located in the Clubhouse and the Pro Shop, are to be cleaned and supplied, including paper towels and toilet paper provided by the Concessionaire on a daily basis and when needed. Trash and debris within the restrooms shall be regularly collected and properly disposed of. All surfaces shall be swept, washed, and sanitized when needed. The City will clean, maintain and stock any Golf Course restrooms and First Tee restrooms not associated with concessions.

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

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

E. Utilities: The Concessionaire shall provide internet and cable or satellite television for the golfing and other public at the Concession Site. All service charges for internet and cable or satellite television service shall be paid by the Concessionaire. The City shall be responsible for Utilities as set forth in Section V(D), below. The Concessionaire shall endeavor to take reasonable measures to avoid unnecessary or wasteful use of energy and water and will make every reasonable effort to participate in conservation programs that the City may sponsor or support.

F. Vehicles & Storage: Vehicles and trailers serving the Concession Site shall be parked, other than during short-term delivery of goods and materials, in a lawful manner and so as not to impede access or use of the Golf Course or Clubhouse by patrons. All storage of items shall be provided by the Concessionaire either within provided storage areas of the Concession Site or off-site in a lawful manner. Items not needed for the

performance of this Concession License shall not be kept or stored in the Concession Site or on adjoining City-owned property.

G. Contact: The Director will be designated to be Concessionaire's contact for the purposes of this Concession License. The Concessionaire shall provide the Director with a telephone number(s) and email addresses at which the Concessionaire can be reached. A full-time manager responsible for operations at the Concession Site must be designated and emergency contact telephone number(s) for said manager provided to the Director. Whenever Concessionaire is not able to operate the Concession on a particular day, Concessionaire shall promptly contact the Manager of the Pro Shop.

H. Special (Non-Golf) Events: All non-golf events which Concessionaire may propose to schedule or hold in or about the Clubhouse must be approved, in writing, by the Director or Director's designee, which may be the City Golf Professional, prior to scheduling such events. In preparing the written request for approval, the Concessionaire must fully identify and describe the event, and the Director must expressly approve subject to any conditions or restrictions the Director may deem appropriate. The Director may, in the Director's sole discretion, approve or deny the following for non-golf events:

1. Activities and uses that could interfere with the golfing public's access to and use of the Clubhouse, parking lots, and the surrounding area, including the golfing public's access to food and beverage services provided by the Concessionaire.
2. Activities utilizing public address or sound amplifying systems, live music, or other sounds or noise not typical to the operation of the Golf Course.
3. Activities or uses that would occur after 11:00 p.m. any day.

Notification and subsequent approval by the Director may be by electronic mail and shall be deemed sufficient.

I. Monitoring & Reporting: The Concessionaire shall monitor and record inappropriate or illegal activity in the Clubhouse or on the Golf Course on a regular basis and shall notify, in a prompt manner, the appropriate authorities, including the police or sheriff and the Director, of unlawful acts, dangerous or destructive activities, and unpermitted events. Furthermore, the Concessionaire shall timely notify the Director of any needed maintenance or repairs to the Concession Site that are outside of the Concessionaire's responsibilities.

J. Dates & Hours of Operation: Sales and services to the public are to be provided seven days per week, year-round (weather permitting), during (at a minimum) all hours that the Golf Course is open. Additionally, the Concessionaire shall ensure that, at a minimum, sales and services under this Concession License are provided to the public during the same hours as the Pro Shop. The City Golf Professional shall communicate the Pro Shop hours to the Concessionaire. Maintenance and repair services are to be provided when and where needed, year-round.

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

V. CITY'S RESPONSIBILITIES: The overall operation of the City Park Golf Course and its concession facilities is conducted under the supervision and authority of the City. The following responsibilities will remain solely with the City:

A. Golf Course Maintenance: Maintenance of the Golf Course and decisions relating to maintenance of the Golf Course, including but not limited to the periodic mowing and other routine maintenance of all turf areas and routine maintenance of the driving range irrigation system, including landscaping around the Clubhouse.

B. Golf Course Operations: Operations of the Golf Course and Pro Shop, including but not limited to hours of operation of the Golf Course and Pro Shop, reservation and tournament scheduling and policies, retention of course fees, and establishment and enforcement of rules and regulations for play and use of Golf Course facilities.

C. Snow Removal: The City shall perform snow removal in the parking lot between 8:00 a.m. and 2:00 p.m., and will perform sidewalk snow/ice removal between 8:00 a.m. and 4:00 p.m. The Concessionaire shall perform snow removal on public walkways around the Clubhouse on a timely and as-needed basis outside of the hours when the City will provide the services. The City will provide after-hours on-call snow and ice removal for the parking lot and sidewalks for special functions. The Concessionaire must provide written notice of the special function at least one week in advance. Should snow fall occur and snow/ice removal is required for the event, the Concessionaire will be responsible for contacting the on-call City employee to perform the work; such contact list will be provided by the City. Unless the City has specifically agreed to be responsible for snow and ice removal under this Section V.C., then the Concessionaire shall be responsible for snow and ice removal under all other circumstances.

D. Utilities: The City shall pay all costs of utility charges and service charges for gas, electric, water and wastewater for City Park Golf Course Concession site, including the Pro Shop in the Clubhouse, as well as all land-line telephone service charges. All service



charges for internet and cable or satellite television service shall be paid by the Concessionaire.

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

F. City Improvements: Notwithstanding Section IV(I), above, the City intends, at the discretion of the Manager, to make certain improvements to or about the Clubhouse, subject to prior appropriation and availability of funds (“City Improvements”). The Concessionaire shall cooperate with the City in making these City Improvements and shall provide access to the Concession Site to the City or its contractor(s) when needed for the City Improvements to be made, as provided in the applicable Terms and Conditions (Section X below).

G. Terms & Conditions: The City shall have the right to exercise all authority set forth in the applicable Terms and Conditions (Section X below).

VI.	<u>TERM:</u>	<u>EFFECTIVE DATE:</u>	<u>EXPIRATION DATE:</u>
		Date Concession License is executed by City	January 1, 2028

Unless revoked in accordance with Section 7 of the Terms and Conditions (Section X below). The Term may not be increased without approval of Bond Counsel.

VII. COMPENSATION TO BE PAID TO CITY: Compensation shall be paid to the City and financial records shall be maintained in accordance with Section 4 of the Terms and Conditions (Section X below) and as follows:

A. Guaranteed Annual Minimum Payment (“GAMP”) of Fifteen Thousand Dollars (\$15,000.00), to be paid on or before May 1<sup>st</sup> each year during Term of Concession License except for the years 2019 and 2020, with the first GAMP installment due May 1, 2021.

B. Percentage Payment of Nine Percent (9%) of all Gross Revenues, to be paid by the 20<sup>th</sup> day of the month following the month in which the Gross Revenues were received or due. Percentage payments under this Subsection B shall be due and payable without regard to the due date or payment of GAMP.

C. [Reserved.]

D. Starting the effective date of this Concession License, all Concession sales and receipts shall be recorded on a cash register or computer system designed to accurately record all sales and receipts. Paper and electronic records of all transactions and bank deposits shall be maintained along with appropriate bookkeeping and accounting practices to document Gross Revenues.

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

An annual revenue report, in a 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 (which do not need to be certified), and annual income statement.

E. Neither the Compensation under this Part VII, nor the Services or Contributions provided to the City under Paragraph IV, above, may be amended without approval of Bond Counsel.

VIII. PAYMENT AND PERFORMANCE BOND: The Concession License shall not be effective until the Concessionaire delivers to the Manager a satisfactory performance bond or letter of credit to assure performance under this Concession License in the amount of Fifty Thousand Dollars (\$50,000.00), as specified in Sub-section 5-4 of the Terms and Conditions (Section X below), and a satisfactory performance and payment bond or letter of credit to assure all contracted maintenance and repair work and all financial obligations associated with said work, as specified in paragraph f. of Sub-section 2-4 of the Terms and Conditions (Section X below), in the amount of Ten Thousand Dollars (\$10,000.00).

IX. INSURANCE COVERAGE: In accordance with Sub-section 5-2 of the Terms and Conditions (Section X below), the following amounts of insurance coverage are required:

Commercial General Liability	\$1,000,000.00 per occurrence
	\$2,000,000.00 general aggregate limit
	\$1,000,000.00 products-completed operations aggregate limit

	\$1,000,000.00 personal & advertising injury
	\$300,000.00 fire damage legal
Worker’s Compensation	Colorado statutory requirements
Business Auto Liability	\$1,000,000.00 per occurrence
Liquor Liability Insurance	\$1,000,000.00

The amounts and types of insurance coverage required above shall be subject to review every four (4) years during the term of this Concession License and upon any renewal of this Concession License. If it is determined by Risk Administration for the City that changes in the amounts or types of insurance coverage are needed in order to address changed conditions or inflationary conditions, Concessionaire shall be notified, in writing, to make the required changes in insurance coverage within ninety (90) days of notification. The City has the option to require Concessionaire to carry property insurance on the Concession Site, including business interruption coverage, with the City named as a Loss Payee.

- X. TERMS AND CONDITIONS: All sections and sub-sections of the Terms and Conditions, hereto attached and hereby incorporated into this Concession License, are applicable to this Concession License, except as otherwise provided in this Concession License. In the event of any conflicts or inconsistencies between the specific provisions of the Concession License set out above and the attached Terms and Conditions, the specific provisions above shall control.
  
- XI. EXAMINATION OF RECORDS: Any authorized agent of the City, including the City Auditor or his or her representative, has the right to access and the right to examine any pertinent books, documents, papers and records of the Concessionaire, involving transactions related to the License until the latter of three (3) years after the final payment under the License or expiration of the applicable statute of limitations.
  
- XII. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS: Contractor consents to the use of electronic signatures by the City. The Agreement, and any other documents requiring a signature under the Agreement, 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 Agreement 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 Agreement 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.

**Contract Control Number:** PARKS-201951237-00  
**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:

\_\_\_\_\_

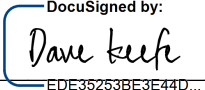
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By:

\_\_\_\_\_

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

PARKS-201951237-00  
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)

**CONCESSION LICENSE  
TERMS AND CONDITIONS**

The terms and conditions stated herein, as modified and supplemented by the specific provisions of the Concession License to which these Terms and Conditions are attached, shall constitute the terms and conditions of the Concession License to the extent specified in the Concession License, Section X.

**NOTE: The granting of a Concession License to a Concessionaire allows the use of the Concession Site for the operation of a Concession. The Concession License does not create or recognize, nor shall it be construed to create or recognize, any obligation on the part of the City or the Department of Parks and Recreation to provide the Concessionaire with an operating business or to guarantee the success of the business operated by the Concessionaire on the Concession Site.**

**SECTION 1 -- DEFINITIONS**

As used throughout, the following definitions shall apply:

- 1-1. "Auditor" shall mean the City Auditor or the Auditor's authorized representative.
- 1-2. "City" shall mean the City and County of Denver.
- 1-3. "Compensation" shall mean the amount of money due the City during or following the Term of the Concession License from Concessionaire in accordance with any payment schedule and other requirements in the Concession License and subject to any adjustments in amount provided for in the Concession License.
- 1-4. "Concessionaire" shall mean the party identified in the Concession License and the Concessionaire's successors and permitted assigns, subcontractors, and transferees.
- 1-5. "Concession" shall mean the right to operate sales, service and other concession activities as expressly authorized by the Concession License.
- 1-6. "Concession License" shall mean the Concession License to which these Terms and Conditions are attached and any exhibits and attachments to that Concession License including these Terms and Conditions, and any duly approved amendments to the Concession License.
- 1-7. "Concession Site" or "Premises" shall mean the entire real property and structures covered by the Concession License, including any Improvements and Fixtures.
- 1-8. "Fixture" shall mean any goods, items and other articles, other than Improvements, which are securely affixed to the Concession Site and which ultimately becomes the property of the City because they cannot be removed without obvious damage to the Concession Site.
- 1-9. "Gross Revenues" shall mean the aggregate of fees, receipts, sales, and income of any kind derived directly or indirectly from the operation of the Concession, after deducting any

discounts provided to customers or employees at the point of sale; taxes collected at the point of sale on behalf of government agencies; tips; gratuities; and deposits for a rental, function, or event but only if such deposit is recorded as a liability upon receipt of payment and then recorded as revenue upon completion of the rental, function or event or that portion of the deposit retained after cancellation of the rental, function or event. No other costs, expenses or losses may be deducted. If Concessionaire provides discounts the amount of which the Concessionaire is later reimbursed, then the discount shall not be deducted from Gross Revenues, but shall be included in the reported Gross Revenues.

