

CITY AND COUNTY OF DENVER

DEPARTMENT OF PARKS AND RECREATION

FIRST AMENDMENT TO CONCESSION LICENSE

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

1. Section IV of the Concession License entitled “**CONCESSIONAIRE’S RESPONSIBILITIES**” subsection (J)(1) shall be amended as follows:

“Pre-determined Capital Improvements. Subject to the terms of this Concession License and its Terms and Conditions, Pre-determined Capital Improvements for Kennedy Golf Course shall include carpet replacement on the first floor of the restaurant building and in the café area of the Clubhouse up to the Pro Shop door, which shall be completed by August 1, 2018; replacement of patio furniture and restaurant barstools, which shall be completed by no later than May 1, 2019; and replacement of restaurant tables and chairs, which shall be completed by no later than May 1, 2020. Prior to commencing the Pre-determined Capital Improvements, the Concessionaire shall submit its proposal and costs for each project to the Director. The Director shall either approve or disapprove the Concessionaire’s proposal, either in whole or in part, within thirty (30) days of submittal. The Concessionaire shall be entitled to a credit against the future Guaranteed Annual Minimum Payment and/or Percentage Payment(s) of Gross Revenues in the amount of the verified actual costs incurred by the Concessionaire for the Pre-determined Capital Improvements projects. Promptly upon completion of all Pre-Determined Capital Improvement projects, the Concessionaire shall submit final invoices or receipts documenting the actual costs of each project to the Director.”

2. Section VI of the Concession License entitled “**TERM**” shall be amended as follows:

“VI. <u>TERM:</u>	<u>EFFECTIVE DATE:</u>	<u>EXPIRATION DATE:</u>
	January 1, 2018	January 1, 2028”

3. Section VII of the Concession License entitled “**COMPENSATION TO BE PAID TO CITY**” subsection (A) shall be amended as follows:

“Guaranteed Annual Minimum Payment (“GAMP”) of Fifteen Thousand Dollars (\$15,000.00), to be paid on or before May 1st each year during Term of Concession License, with the first GAMP installment due August 1, 2018.”

4. Section VII of the Concession License entitled “**COMPENSATION TO BE PAID TO CITY**” subsection (B) shall be amended as follows:

“Percentage Payment of Eleven Percent (11%) of Gross Revenues, excluding Gross Revenues from Mini-Golf operations, to be paid by the 20th day of