- 1-10. "Guaranteed Annual Minimum Payment" ("GAMP") shall mean a minimum dollar amount, which the Concessionaire agrees to annually pay, as specified in the Concession License.
- 1-11. "Improvement" shall mean any permanent improvement, other than a Fixture, constructed or installed on or in the Concession Site which becomes the property of the City upon construction or installation.
- 1-12. "Manager" shall mean the Manager of Parks and Recreation of the City or the Manager's authorized representative.
- 1-13. "Term" shall mean the time period between and including the effective date and the expiration date provided in the Concession License and any extension thereto as approved by amendment to the Concession License.

**SECTION 2 – IMPROVEMENTS; OWNERSHIP AND USE; MAINTENANCE AND REPAIR; AND PERSONAL PROPERTY**

2-1. CONSTRUCTION OF IMPROVEMENTS BY CONCESSIONAIRE:

a. Concessionaire, at no cost to the City and subject to the requirements of this Sub-Section 2-1, shall cause to be designed, constructed and installed in or on the Concession Site Capital Improvements as set forth in the Concession License, Sub-section I. of Section IV.

b. Concessionaire agrees that any proposed permanent improvement to the Concession Site, unless otherwise expressly provided in the Concession License, must receive the prior written approval of the Manager, which will not be unreasonably withheld provided the proposed improvement serves the stated purposes of the Concession License. Concessionaire further acknowledges and agrees that, except as expressly provided in the Concession License, the Concessionaire shall not be entitled to any reimbursement, reduction in Compensation paid to the City, or any additional extension of the Term or increase in rights or privileges under the Concession License based on any improvements made by Concessionaire to the Concession Site. Upon construction or installation, the additional improvement shall be regarded as an Improvement or Fixture, as appropriate under the Concession License.

1) In accordance with City Charter §2.3.3, §20-56, D.R.M.C., and Executive Order 8, and with the City's approval, the Concessionaire's construction contractor shall be selected by competitive selection, either to a lowest, qualified, responsive bidder, or through a request for qualification (RFQ) or request for proposal (RFP).



2) M/WBE Participation Requirement: Construction performed by the Concessionaire's construction contractor is subject to all applicable provisions of Divisions 1 and 3 of Article III, of Chapter 28, Denver Revised Municipal Code (D.R.M.C.), designated as Sections 28-31 – 29-36 and 28-52 – 28-90 D.R.M.C. and referred to as the "M/WBE Ordinance". In accordance with the requirements of the M/WBE Ordinance, the Concessionaire's construction contractor shall obtain a minimum participation goal to utilize properly certified M/WBE subcontractors and suppliers, if that contractor intends to retain subcontractors for the proposed construction. In addition to the applicable provisions of the M/WBE Ordinance, the Concessionaire's construction contractor shall agree, as an express condition of its performance, to comply with the requirements of any approved Division of Small Business Opportunity Compliance Plan, if applicable. The Concessionaire's construction contractor shall acknowledge its continuing duty, pursuant to Sections 28-72, 28-73 and 28-75 D.R.M.C. and the M/WBE Program, to meet and maintain throughout the duration of the construction its participation and compliance commitments and to ensure that all subcontractors subject to the M/WBE Ordinance or the M/WBE Program also maintain such commitments and compliance. Failure to comply with these requirements may result, at the discretion of the Director of the Division of Small Business Opportunity ("DSBO"), in the imposition of sanctions against the construction contractor in accordance with Section 28-77, D.R.M.C.

c. With respect to any construction or installation work on the Concession Site, Concessionaire shall obtain and maintain, or require the contractor(s) and subcontractor(s) to obtain and maintain, 1) insurance in the amounts and types of coverages appropriate for the work, substantially as specified in Sub-Section 5.2, unless otherwise agreed in writing by the City's Risk Management Office, and b) one hundred percent (100%) payment and performance bonds as specified in paragraph a. of Sub-Section 5.4. The City shall be named as additional insured on insurance coverages, and Concessionaire shall be named as the obligee on bonds. Bonds and insurance shall be subject to review and approval by the City prior to the initiation of any work on the Concession Site. In addition, all contractor(s) and subcontractor(s) shall be required to include an indemnification and "hold harmless" clause, approved by and for the benefit of the City, to protect the City against claims, actions, and demands arising from or related to the work performed by the contractor(s) and subcontractor(s). Evidence that such insurance and bonds have been obtained, satisfy the requirements of this paragraph c. of Sub-Section 2-1, and have been continuously maintained shall be provided by Concessionaire to the Manager. Copies of any construction contracts shall be provided by Concessionaire upon request by Manager. Concessionaire or its contractor(s) and subcontractor(s) shall pay the costs of the bonds and insurance.

d. Prior to the commencement of any work on the Concession Site, Concessionaire shall, at no cost to the City, develop or have developed plans, drawings, and specifications for all construction to be performed and installed on the Concession Site and obtain approval of such plans, drawings, and specifications from the Manager and, if required, from the Department of Public Works. Any substantive changes in the work schedule, plans, drawings, and specifications must likewise obtain prior approval by the Manager and, if required, from the Department of Public Works. All plans, drawings, and specifications shall be prepared under the direction of and certified by 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. All plans, drawings, and specifications shall meet all requirements of current

editions of all applicable codes and regulations established by federal, state, and local law. Concessionaire shall provide City with a schedule of final construction plans and phasing of actual construction.

e. Concessionaire shall secure, keep current, and pay for all necessary licenses, permits, fees, and taxes for its construction and related operations on the Concession Site, including but not limited to site development permits, water and sewer connection fees, building permits, zoning permits, and any other necessary approvals, as required, prior to the commencement of each applicable component of construction and observe and comply with the applicable provisions of the Charter, ordinances, and rules and regulations of the City as well as applicable state, federal and other local laws. To the extent applicable, Concessionaire shall conform with the requirements of the federal Americans with Disabilities Act and any other federal or state laws requiring access for the disabled to public accommodations. Concessionaire shall require its contractors and subcontractors to comply, to the extent applicable, with the environmental requirements of Section 3-12.

f. Depending on the scale of the construction project, the Manager may require Concessionaire to purchase, or to arrange for any contractor to purchase, All Risks Form Builder's Risk insurance for any Improvements or Fixtures to be constructed or installed. The insurance coverage shall include all equipment, machinery, supplies, and other property intended to be permanently incorporated in the Concession Site for which title or risk of loss shall have passed at the time of loss to the insured. Limits under this insurance shall not be less than 100% of the replacement value of the Improvements or Fixtures to be constructed or installed and for physical damage to property and related expenses. Coverage shall include expense due to delays in completion as a result of the insured perils, subject to a thirty (30) day deductible. Coverage shall apply to such property while it is located at the Concession Site or on nearby City-owned property, or located at temporary off-site storage or staging areas, or while in land-based transit to the Concession Site within the continental United States. Coverage shall include subcontractors working on the Improvements or Fixtures. The deductible shall be no more than 2% of the total value of the Improvements or Fixtures being made or installed, or \$10,000, whichever is the greater or at an amount agreed by the City's Risk Management Office. The City and County of Denver, its employees and officers shall be named as loss payee and additional insured.

g. Prevailing Wage Requirements:

1) Concessionaire shall require every contractor or subcontractor to post in a prominent and easily accessible place at the site of the work the scale of wages to be paid by the contractor and subcontractors of all tiers.

2) In performance of all work under this Sub-Section 2-1, Concessionaire agrees 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 but not limited to all any anniversary date wage rate adjustments, and any determinations made by the City pursuant thereto. As such, Concessionaire shall require every contractor and subcontractor of any tier performing work under this Sub-Section 2-1 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 of the Denver Revised Municipal Code and require that employees be paid weekly. Concessionaire shall require every contractor and subcontractor to fully familiarize themselves with

all the terms, conditions, and requirements of said Revised Municipal Code Section 20-76, which is part of the Concession License.

3) In accordance with Section 20-76(b), D.R.M.C., the prevailing wage rate schedule applicable to any work performed under this Section shall be the most current schedule available at the time 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 construction of Improvements or installation of Fixtures authorized under this Sub-Section 2-1. The Concessionaire shall require every contractor and subcontractor of any tier performing work that is covered by the Section 20-76 of the Denver Revised Municipal Code 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. Three sets of these payroll records are required. The original shall be transmitted to the Auditor of the City and copies to appropriate City departments and agencies.

4) If any laborer, mechanic, or worker employed by any contractor or any subcontractor to perform work for Concessionaire at the Concession Site has been or is being paid less than the rate of wages required by the applicable prevailing wage rate schedule, the City may suspend or revoke the Concession License. In the event of revocation, the City may prosecute the work to completion by contract or otherwise, and Concessionaire and its sureties shall be liable to the City for any additional costs to the City. No payroll shall be approved by the Auditor of the City unless the party presenting such payroll, or in whose behalf it is presented, has filed with the Auditor the reports and statements described herein, nor while any such contractor or any subcontractor under him shall be in default in the payment of such wages as are required by the Concession License.

h. 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.

i. Notwithstanding any provision above, any contractor, subcontractor, consultant, supplier, materialman, workman, or other person, firm, or corporation who engages in or participates in any design and construction of any Improvements, or installation of Fixtures, or other additions, alterations, replacements or repairs shall be an independent contractor to whom the City shall have no obligation, responsibility, or relation except as expressly stated in this Sub-Section 2-1.

j. Concessionaire understands and agrees that all phases of construction shall be subject to complete inspection and approval by the Department of Parks and Recreation and, if required, the Department of Public Works. The City shall have the right, at any time during the construction period, for its inspector(s) to access the Premises and inspect and monitor the construction work. Concessionaire shall not proceed with subsequent phases of construction until the prior phase of construction has been inspected and approved by the Department of Parks and Recreation and, if required, the Department of Public Works.

k. Upon completion of each project under this Sub-Section 2-1, the City may require Concessionaire to provide a complete and final, unconditional waiver or release of any and all lien and claim rights from each contractor, subcontractor, supplier, manufacturer and dealer for all labor, equipment and material used or furnished by each. In the event the City should determine, in its discretion, that it is necessary or appropriate for the City to pay any claim made by a contractor, subcontractor, supplier, manufacturer and dealer for all labor, equipment and material used or furnished for improvements under this Sub-Section 2-1, the City shall have a right to recover this payment from Concessionaire or its contractor and to seek any other remedies, legal or equitable, available under law to assure the City is reimbursed.

## 2-2. OWNERSHIP AND USE OF CITY REAL PROPERTY:

a. Concessionaire acknowledges and agrees the City shall have or shall be given unencumbered title to all Improvements and Fixtures, other than any items expressly excluded in the Concession License, after construction or installation on the Concession Site. Upon written request by the City and for no additional consideration, Concessionaire shall execute and deliver any instruments necessary and appropriate to convey all title and interest, completely unencumbered, to any Improvements or Fixtures Concessionaire constructs or installs or has constructed or installed on or in the Concession Site. Concessionaire shall be entitled to use such Improvements and Fixtures upon completion of their construction or installation in accordance with the provisions of the Concession License.

b. Concessionaire shall use the Concession Site only for those purposes specified in the Concession License and for no other purposes, unless authorized by the Manager in writing. Concessionaire may not sell or offer goods or provide or offer services on Department of Parks and Recreation property outside of the Premises, unless otherwise so permitted in the Concession License or authorized by the Manager in writing. Concessionaire shall use the Premises in a careful, safe, and proper manner and shall not use or permit the Premises to be used for any purpose prohibited by the

laws of the United States of America, the State of Colorado, the Charter or ordinances of the City and County of Denver, or the written policies and rules and regulations of the Denver Department of Parks and Recreation.

c. The rights or privileges granted by the Concession License to Concessionaire do not create or recognize, nor shall they be construed as creating or recognizing, a property interest in the Concession Site, the Improvements, or the Fixtures.

2-3. INSPECTIONS & CONDITION OF CITY REAL PROPERTY:

a. Just prior to or shortly after commencement of the Concession License, Concessionaire agrees to mutually inspect Concession Site with City to document the existing condition of said property. Concessionaire agrees to accept the condition of the property “as is,” “where is” without any improvements or alterations, unless otherwise provided in the Concession License. Concessionaire agrees to make no demands upon the City for any improvements or alterations thereto other than those agreed to in writing.

b. 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 Concession 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 Concession. 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.

2-4. MAINTENANCE & REPAIR OF FACILITIES:

a. Unless otherwise provided in the Concession License and subject to the terms and conditions of this Sub-Section 2-4 and the availability of appropriated funds, the City will maintain and repair existing structural elements of the building or other structures at the Concession Site, including roof, roof support, walls, floor substructure, concrete foundations, brick facades, patios, patio covers, driveways, parking lots, fences, storage or maintenance buildings, and similar or related features (“Structural Elements”). The City may, at its sole discretion, improve, expand, or replace said Structural Elements.

b. Unless otherwise provided in the Concession License and subject to the terms and conditions of this Sub-Section 2-4 and the availability of appropriated funds, the City will maintain and repair existing mechanical, electrical, and utility systems for heating, ventilation, and air conditioning (HVAC), water, sewer, drainage, electrical, natural gas, fire protection, and telephone systems, including associated tubes, ducts, pipes, lines, mains, wires, conduits, boxes, grates, valves, vents, meters, panels, and associated equipment and appurtenances (“Systems”) located on the Concession Site or used by the Concession. The City may, at its sole discretion, improve, expand, or replace said Systems.

c. The City or its contractors and agents shall have the right to enter upon the Premises at all reasonable times to take such actions as may, in the opinion of the City, be deemed necessary or advisable to perform such work as provided in paragraphs a and b of this Sub-Section 2-4. Except for emergency situations, the City will make every reasonable effort to timely notify Concessionaire of any pending work and to coordinate such work so as to minimize any disruption to the Concession. Paragraphs a and b of this Sub-Section 2-4 is not intended, nor shall be construed, to impose upon the City any obligation to maintain, repair, replace, or alter any Structural Element or System at a specific time, in any particular manner, or to the satisfaction of Concessionaire nor to provide a basis for liability for failure to do so.

d. Concessionaire may, at its own expense and subject to advance written approval by the Manager, install, improve, expand, or replace Structural Elements or Systems upon satisfaction of the requirements in Sub-Section 2-1 and shall undertake such installation, improvements, expansions, or replacements of Structural Elements or Systems if so specified in the Concession License.

e. Notwithstanding any other provision in this Sub-Section 2-4 but subject to any modifications specified in the Concession License, and with the understanding that it is responsibility of the Concessionaire to keep and maintain the Concession Site in good physical and working condition, Concessionaire shall, at its own expense, maintain, repair, or replace any of the following damaged, broken, or worn out items: 1) windows and window frames; 2) doors and door frames; 3) handles and locks; 4) cabinets, counters, and bars; 5) carpet, floor tiles, and other flooring; 6) paints and stains; 7) woodwork, wall paneling and tiles, drywall, and plastering; 8) plumbing items, including sinks, toilets, urinals, garbage disposals, dishwashers, and associated above-floor or below-ceiling pipes and drains; 9) light switches, plugs, and lighting; 10) ceiling tiles; 11) all built-in or attached electrical fans, stove or grill venting systems, kitchen hood, and fire suppression system; 12) refrigerators or refrigeration units and freezers or freezing units; 13) stoves, ovens, cooktops, ranges and grills; 14) drinking fountains; 15) televisions, video games, and computer systems; and 16) items of similar character or use. Replacements shall be of at least equal quality and functionality as the replaced items were when they were new.

f. Upon execution of the Concession License, Concessionaire shall promptly procure, pay for and maintain for the Term of the Concession License, a payment bond or 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, repair and replacement obligations shall be paid. The form of the bond or letter of credit must be acceptable to and approved by the Manager. This bond or letter of credit shall be in the amount specified in the Concession License and shall comply with the requirements of Section 20-53 of the Denver Revised Municipal Code. If the cost of any work under paragraph e. of Sub-Section 2-4 is anticipated to exceed the amount specified in the Concession License, then any supplemental bond, letter of credit or other financial assurance acceptable to the Manager must be provided prior to commencement of work.

g. For any work performed under paragraph e. of Sub-Section 2-4, Concessionaire shall comply with paragraph g. of Sub-Section 2-1 regarding payment of prevailing 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.

h. Notwithstanding any other provision in this Sub-Section 2-4, Concessionaire shall be responsible for any repairs or replacements of Structural Features or Systems 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 public use of the Premises that result in such damage. Such repairs or replacements shall be performed by Concessionaire within a reasonable time period specified in a written notice from the City and in accordance with Sub-Section 2-1.

i. Concessionaire shall provide, at its own expense, for all cleaning and sanitation for the Premises, including without limitation all janitorial services and window washing. Concessionaire shall comply, in carrying out these obligations, with paragraph g. of Sub-Section 2-1 regarding payment of prevailing wages and any applicable living wage requirements set forth in the Denver Revised Municipal Code.

j. Maintenance and care for any landscaping on Premises shall be as provided in the Concession License.

k. For any applicable work performed under Sub-Section 2-4, Concessionaire shall comply with paragraph h. of Sub-Section 2-1 regarding payment of minimum wages and may be required to comply with paragraph k. 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.

## 2-5. PERSONAL PROPERTY:

a. Concessionaire shall supply all personal property, including furnishings and equipment, as necessary or prudent to operate the Concession unless such items are already available for Concessionaire's use at the Concession Site. Concessionaire and the City acknowledge and agree that, unless provided otherwise in the Concession License, all personal property and equipment which 1) are not affixed to the Concession Site so as to constitute Fixtures, and 2) are owned or leased by Concessionaire, shall remain the property of Concessionaire.

b. Concessionaire shall keep and maintain all City personal property, including furnishings and equipment, used by Concessionaire at the Concession Site in good physical and working condition, except for ordinary wear and tear resulting from uses allowed under the Concession License.

c. All personal property, including furnishings and equipment, owned by Concessionaire shall be maintained in good physical and working condition. The City reserves the right to require the removal and/or replacement of inoperable or physically deteriorated personal property and equipment owned by Concessionaire.

d. Concessionaire shall not keep, maintain, store, or use any booths, stands, mobile units, furnishings, equipment, vehicles, supplies or materials at the Concession Site not needed for

the operation of the Concession or not permitted by the Concession License or that would impair the use or value of the Concession Site or any adjoining City-owned property.

### SECTION 3 – CONCESSION OPERATION

#### 3-1. COMMENCEMENT OF OPERATIONS; FAILURE TO OPERATE:

a. Unless otherwise provided in the Concession License or a later date is approved by the Manager in writing and subject to *force majeure*, the provision of goods and services by the Concessionaire shall commence on the effective date of the Concession License. Failure to commence operations when required may result in the revocation of the Concession License as provided in Sub-Section 7-1. All specified Compensation shall be paid by Concessionaire when due, notwithstanding failure to commence operation of the Concession, and if the Compensation is based, in whole or part, on Gross Revenues, Concessionaire covenants and agrees to pay Three Hundred Dollars (\$300.00) a day in lieu of the specified percentage of Gross Revenues then due, in addition to any other Compensation or Guaranteed Annual Minimum Payment due, until Concessionaire commences operations or the Concession License is revoked. This remedy shall be in addition to any other remedies provided in the Concession License or by law to the City.

b. Subject to any exceptions in the Concession License and *force majeure*, Concessionaire is expected to operate the Concession according to the monthly, daily, and hourly schedule in the Concession License. Failure to operate when required may result in the revocation of the Concession License as provided in Sub-Section 7-1. All specified Compensation shall be paid by Concessionaire when due, notwithstanding the fact that the Concession is not operating, and if the Compensation is based, in whole or part, on Gross Revenues, Concessionaire covenants and agrees to pay 1) Three Hundred Dollars (\$300.00) a day in lieu of the specified percentage of Gross Revenues then due, or 2) twenty-five percent (25%) more than the highest monthly payment based on Gross Revenues over the previous six month period of Concession operations, whichever amount is larger, in addition to any other Compensation or Guaranteed Annual Minimum Payment due, until Concessionaire restarts operations or the Concession License is revoked. This remedy shall be in addition to any other remedies provided in the Concession License or by law to the City.

c. *Force majeure* shall mean circumstances where it is impossible, for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, acts of God, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, weather disaster, floods, riots, rebellion, sabotage, or national calamity, for Concessionaire to sell goods or provide services as contemplated in the Concession License.

#### 3-2. BASIC OPERATION REQUIREMENTS:

a. Concessionaire shall provide the food, beverage, goods and other services to the extent and in manner provided in the Concession License subject to seasonal public demand and within the hours of operation, and any exceptions thereto, provided in the Concession License and subject to any reasonable orders, rules and regulations concerning conduct and management that may be made by the Manager.

b. Concessionaire shall maintain the Premises in a neat, clean, safe, and sanitary



condition. All trash, debris, junk, waste, or packing boxes or materials shall not be allowed to accumulate or to be stored for more than a week on the Premises or any adjoining City-owned property and must be containerized, if possible, and regularly removed from the Premises and disposed of in accordance with law. Spills of any nature shall be promptly cleaned up.

c. Concessionaire shall conduct its operations in an orderly and proper manner so as not to commit or maintain any nuisance on the Premises or annoy, disturb or be offensive to others and shall take all reasonable measures to eliminate any unusual, nauseous, or objectionable noise, gases, vapors, odors, and vibrations and to maintain the lowest possible sound level in its operations. Concessionaire shall not commit or suffer to be committed any waste or damage upon the Premises or the adjoining City-owned property.

d. Concessionaire agrees that no improvements, changes, alterations, additions, or repairs shall be made to the Concession Site or any use of the Concession Site which might impair the structural soundness of the Concession Site; result in an overload of utility, plumbing, or HVAC systems serving the Concession Site or other City-owned property; 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.

e. Amusement or vending machines and ATM machines may be installed or maintained in or on the Premises, provided that the Manager may set reasonable requirements and restrictions regarding quantity, placement, appearance, and type of machines.

f. Concessionaire shall give personal supervision and direction to the operation of the Concession and, when absent, keep competent personnel in charge. Concessionaire shall staff the Concession with qualified, trained, and courteous staff in sufficient numbers to meet reasonable needs or demands of patrons during hours of operation.

### 3-3. RATES – GOODS & SERVICES:

Concessionaire agrees to provide for the public at the Concession Site food, beverage, goods and other services equivalent in quality and price to that generally furnished to the public at similar places of comparable size and scope in the Denver metropolitan area. All menus and prices shall be subject to the reasonable approval of the Manager unless the Manager waives, in whole or part, this right of approval. Prices of all merchandise sold shall be posted in a conspicuous place at the Concession Site, including making available menus.

### 3-4. LIQUOR, BEER & WINE:

The right to sell or serve liquor, beer, or wine on Premises shall be as provided in the Concession License. Any such right is subject to Concessionaire securing of a license (or licenses) from the appropriate licensing authority therefor and compliance with any and all terms and conditions connected therewith. However, the City makes no representation that such license(s) may be issued by the licensing authority or transferred from a prior concession operator. All sale and service of liquor, beer, or wine shall be solely for consumption on site within the food service area or as otherwise designated by the licensing authority. If the sale or service of liquor, beer, or wine on Premises is prohibited by the Concession License, the sale or service of any liquor, beer, or wine by

Concessionaire shall be grounds for suspension or revocation of the Concession License.

3-5. ALCOHOL & DRUGS POLICY; SMOKING POLICY; SALE OF TOBACCO PRODUCTS

a. Concessionaire and its directors, officers, agents, and employees shall cooperate with the provisions of Executive Order No. 94 and Attachment A thereto concerning the use, possession or sale of alcohol or drugs. Refusal to cooperate with implementation of the policy can result in the City barring Concessionaire or any offending directors, officers, agents, and employees from City facilities or participating in City operations. Concessionaire, as an employer, shall adhere to the federal, state, and local laws regarding alcohol and drug abuse. Concessionaire shall, through its personnel rules and regulations, or otherwise, maintain a policy against the possession, use or sale of illegal drugs or the unauthorized use by employees of alcohol in the workplace in order to promote safe, healthful, and efficient operations.

b. Concessionaire agrees to adopt and enforce a “no smoking” policy in all areas of the Premises. Concessionaire’s written smoking policy shall be in conformance with Executive Order No. 99 and any rules, regulations, or policies adopted by the Manager and generally applicable to specified facilities under the auspices of Parks and Recreation. Concessionaire shall comply with D.R.M.C. Section 24-301 *et seq.* concerning Environmental Tobacco Smoke Control.

c. Concessionaire is prohibited from selling or permitting the sale of tobacco products on Premises. “Sale” includes promotional distribution, whether for consideration or not, as well as commercial transactions for consideration.

3-6. ADVERTISING/SIGNAGE:

a. Advertising signs on Premises are prohibited; provided, however, that this prohibition shall not apply to advertising of products sold on Premises or to advertising by sponsors of an authorized event held on or in City-owned facilities. “Advertising” includes the display of commercial and noncommercial promotion of products for sale through any medium whatsoever.

b. All signage (other than directional or labeling signs that are small, discrete, and not lighted) which is visible to, and intended for viewing by, persons located off-site from the Premises shall be subject to prior approval by the Manager. Such signage shall conform to any standards established by the Manager and to all zoning and other code requirements for signs. Any sign promoting the Concession shall recognize, in a manner acceptable to the Manager, the Denver Parks and Recreation Department as owner of the Concession Site.

3-7 ACCESS:

a. Concessionaire shall not do or permit to be done anything which might interfere with the effectiveness or accessibility of any utility, heating, ventilating, or air conditioning systems, or portions thereof, on or in the Concession Site or on adjoining City-owned property.

b. Concessionaire shall not do or permit to be done anything which might interfere with free access and passage in, to, or by the Concession Site or public-accessible areas adjacent thereto, or hinder police, firefighting, or other emergency personnel, or the Department of Parks and

Recreation staff, in the discharge of their duties.

c. Concessionaire shall not place any additional lock of any kind upon any window or interior or exterior door on or in the Concession Site, or make any change in any existing door or window lock or the mechanism thereof, unless a key therefore is maintained on the Concession Site, nor refuse, upon the expiration, revocation, or termination of the Concession License, to surrender to the City any and all keys to windows and doors in and on the Concession Site, whether said keys were furnished to or otherwise procured by Concessionaire. If any keys furnished to Concessionaire by the City are lost, Concessionaire shall pay the City, on demand, the cost of replacement thereof.

3-8. BACKGROUND CHECKS:

a. Concessionaire shall be responsible for conducting background checks on all employees and other persons that Concessionaire assigns to, or allows to work at, a Concession Site. Concessionaire shall not assign or allow any person to work at a Concession Site if that person has been convicted or released from confinement following conviction within the preceding five years, anywhere in the United States, for one or more of the following:

1. Sexually-related crimes: prostitution, pandering, procuring, and pimping; sexual assault; incest; indecent exposure or public indecency; stalking; harassment; obscenity or the promotion, sale, distribution, or possession of obscene materials; any of the foregoing related to a child or children, including trafficking in child pornography, sexual exploitation of a child, or providing sexually explicit material to a child; and any criminal attempts, solicitations, or conspiracies, including racketeering, involving any of the foregoing; or

2. Drug-related crimes: the unlawful manufacture, transportation, promotion, distribution, dispensing, sale or possession with intent to distribute narcotics, stimulants, depressants, or other controlled substances; the unlawful manufacture, transportation, promotion, distribution, dispensing, or sale of alcohol beverages, including the dispensing or sale to a person under twenty-one years of age or a visibly intoxicated person; and any criminal attempts, solicitations, or conspiracies, including racketeering, involving any of the foregoing; or

3. Any criminal act or violation of local government ordinance or regulation, which criminal act or violation was punished, following conviction, by incarceration and was directly related to the operation, or committed upon the premises, of a concession licensed by the City or any similar business operated elsewhere in the United States; or

4. Any criminal act or violation of local government ordinance or regulation, which resulted in a conviction or judicial determination directly ordering or causing the permanent closure or forfeiture of any business owned or managed by the person and licensed as a concession by the City or any similar business owned or managed by the person elsewhere in the United States.

b. The Manager may also consider criminal convictions for lesser crimes that are sexually-related or drug-related but are not listed in paragraph a. of this Sub-Section 3-8 under either of the following circumstances: There have been multiple convictions (3 or more) within the past ten-year period *or* the conviction for a lesser crime appears, based on competent evidence, to have resulted from a plea bargain and that the original charge or indictment was for a criminal act listed in

paragraph a. of this Sub-Section 3-8.

c. If such a criminal or ordinance violation conviction or judgment exists and Concessionaire believes there are extenuating circumstances that should be considered, Concessionaire may request, in writing, that the Manager waive the restrictions of this Sub-Section 3-8 in light of policies set forth in C.R.S. Section 24-5-101, as amended, pertaining to the effect of criminal convictions on employment rights.

d. The words “convicted” or “conviction” as used in Sub-Sections 3-8 and 3-9 shall mean a plea of guilty, a plea of nolo contendere, a finding of guilty, a default judgment, or a deferred judgment and sentence.

3-9. CRIMINAL ACTS:

During the Term of the Concession License, a conviction of Concessionaire or any of its owners, shareholders, members, officers or employees for 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 Concessionaire’s business may result in the revocation of the Concession License as provided in Sub-Section 7-1, unless, upon knowledge of Concessionaire, such owner, shareholder, member, officer or employee is promptly terminated or the relation with Concessionaire’s business is severed.

3-10. PATENTS, TRADEMARKS, COPYRIGHT, AND LICENSES:

Concessionaire represents that it is the owner of or fully authorized to use any and all services, processes, equipment, articles, business programs, computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans used by it in its operations under or in any way connected with this Concession. Any and all services, processes, equipment, articles, business programs, computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans owned or authorized for use by Concessionaire prior to the execution of the Concession License shall remain the sole property of Concessionaire. Any computer applications, URLs, domain names, web pages, software, marks, logos, names or slogans created or developed by the Concessionaire with respect to the operation of the Concession or provided or authorized by the City for the Concessionaire’s use shall be promptly returned to the City upon the expiration, revocation or termination of this Concession License and all rights and interests thereto released by Concessionaire. Concessionaire shall save and hold the City, its officers, employees, agents and representatives, free and harmless of and from any loss, liability, expense, suit or claim for damages in connection with any actual or alleged infringement or violation of any patent, trademark, copyright, or license or arising from any alleged or actual unfair competition or other similar claim arising out of the operations of Concessionaire under or in any way connected with this Concession. If the City determines that Concessionaire is in violation of this Section 3-10, the City may seek any remedy available at law or equity or under this Concession License, including suspension or revocation of the Concession License and any remedy consistent with United States patent, trademark, or copyright laws or applicable licensing restrictions.

3-11. NO EMPLOYMENT OF ILLEGAL ALIENS:

a. This Concession License is subject to Division 5 of Article IV of Chapter 20 of the Denver Revised Municipal Code, and any amendments (the “Certification Ordinance”).

b. The Concessionaire certifies that:

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

(2) It will participate in the E-Verify Program, as defined in § 8-17.5-101(3.7), C.R.S., to confirm the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement.

c. The Concessionaire also agrees and represents that:

(1) It shall not knowingly employ or contract with an illegal alien to perform work under the Agreement.

(2) It shall not enter into a contract with a subconsultant 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 Agreement.

(3) It has confirmed the employment eligibility of all employees who are newly hired for employment to perform work under this Agreement, through participation in the E-Verify Program.

(4) It is prohibited from using the E-Verify Program procedures to undertake pre-employment screening of job applicants while performing its obligations under the Agreement, and that otherwise requires the Concessionaire to comply with any and all federal requirements related to use of the E-Verify Program including, by way of example, all program requirements related to employee notification and preservation of employee rights.

(5) If it obtains actual knowledge that a subconsultant or subcontractor performing work under the Agreement knowingly employs or contracts with an illegal alien, it will notify such subconsultant or subcontractor and the City within three (3) days. The Concessionaire will also then terminate such subconsultant or subcontractor if within three (3) days after such notice the subconsultant or subcontractor does not stop employing or contracting with the illegal alien, unless during such three-day period the subconsultant or subcontractor provides information to establish that the subconsultant or subcontractor has not knowingly employed or contracted with an illegal alien.

(6) 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., or the City Auditor, under authority of D.R.M.C. 20-90.3.

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 Concession License for a breach of the Concession License. If the

Concession 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.

3-12. ENVIRONMENTAL PROTECTION:

a. Concessionaire shall comply with the applicable federal, state, and local laws, regulations, and standards that are or may become applicable to Concessionaire's activities on the Concession Site.

b. Concessionaire shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operation under this Concession License, independent of any existing permits.

c. Concessionaire shall save, indemnify and hold harmless the City from any damages, costs, expenses, liabilities, fines, or penalties resulting from releases, discharges, emissions, spills, storage, disposal, or any other acts or omissions by Concessionaire, its officers, agents, employees, contractors or sublessees, giving rise to City liability, civil or criminal, or responsibility under federal, state or local environmental laws. This provision shall survive the expiration or revocation of the Concession License, and Concessionaire's obligations hereunder shall apply whenever the City incurs costs or liabilities for Concessionaire's actions of the types described in this Sub-Section 3-12.

d. The City's rights under the Concession License specifically include the right for City officials to inspect, upon reasonable notice, the Concession Site for compliance with environmental, safety, and occupational health laws and regulations, whether or not the City is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The City normally will give Concessionaire twenty-four (24) hours prior notice of its intention to enter the Concession Site for an inspection pursuant to this paragraph unless it determines the entry is required for safety, environmental, or security purposes.

e. The City is not responsible for any removal or containment of asbestos unless such responsibility is so provided in the Concession License. If any improvement plans for the Concession Site require the removal of asbestos, an asbestos removal and disposal plan must be submitted concurrently with the improvement plans. The asbestos removal and disposal plan must identify the proposed disposal site for the asbestos.

f. Concessionaire agrees that the City assumes no liability to Concessionaire should hazardous waste cleanup requirements, whether imposed by law or regulatory agencies, interfere with Concessionaire's use of the Concession Site. Concessionaire shall have no claim on account of any such interference against the City or any officer, agent, employee or contractor thereof.

g. Concessionaire must comply with all federal, state, and local laws, regulations, orders, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes.

h. Concessionaire shall strictly comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its state equivalent and any other applicable laws, rules or regulations. Concessionaire must provide at its own expense such hazardous waste storage facilities which comply with all laws and regulations as it may need for such storage. Any violation of the requirements of this provision shall be deemed a material violation of the Concession License. Notwithstanding any other provisions of this License, neither Concessionaire nor any of its contractors or subcontractors shall store or otherwise allow its hazardous waste to remain on the Concession Site in excess of ninety (90) days without the express written consent of the Manager.

i. Concessionaire must maintain and make available to the City all records, inspection logs, and manifests that track the generation, handling, storage, treatment and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. The City reserves the right to inspect the Concession Site, Concessionaire records for compliance with federal, state, and local laws, regulations, orders and other requirements relating to the generation, handling, storage, treatment and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by the City to appropriate regulatory agencies, as required by applicable law. Concessionaire will be liable for the payment of any fines and penalties, which may accrue as a result of the actions of Concessionaire.

j. Concessionaire shall comply with all requirements of the Federal Water Pollution Control Act, the National Pollutant Discharge Elimination System (NPDES), and any applicable state or local requirements.

k. Concessionaire shall not conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of the Manager. Failure to adhere to federal and state regulations concerning underground storage tanks at the Concession Site, if any, shall be sufficient grounds for revoking the Concession License after appropriate notice. Such revocation shall not release Concessionaire from any liability resulting from a release which occurred while the Concession License was in effect, including any fines, civil penalties or damages. Concessionaire shall be responsible for permanent closure and any remedial action required by the Colorado Department of Health or the Environmental Protection Agency.

l. Concessionaire must notify the Manager of Concessionaire's intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act and its implementing regulations; of Concessionaire's intent to possess, use, or store radium; and of Concessionaire's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation, at least sixty (60) days prior to the entry of such materials or equipment upon the Concession Site. Upon notification, the Manager may impose such requirements, including prohibition of possession, use, or storage, as the Manager deems necessary to adequately protect health and the human environment. Thereafter, Concessionaire must notify the Manager of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided; however, that Concessionaire need not make either of the above notifications to the Manager with respect to source and byproduct material which is exempt from regulation under the Atomic Energy Act. Concessionaire shall not, under any circumstances, use, own, possess or allow the presence of special nuclear material on the Concession Site.

m. Concessionaire acknowledges that lead-based paint may be present in and on facilities and equipment within the Concession Site. The City may conduct surveys to determine the existence and extent of any possible lead-based paint. Concessionaire will be notified if the City determines there is lead-based paint in or on the licensed facilities or equipment. Prior to beginning any alteration or modification, Concessionaire or City must test any paint which would be disturbed unless a conclusive determination has been made that lead-based paint is not present. If the paint is lead-based, Concessionaire is required to handle it in accordance with all applicable federal, state, and local laws and regulations at its own expense. Concessionaire is required to ensure that any lead-based paint left in place is maintained in good condition.

3-13. COMPLIANCE WITH LAW:

a. Concessionaire shall comply with all applicable laws of the United States, the State of Colorado, and the Charter and Ordinances of the City and County of Denver, and all rules and regulations issued pursuant thereto.

b. Unless otherwise provided in the Concession License, a Concession shall be operated in conformance with the Rules and Regulations of the Department of Parks and Recreation, and Concessionaire shall require all employees, servants, contractors, invitees, suppliers, agents, customers and patrons of the Concession to comply with said Rules and Regulations.



## SECTION 4 – COMPENSATION & ACCOUNTING

### 4-1. COMPENSATION & OTHER PAYMENTS:

a. Concessionaire covenants and agrees, without offset, deduction or abatement, to pay the City, as consideration for the rights and privileges granted in the Concession License, 1) the Compensation provided for in the Concession License; 2) any Guaranteed Annual Minimum Payment provided for in the Concession License; and 3) any other payments or reimbursements specified in the Concession License. Said obligation to make said specified payments shall commence on the effective date of the Concession License and continue through the Term.

b. All payments shall be made at Parks Finance, at 201 West Colfax Ave., Dept. 602, Denver, Colorado 80202, or at such other office as may hereafter be substituted hereafter by notice to Concessionaire, and made payable to the Denver Manager of Finance.

c. Upon failure to make prescribed payments by the date provided in the Concession License, interest of 15% per annum shall accumulate and be paid for all amounts past due.

### 4-2. BOOKS OF ACCOUNT AND AUDITING:

a. Concessionaire shall keep and make available, upon request, true and complete records and accounts of all Gross Revenue and business transacted, including daily bank deposits and quarterly sales tax statements. Not later than March 31<sup>st</sup> of each and every year during the Term of the Concession License, Concessionaire shall furnish to the Manager a true and accurate statement of the total of Gross Revenues during the preceding calendar year or any part thereof (unless a different reporting period is specified in the Concession License) that the Concession operated. The statement shall itemize the authorized deductions and exclusions in computing the amount of such Gross Revenues and shall include a breakdown of Gross Revenues on a month-by-month basis. Such statement shall be prepared and certified by an independent certified public accountant who has audited the Gross Revenues in accordance with generally accepted accounting procedures for special reports. The above requirements for the annual statement may be modified by the Manager, in the Manager's discretion, if such modification is in the best interests of the City.

b. Concessionaire agrees to establish and maintain a system of bookkeeping satisfactory to the Auditor. Such system shall be kept in a manner as to allow Concessionaire's operations at the Concession Site to be distinguished from all other locations or operations of Concessionaire. Concessionaire shall keep and preserve for at least three years, or until sooner audited by City, all sales slips, cash register tapes, sales books, bank books or duplicate deposit slips, and all other evidence of Gross Revenues and business transacted for such period. The Auditor or Manager shall have the right at any time to inspect or audit all of the books of account, bank statements, documents, records, returns, papers and files of Concessionaire relating to the Gross Revenues and business transacted.

c. Concessionaire, upon written request, shall make all such documents available for examination within the Denver metropolitan area or shall pay to the City, in full and in advance, travel and related expenses of a City representative to travel to any location outside the Denver area for such examination. Following the travel, expenses shall be reconciled, and any difference between the advance payment and the actual expenses shall be paid by or refunded to Concessionaire as appropriate. Such documents shall be available to the City representative within fourteen (14) calendar days of the date of the written request. The parties agree that any delay in furnishing such records to the City will cause damages to the City which the parties agree are liquidated in the amount of Three Hundred and Fifty Dollars (\$350.00) per day for each day the records are unavailable beyond the date established as the City's notice.

d. If the City determines, after an audit for any year, that the Gross Revenues shown by Concessionaire's statement for such year are understated, Concessionaire shall pay the amount of the deficiency plus 15% per annum interest for being past due. If the Gross Revenues are understated by more than 3%, Concessionaire shall pay to the City the cost of the audit, in addition to the deficiency and interest. The City's right to perform such an audit will expire three (3) years after Concessionaire's statement for that year has been delivered to the City.

e. Concessionaire agrees that the Manager or the Auditor may inspect any document, return, data or report filed pursuant to Chapter 53 of the Denver Revised Municipal Code by Concessionaire with the City's Manager of Finance and any related reports, document, data or other information generated by the City's Manager of Finance or employees under the control of such Manager of Finance in connection with any investigation or audit of Concessionaire by the City's Department of Finance. Concessionaire authorizes and permits the inspection of such documents, data, returns, reports and information by the Manager or Auditor, and, further, waives any claim of confidentiality that it may have in connection with such documents, returns, data, reports and information.

## **SECTION 5 – INDEMNIFICATION, INSURANCE, SURETIES AND FINANCIAL OBLIGATIONS**

### **5-1. DEFENSE, INDEMNIFICATION & IMMUNITY:**

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 Concession 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 \$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.

f. This defense and indemnification obligation shall survive the expiration, revocation, or termination of the Concession License.

## 5-2. INSURANCE:

a. General Conditions: Concessionaire agrees to secure, at or before the time of execution of this Concession License, insurance covering all operations, activities, and services provided pursuant to the Concession License in the types and amounts of coverage specified in the Concession License. Concessionaire shall keep the required insurance coverage in force at all times during the Term of the Concession License and for the time period specified in Sub-Section 8-8. Each policy shall contain a valid provision or endorsement requiring notification to the City in the event any of the required policies is canceled or non-renewed before the expiration date thereof. Such written notice shall be sent to the parties as provided in Sub-Section 8-1. Such notice shall reference the City contract number listed on the signature page of this Concession License. Said notice shall be sent thirty (30) days prior to such cancellation or non-renewal unless due to non-payment of premiums for which notice shall be sent ten (10) days prior. If such written notice is unavailable from the insurer, Concessionaire shall provide written notice of cancellation or non-renewal as well as any reduction in coverage to the parties as provided in Sub-Section 8-1 within three (3) business days of such notice by its insurer(s) and referencing the City's contract number. If any policy is in excess of a deductible or self-insured retention, the City must be notified by Concessionaire. Concessionaire shall be responsible for the payment of any deductible or self-insured retention. The insurance coverages specified in the Concession License are the minimum requirements, and these requirements do not lessen or limit the liability of Concessionaire.

b. Proof of Insurance: Concessionaire shall provide a copy of the Concession License, including these insurance requirements, to its insurance agent or broker. Concessionaire certifies that the certificate of insurance provided to the City, preferably an ACORD certificate, shall comply with all insurance requirements of the Concession License. The City requests that the City's contract number be referenced on the certificate. The City's acceptance of a certificate of insurance or other proof of insurance which does not comply with all insurance requirements set forth herein shall not act as a waiver of any of the City's rights or remedies under the Concession 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 Commercial General Liability, Business Automobile Liability, Liquor Liability and Contractor's Pollution Liability, Concessionaire's insurer(s) shall name the City and County of Denver, its elected and appointed officials, employees and volunteers as additional insured.

d. Waiver of Subrogation: For all coverages, Concessionaire's insurer shall waive subrogation rights against the City.

e. Contractors and Consultants: All Contractors and Consultants (including independent contractors, subcontractors, sub-consultants, suppliers or other entities providing goods or services required by this Agreement) shall be subject to all of the requirements herein and shall procure and maintain the same coverages required of Concessionaire. Concessionaire shall include all such Contractors and Consultants as additional insured under its policies (with the exception of Workers' Compensation) or shall ensure that all such Contractors and Consultants maintain the required coverages. Concessionaire agrees to provide proof of insurance for all such Contractors and Consultants upon request by the City.

f. Workers' Compensation/Employer's Liability Insurance: If Colorado statutory requirements are specified in the Concession License, 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. Concessionaire expressly represents to the City, as a material representation upon which the City is relying in entering into this Agreement, that none of 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 Concession License, and that any such rejections previously effected, have been revoked as of the date Concessionaire signs the Concession License.

g. Commercial General Liability: Unless different coverage amounts are specified in the Concession License, Concessionaire shall maintain a Commercial General Liability insurance policy with limits of \$1,000,000 for each occurrence, \$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 Concession License.

h. Business Automobile Liability: Unless different coverage amounts are specified in the Concession License, 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.

i. 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).

j. Professional Liability (Errors & Omissions): Concessionaire shall require any design professional for construction to maintain limits of \$1,000,000 per claim and \$1,000,000 policy aggregate limit. (Design Professionals only).

k. Other Coverage: Concessionaire shall obtain and maintain insurance coverage for Liquor Liability, if so required by the Concession License.

l. Additional Provisions:

(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 in excess of policy limits;
- (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
- (v) No exclusion for sexual abuse, molestation or sexual misconduct.

(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.

(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.

m. Failure to Insure. Failure to obtain, keep, renew, or replace, or pay premiums for, insurance policies required under the Concession License may result in the revocation of the Concession License, as provided in Sub-Section 7-1, upon failure to provide proof that the required insurance policies are in effect and fully paid within fifteen (15) days of notice from the City that

such proof is required. The City reserves the right to suspend Concession operations, at Concessionaire's cost, during any time period that the required insurance policies are not available or have not been provided.

5-3. PERSONAL PROPERTY INSURANCE:

a. Concessionaire agrees to carry property insurance on an all-risk basis, including flood and earth movement, for the replacement cost of Concessionaire's personal property, including furnishings and equipment, used in the operation of the Concession. Concessionaire hereby expressly waives and releases any claim or cause for right of recovery which Concessionaire may have hereafter against the City for any loss or damage to the Premises or contents therein belonging to either party, caused by fire, windstorm, explosion, and other Acts of God or by third persons. Any and all risks covered by Concessionaire's property insurance shall contain a waiver of subrogation rights against the City.

b. The City may secure and maintain all-risk fire and extended peril property insurance provided on a replacement cost basis for City-owned personal property. Such coverage may be placed on a blanket basis. The City may also insure on a self-funded basis. To the extent that such property insurance is obtained and covers all losses or damages and any losses or damages are not the direct result of the gross negligence or willful or wanton acts of Concessionaire or Concessionaire's officers, employees, contractors or agents, the City waives and releases any subrogation rights which the City may have against Concessionaire for any loss or damage to the affected Premises, or to the contents thereof belonging to either party, caused by a covered cause of loss or damage.

5-4. PAYMENT & PERFORMANCE GUARANTEES:

Without limiting or waiving any other obligations or liabilities of Concessionaire under the Concession License, Concessionaire shall provide any bonds or other payment or performance guarantees or surety specified in the Concession License, subject to the following requirements and subject to the review and approval of the Denver City Attorney:

a. Payment and Performance Bonding for Construction: Concessionaire shall deliver to the City, prior to the commencement of the construction of any Improvements or the installation of Fixtures, and shall maintain until the completion and acceptance of the same, contractor's payment and performance bonds, acceptable to and approved by the Manager and, if Public Works is managing the project, the Manager of Public Works, each in the amount equal to one hundred percent of the proposed amount of the work and costs of said Improvements and Fixtures to be performed by Concessionaire, in conformance with section 2.3.3 of the Denver Charter and Section 20-53 of the Denver Revised Municipal Code. Satisfactory proof of renewal must be provided at least sixty (60) days prior to the date of expiration of the Surety if the construction is not completed and accepted by the City.

b. Performance Assurances for Operations: Concessionaire shall deliver to the Manager, prior to the execution of the Concession License, a performance bond or a letter of credit, as

specified in the Concession License and in a form acceptable to and approved by the Manager, to assure performance of the duties and obligations under the Concession License, including payment of Compensation (the "Surety"). Said Surety shall be in the amounts specified in the Concession License. The Surety must be issued from a surety corporation or bank authorized to do business in the State of Colorado. Such Surety shall be payable without condition to the City and shall guarantee to the City full and faithful performance of the Concession License. The Surety shall state that 1) if it is subject to annual renewal or cancellation, that written notice of non-renewal or cancellation must be provided to the Manager at least thirty (30) days in advance of non-renewal or cancellation, and any claims the City has against the Surety prior to termination or cancellation shall survive; and 2) the Surety will remain in effect for a ninety (90) day period following the expiration of the Term of the Concession License or the revocation or termination of the Concession License. If a bond or letter of credit is to be cancelled or not renewed during the Term of the Concession License, Concessionaire must provide a satisfactory replacement of the bond or letter of credit prior to the effective date of cancellation or non-renewal.

c. Failure to comply with this Sub-Section 5-4 may result in the revocation of the Concession License under Sub-Section 7-1, upon failure to provide proof that the required sureties are in effect and fully paid within fifteen (15) days of notice from the City that such proof is required. The City reserves the right to suspend Concession operations, at Concessionaire's cost, during any time period that the required sureties are not available or have not been provided.

#### 5-5. TAXES, LICENSES, EMPLOYEE TAXES, INSURANCE & LIENS:

a. Concessionaire shall pay promptly all taxes, excises, and license or permit fees of whatever nature applicable to the Concession, and take out and keep current all licenses or permits, municipal, state or federal, required for the conduct of the concession, and further shall not permit any of said taxes, excises, or license or permit fees to become delinquent and shall pay any fine or penalty should there be a delinquency or violation of law. Upon request, Concessionaire shall provide proof to the City of payment of all taxes, excises, license and permit fees, fines or penalties.

b. Concessionaire also shall not permit any legitimate mechanic's or materialman's or any other lien to become attached to or be foreclosed upon the Concession Site or any Improvements or Fixtures, or any part or parcel thereof, by reason of any work or labor performed or materials furnished by any person, partnership, association of persons, firm, company, or corporation at, in or upon the Concession Site or regarding the Concession herein granted, either pursuant to C.R.S. section 38-26-107, as amended, or by other authority.

c. Upon request, 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 Concessionaire.

d. Concessionaire shall pay promptly when due all bills, debts and obligations incurred in connection with the operation of the Concession so as to not permit same to become delinquent and suffer no lien, mortgage, judgment, execution or adjudication in bankruptcy which will in any way impair the rights and title of the City to the Concession Site or under the Concession License

e. If Concessionaire elects, in good faith, to defend against or legally contest any claims, demands, liens or orders that arise under this Sub-Section 5-5, 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 Concession License, shall notify the Manager of what measures and other actions Concessionaire is taking in this regard, and, if Concessionaire is not completely successful in its efforts, shall promptly and fully pay any financial obligations as specified by order, judgment, decree or as otherwise provided in this Sub-Section 5-5.

5-6. UTILITIES:

All charges, connection fees, taxes, and excises for public utilities and cable television used or consumed at the Concession Site, including but not limited to gas and electric, telephone, water, and garbage and waste disposal, shall be the sole responsibility of Concessionaire, unless otherwise provided in the Concession License.

**SECTION 6 -- ASSIGNMENT, TRANSFER OF CONTROL & ENCUMBRANCES**

6-1. ASSIGNMENT:

Concessionaire covenants and agrees not to assign, subcontract, or otherwise transfer any rights, benefits, obligations, or duties under the Concession License, in whole or in part, without the prior written consent of the City. The Manager may require documented evidence that the proposed assignee, subcontractor, sub-concessionaire, or transferee has the skills and financial ability to fully perform the Concession License and may require that the proposed assignee, subcontractor, sub-concessionaire, or transferee unequivocally agree, in a signed document satisfactory to the Manager and in compliance with the City Charter, (1) to assume the obligations and duties of Concessionaire under the Concession License; and (2) to be bound by all of the terms, covenants and conditions contained in the Concession License. If the City consents, then any assignment, subcontract, sub-concession, or transfer may be permitted only if Concessionaire pays all amounts due and owing to the City before any assignment, subcontract, sub-concession, or transfer is effective. Concessionaire shall be responsible in all respects for the work assigned, subcontracted, or transferred unless a release is consented to by the City in writing. Every assignment, subcontract, sub-concession, or transfer shall make the Concession License subject to suspension unless and until the City consents in writing thereto and subject to revocation if the City does not consent. The consent of the City shall be evidenced by City Council approval and the signature of the Mayor.

6-2. TRANSFER OF CONTROL:

Any transfer of fifty percent (50%) or more of the outstanding voting stock of Concessionaire or of fifty percent (50%) or more of the equity interest in Concessionaire, including transfer by merger, consolidation, or liquidation, or other change in ownership of Concessionaire, shall constitute a Transfer of Control by Concessionaire under this Sub-Section 6-2; provided, however, that transfer of such stock or equity interest to an existing shareholder or owner resulting from the death of another shareholder or owner with a 50% or more interest shall not constitute a Transfer of



Control under this Sub-Section 6-2. Concessionaire shall promptly notify the Manager of any proposed Transfer of Control. The Manager may require documented evidence that the transferee has the skills and financial ability to fully perform the Concession License and may require the transferee, in a signed document satisfactory to the Manager, (1) to assume the obligations and duties of Concessionaire under the Concession License; and (2) to be bound by all of the terms, covenants and conditions contained in the Concession License. Every Transfer of Control shall make the Concession License subject to suspension unless and until the City consents in writing thereto and subject to revocation if the City does not consent. The consent of the City shall be evidenced by City Council approval and the signature of the Mayor.

6-3. ENCUMBRANCE OF INTERESTS:

Concessionaire shall not, under any circumstances, encumber or hypothecate any rights or interests in the Concession License, the Concession Site, Improvements, Fixtures, or any personal property owned by the City. This prohibition shall not pertain to equipment, furnishings or other personal property owned or leased by Concessionaire.

**SECTION 7 – REVOCATION, CURE, TERMINATION & REMISE OF PREMISES**

7-1. DISCRETIONARY REVOCATION:

a. If any one or more of the following events shall occur, then the Manager may, at the Manager’s option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed:

1. Concessionaire becomes insolvent, or takes the benefit of any present or future insolvency statute, or makes a general assignment for the benefit of creditors, or files a voluntary petition in bankruptcy or a petition or answer seeking an arrangement or its reorganization or the readjustment of its indebtedness under this federal bankruptcy laws or under any other law or statute of the United States or any State thereof, or consents to the appointment of a receiver, trustee, or liquidator of all or substantially all of its property; or

2. By order or decree of a court, Concessionaire is adjudged bankrupt or an order is made approving a petition filed by any of its creditors or by any of its stockholders, seeking its reorganization or the readjustment of its indebtedness under the federal bankruptcy laws or under any law or statute of the United States or any State thereof; or

3. A petition under any part of the federal bankruptcy laws or an action under any present or future insolvency law or statute is filed against Concessionaire and is not dismissed within sixty (60) days after the filing thereof; or

4. By or pursuant to, or under authority of, any legislative act, resolution or rule, or any order or decree of any court or governmental board, agency or officer, a receiver, trustee, or

liquidator takes possession or control of all or substantially all of the property of Concessionaire and such possession or control continues in effect for a period of sixty (60) days; or

5. Concessionaire becomes a corporation in dissolution or liquidation; or

6. The interests of or rights of Concessionaire hereunder are transferred to, passed to, or devolve upon, by operation of law or otherwise, any other person, firm, corporation, or other entity, by, in connection with or as a result of any bankruptcy, insolvency, trusteeship, liquidation, or other proceeding or occurrence described in paragraphs a.1, 2, 3, 4, or 5 of this Sub-Section 7-1; or

7. Concessionaire refuses to construct or install any Capital Improvements or pay any costs of any Capital Improvements as required by the Concession License; or

8. In violation of Sub-Section 3-1, Concessionaire fails to commence Concession operations or discontinues Concession operations for a period of thirty (30) days or more when no exclusions or exceptions under the Concession License are applicable or no time extension or waiver has been granted by the Manager; or

9. Concessionaire is in violation of Sub-Section 3-9; or

10. The Concessionaire notifies the City or takes action to abandon or vacate the Concession prior to the expiration of the Term of the Concession License; or

11. There is substantial evidence that it has been or will be impossible for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of one hundred-eighty (180) days or more due to strikes, boycotts, labor disputes, acts of God, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, court orders, weather disaster, floods, riots, rebellion, sabotage, or national calamity; or

12. Concessionaire fails or refuses to obtain, renew, or maintain insurance coverage or provide proof of insurance as required under Sub-Section 5-2 or causes or is at fault for damage to property or injury to persons that is not covered or not adequately covered by insurance and Concessionaire fails to remedy situation to the Manager's reasonable satisfaction; or

13. Concessionaire fails or refuses to comply with or perform any obligations set forth in Section 5 regarding defense and indemnification, insurance, financial assurances, and financial and liability obligations despite notification from the City; or

14. Concessionaire completes an assignment or transfer of control or encumbers interests in violation of Section 6; or

15. The Premises or any part or portion thereof is destroyed or substantially damaged as a result of a casualty that renders the Premises wholly or substantially unusable in the opinion of the City. In the alternative, the City may elect to enter a separate agreement with

Concessionaire to use any property insurance proceeds and other funding that the parties, at their individual discretion, elect to make available for the reconstruction or repair of the Premises.

b. If Concessionaire is a privately owned corporation or partnership, and any of the events enumerated in paragraphs a.1, 2, 3, 4, 5 or 6 of this Sub-Section 7-1 hereof occurs with respect to a principal shareholder or owner of Concessionaire, or said shareholder's or owner's estate, and such event adversely affects the operation of the Concession, then upon the occurrence of any such event or at any time thereafter during the continuance thereof, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

7-2. VIOLATION, CURE & REVOCATION:

a. In the event Concessionaire fails to perform or, improperly or incompletely performs, any of its duties or obligations under the Concession License or violates or breaches any term or condition of this Concession License ("Non-Performance") and provided the Non-Performance is not a basis for immediate revocation under the Concession License or discretionary revocation under Sub-Section 7-1 so that the Manager has revoked or intends to revoke the Concession License, then the City shall provide Concessionaire with a notice of Non-Performance which shall set forth specifically the Non-Performance. Concessionaire shall have thirty (30) days from the date of receipt of such notice, unless a shorter time period is otherwise provided in the Concession License and except as provided below, within which to correct the Non-Performance. Should Concessionaire cure the Non-Performance within the thirty (30) day period, it shall notify the City in writing of when and how the cure was accomplished and provide any required documentation of said cure. Notwithstanding the foregoing, Concessionaire agrees that it will undertake all good-faith measures to cure the Non-Performance as promptly as commercially practicable, and Concessionaire will not take thirty (30) days to cure the Non-Performance if such can be cured in a shorter period. In the event the Non-Performance is not cured within such thirty (30) day period, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed. Such revocation notice shall not extend further the cure period afforded to Concessionaire.

b. Notwithstanding the foregoing, if the Non-Performance cannot be cured through the exercise of reasonable diligence within the thirty (30) day period, then such thirty (30) day period may be extended to a time as is reasonable to cure the Non-Performance, provided Concessionaire has proceeded and is continuing to proceed in a diligent and reasonable manner to cure, in the opinion of the Manager. Concessionaire shall, if the Non-Performance cannot be cured within the thirty (30) day time period through the exercise of reasonable diligence, so advise the City in writing as soon as reasonably possible and include in said writing a detailed listing of what measures that Concessionaire has undertaken to cure the Non-Performance and Concessionaire's best estimate of when and how such Non-Performance will be cured. The City reserves the right to reject any time extension if, in the opinion of the Manager, Concessionaire has not proceeded in a diligent and reasonable manner to cure or any further delays in curing the Non-Performance would substantially

damage the City's interests under the Concession License. In the alternative, the Manager may, as a condition of approving any time extension for cure, specify, within reason, certain actions Concessionaire must undertake in order to cure or specify a shorter or longer cure period than that indicated in Concessionaire's writing. If a time extension is approved, Concessionaire shall advise the City in writing when and how the cure was accomplished and provide any required documentation of said cure. In the event the Non-Performance is not cured within the specified time extension, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

c. The foregoing cure provisions shall not apply if Concessionaire fails to timely pay any Compensation or any other sums of money due and owing to the City under the Concession License ("Payment Non-Performance"). In lieu thereof, the cure period shall be five (5) days following receipt of notice of such Payment Non-Performance. If full payment is not received within five (5) days, the City may, at its option, revoke the Concession License by sending written notice of revocation, by registered or certified mail, return receipt requested, to Concessionaire at the most currently provided address for the Concessionaire, which notice shall be deemed given when mailed.

d. Concessionaire will be allowed only two (2) notices of Non-Performance in any twelve (12) month period which it may cure within the time specified. The third such notice in any twelve (12) month period shall be final, and all of Concessionaire's rights under the Concession License shall be immediately revoked without any right on the part of Concessionaire to cure such Non-Performance after receiving notice.

e. A failure by the City to take any action with respect to any Non-Performance by Concessionaire shall not in any respect limit, prejudice, diminish, or constitute a waiver of any rights of the City to act with respect to any prior, contemporaneous, or subsequent Non-Performance or with respect to any continuation or repetition of the original Non-Performance. The acceptance by the City of Compensation for any period or periods after Non-Performance shall not constitute a waiver or diminution, nor create any limitation upon any right of the City pursuant to the Concession License to revoke the Concession License. However, if Concessionaire timely and fully cures the Non-Performance after receipt of notice, said Non-Performance shall be deemed resolved and the forgoing non-waiver provisions shall not apply, except as provided in paragraph d. of this Sub-Section 7-2.

### 7-3. RIGHT OF RE-ENTRY:

The City shall, as an additional remedy, have the right to re-enter the Concession Site and every part thereof upon the effective date of revocation without further notice of any kind, and may regain and resume possession either with or without the institution of summary or any other legal proceedings or otherwise. Such re-entry, or regaining or resumption of possession, however, shall not in any manner affect, alter or diminish any of the obligations of Concessionaire under the Concession License, shall in no event constitute an acceptance of surrender, and shall not affect any other remedies, equitable or legal, available to the City under law.

7-4. TERMINATION:

a. At any time, upon written and mutual consent of the City and Concessionaire, the Concession License may be terminated.

b. For good cause shown by Concessionaire in writing and satisfactory to the Manager, the Concession License may be terminated. "Good cause shown" shall be limited to circumstances where it is impossible for Concessionaire to sell goods or provide services as contemplated in the Concession License for a period of sixty (60) days or more for reasons beyond the control of Concessionaire and for which Concessionaire is not responsible, including strikes, boycotts, labor disputes, acts of God, acts of the public enemy, closure or suspension of operations by regulatory order of a governmental entity, weather disaster, floods, riots, rebellion, sabotage, or national calamity, and destruction or significant damage to the Premises not caused by Concessionaire or its employees, agents or contractors.

c. For such other reasons and upon such conditions expressly stated in the Concession License, the Concession License may be terminated.

d. Subject to any adjustments the Manager may deem appropriate, all Compensation and other payments due and owing the City and any other financial obligations arising from the Concession shall be paid by Concessionaire as a condition precedent to any termination.

7-5. REMISE OF PREMISES:

At the expiration of the Term of the Concession License or upon revocation or termination of the Concession License:

a. Concessionaire will promptly deliver the Premises and any Improvements and Fixtures to the City in as good condition and state of repair as when received except for ordinary wear and tear or loss or damage caused by an Act of God. Delivery shall include the return of all keys and security codes.

b. Subject to any requirements of the Concession License to the contrary, Concessionaire shall promptly remove from said Premises, all personal property and equipment which are not Improvements or Fixtures or not otherwise owned by the City and which are currently owned or leased by Concessionaire, subject however, to any valid lien or claim which the City may have for unpaid Compensation or other amounts owed to the City or any other financial obligations of the Concessionaire arising out of the Concession which remain unpaid. If said removal causes any damage to the Premises, said 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 and equipment upon expiration, revocation, or termination of the Concession License, the City may, at its option, keep and retain said items or dispose of the same and retain any proceeds therefrom, and the City shall be entitled to recover from Concessionaire any costs of the City in removing the same and in restoring the Concession Site in excess of the actual proceeds, if any, received by the City from the disposition thereof.

7-6. HOLDING OVER:

a. If Concessionaire holds over after expiration of the Term of the Concession License, Concessionaire's occupancy thereafter shall be deemed a periodic tenancy from month-to-month at a monthly rental equal to twice 1) the amount of Compensation provided in the Concession License which is in effect as of the final month of the Term or 2) the highest amount of Compensation paid for any equivalent month during the last year of the Term, whichever is higher. Concessionaire shall be subject to all other terms and conditions of the Concession License. Upon 10 days written notice by the City or Concessionaire, such holding over shall be immediately terminated.

b. Nothing herein shall be construed to give Concessionaire the right to hold over, and the City may exercise any remedy at law or in equity to recover possession of the Premises, as well as any damages incurred by City on account of such holding over.

7-7. REMEDIES:

In addition to other specific remedies provided elsewhere in this Concession License:

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

b. 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. 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.

**SECTION 8 -- GENERAL PROVISIONS**

8-1. NOTICES:

a. Any notice from the City to Concessionaire shall be deemed validly and sufficiently rendered or given if the same be in writing and personally delivered, by the Manager's representative or a courier, to Concessionaire or sent by registered or certified return receipt mail to Concessionaire. Notice shall be delivered or sent to the Concessionaire's address in the Concession License or the latest address provided by Concessionaire in writing to the Manager. The date of mailing or personal delivery of such notice or communication shall be deemed to be the date when the same is received.

b. Any notice from Concessionaire to the City shall be validly and sufficiently rendered or given if the same be in writing and personally delivered, by Concessionaire's representative or a courier, to the Manager or sent by registered or certified return receipt mail addressed to the Manager, Department of Parks and Recreation, 201 West Colfax Ave., Dept. 601, Denver, Colorado 80202, or at such other address as the City shall hereafter designate in writing to Concessionaire.

8-2. GOVERNING LAW; VENUE:

a. The Concession License shall be governed by the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver. The Charter and Revised Municipal Code of the City and County of Denver, as the same may be amended from time to time, are expressly incorporated as if fully set out herein, by this reference.

b. Venue for any and all legal action regarding the Concession License shall lie in the District Court in and for the City and County of Denver, State of Colorado.

c. Concessionaire agrees that any and all notices, pleadings and process that cannot be delivered personally to Concessionaire may be made by serving a copy of the same upon the agent registered by Concessionaire with the Colorado Secretary of State at the Secretary's office in Denver, Colorado or serving a copy of the same upon Concessionaire's legal counsel, if such counsel is known to the Manager, and by mailing by registered or certified return request mail, an additional copy of the same to Concessionaire at the last address provided by Concessionaire in accordance with Sub-Section 8-1; that said service shall be considered as valid personal service, and judgment may be taken if, within the time prescribed by Colorado law or Rules of Civil Procedure, response is not made.

8-3. PARTIAL INVALIDATION; OTHER AGREEMENTS; AMENDMENTS:

a. If for any reason, any term, covenant, or condition herein is to any extent held or rendered invalid, unenforceable, or illegal, then such term, covenant, or condition shall be deemed to be independent of the remainder of the Concession License and to be severable and divisible therefrom, and its invalidity, unenforceability, or illegality shall not affect, impair, or invalidate the remainder of the Concession License or any part thereof, which remainder shall continue to be applicable and enforceable unless the Manager shall determine, in the Manager's sole discretion, that the purpose and intent of the Concession License can no longer be fulfilled or satisfied.

b. The City shall not be bound by any statements, agreements or representations, oral or written, express or implied, not contained herein.

c. The Concession License shall not be modified or amended in any manner other than the same manner the Concession License was approved or as expressly provided in the Concession License.

8-4. NO DISCRIMINATION:

In connection with the performance of work under the Concession License, Concessionaire agrees to comply with all applicable laws concerning non-discrimination against persons with respect to hiring, discharging, promoting or demoting, and with respect to matters of compensation, and shall not discriminate against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity or gender expression, marital status, or physical or mental disability; and Concessionaire further agrees to insert the foregoing provision in all contracts, subcontracts, or agreements it may enter with respect to the Concession. Concessionaire further agrees to comply with all applicable laws concerning non-discrimination against persons because of their race, color, religion, national origin, gender, age, military status, sexual orientation, marital status, or physical or mental disability in connection with such persons' access to and use of the Concession and the provision of any services at the Concession.

8-5. STATUS AND AUTHORITY OF CONCESSIONAIRE:

a. Independent Contractor. Concessionaire understands and agrees that Concessionaire is an independent contractor. This means, among other things, that Concessionaire and its officers, employees, and agents are not entitled to workers' compensation benefits that the City makes available to its employees and that Concessionaire is obligated to pay, and is personally liable for paying, federal and state income tax on any moneys Concessionaire earns pursuant to this Concession License and any payroll taxes and charges for Concessionaire's officers and employees.

b. Limited Authority. The scope of authority Concessionaire may exercise shall be as expressly allowed under, or necessarily implied in, this Concession License. Concessionaire shall have no authority to avoid, modify, or waive any applicable City ordinances or regulatory requirements enacted or adopted under the City's police or taxing powers.

c. Contracts. This Concession License shall not be construed to grant Concessionaire the right or power to bind, or to impose liability upon, the City through any contracts or agreements Concessionaire may make, unless expressly provided herein or unless the prior, written approval of the Manager is obtained and the contract or agreement is in accordance with all applicable City ordinances and regulatory requirements. All contracts or agreements made by Concessionaire shall be in its own name and not in the name of the City, and Concessionaire shall be solely liable for assuring that Concessionaire does not breach or default under such contracts and that all moneys owed to vendors and other contracting parties are timely and fully paid.

8-6. CONFLICT OF INTEREST:

No employee or officer of the City shall have any personal or beneficial interest whatsoever in the services or property described herein and Concessionaire further agrees not to hire or contract for the services of any employee or officer of the City which would be in violation of the Denver Revised Municipal Code Chapter 2, Article IV, Code of Ethics, or Denver City Charter provisions 1.2.8 through 1.2.12.

8-7. THIRD PARTIES:



The Concession License does not, and shall not be deemed or construed to, confer upon or grant to any third party or parties, except as permitted for assignments or transfers of control under Section 6, any right to claim damages or to bring any suit, action, or other proceeding against the City or Concessionaire because of any non-compliance with or violation of the Concession License or because of any of the terms, covenants, and conditions contained in the Concession License.

8-8. SURVIVAL OF CERTAIN PROVISIONS:

The City and the Concessionaire understand and agree that all terms and conditions of this Concession License which, by reasonable implication, contemplate continued performance or compliance beyond the expiration or revocation of this Concession License shall survive such expiration or revocation and shall continue to be enforceable as provided herein. Without limiting the generality of the foregoing, 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. All remedies available to the City under this Concession License shall likewise survive the expiration or revocation of this Concession License.

8-9. APPROPRIATION:

Notwithstanding any provision of this Concession License to the contrary, any financial obligation of the City, if any, under this Concession License is contingent upon all funds necessary for performance under this Agreement being budgeted, appropriated and otherwise made available. It is acknowledged and agreed that this Concession License is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the City.

8-10. SECTION HEADINGS:

The section headings herein are for convenience in reference only and are not intended to define or limit the scope of any provision of the Concession License.

8-11. ELECTRONIC SIGNATURES AND ELECTRONIC RECORDS:

Concessionaire consents to the use of electronic signatures by the City. The Concession 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 Concession 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 Concession 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.

8-12. LEGAL AUTHORITY: Concessionaire assures and guarantees that Concessionaire possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to execute this Concession License. The person or persons signing and

executing this Agreement on behalf of Concessionaire, does hereby warrant and guarantee that he/she or they have been fully authorized to execute this Concession License on behalf of Concessionaire and to validly and legally bind Concessionaire to all the terms, performances and provisions herein set forth. The City shall have the right, at its option, to either temporarily suspend or permanently terminate this Concession License, if there is a dispute as to the legal authority of either Concessionaire or the person(s) signing the Concession License to execute this Concession License.

8-13. CITY EXECUTION OF AGREEMENT: This Concession License shall not be or become effective or binding on the City until it has been fully executed by all signatories of the City and County of Denver.



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PPG

Range Dispen

3

4

1

A

B

H

Clubhouse

C

CG

Prac

G

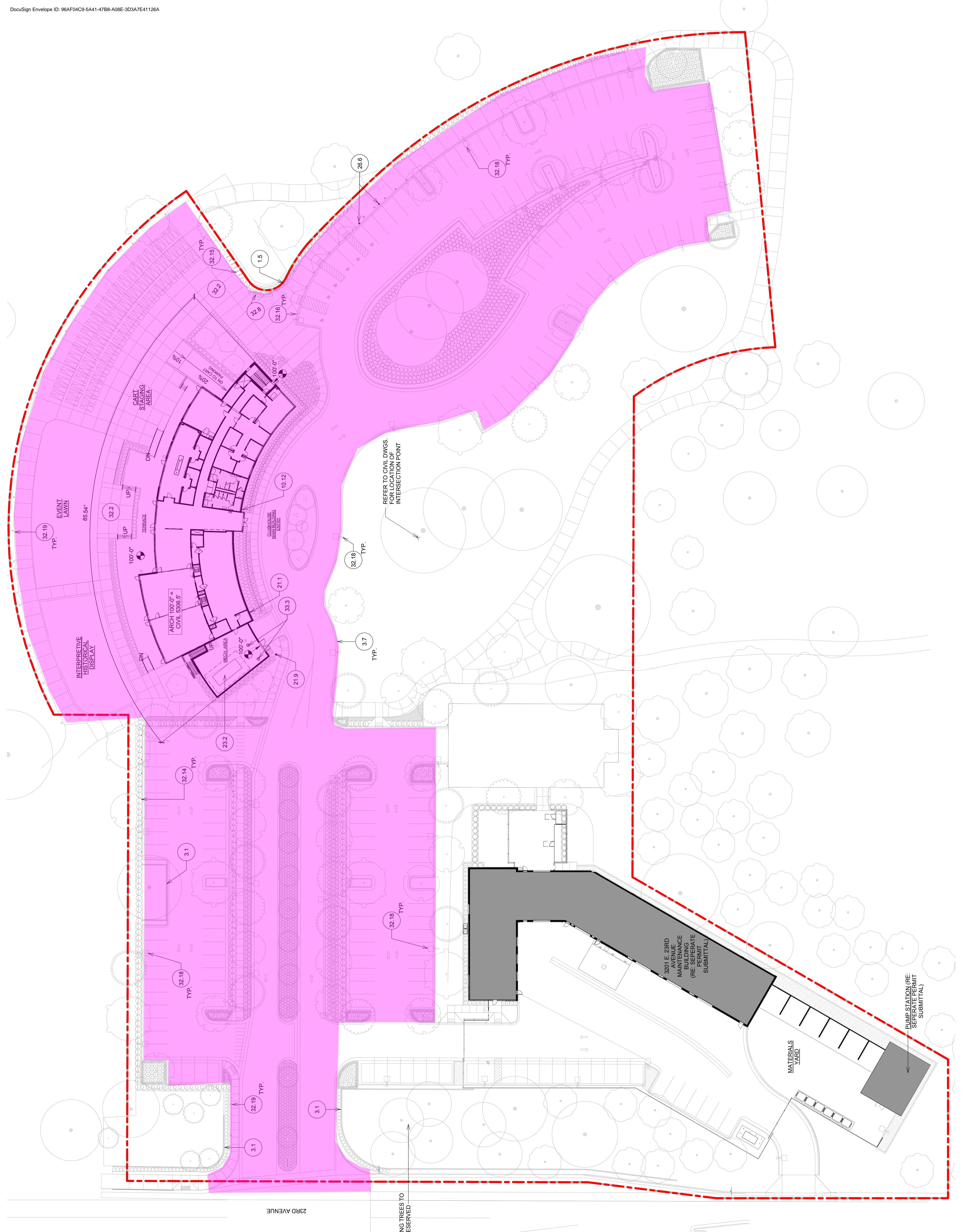
D

E

F

D

Maintenace



EVENT LAWN  
85.54°  
32.19 TYP.

INTERPRETIVE HISTORICAL DISPLAY

ARCH 100'-0" = CIVIL 5306.5

CLUBHOUSE MAINTENANCE ENTRY

CART STAGING AREA

3201 E. 23RD AVENUE MAINTENANCE BUILDING (REPERATE SUBMITTAL)

MATERIALS YARD

PUMP STATION (REPERATE PERMIT SUBMITTAL)

REFER TO CIVIL DIVGS. FOR LOCATION OF INTERSECTION POINT

23RD AVENUE

NO TREES TO BE RESERVED

3.1

32.18 TYP.

32.14 TYP.

23.2

32.19 TYP.

3.1

3.1

3.7 TYP.

32.18 TYP.

21.1

33.3

21.9

10.12

1.5

32.2

32.15 TYP.

32.8

32.16 TYP.

32.18 TYP.

26.6

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**EXHIBIT B****USES OF CLUBHOUSE SPACES****GOLF COURSE FACILITIES**

## Concessionaire Spaces

<b>Facility</b>	<b>Overall Size in SF</b>	<b>Concessionaire Space in SF</b>	<b>Common Space in SF</b>	<b>City Space in SF</b>	<b>Comments</b>
Aqua Golf	2,453	0	0	2,453	
City Park Clubhouse	20,982	7,754	0	13,228	Overall sf does not include outdoor patio space (1173 sf)
City Park Snack Shack	400	400	0	0	
Evergreen	4,337	3,622	0	715	Overall sf does not include outdoor patio space (980 sf)
Harvard Gulch	5,360	0	0	5,360	
Kennedy Restaurant	7,936	5,405	2,101	430	Overall sf does not include outdoor patio space.
Kennedy Pro Shop	7,228	2,500	535	4,193	Overall sf does not include golf storage (278 sf) or old miniature golf sales kiosk (115 sf)
Overland	12,162	4,475	0	7,687	
Wellshire Inn	22,068	20,260	0	1,808	
Willis Case	12,797	4,335	0	8,462	Overall sf does not include outdoor patio space (1800 sf)
<b>TOTALS</b>	<b>95,723</b>	<b>48,751</b>	<b>2,636</b>	<b>44,336</b>	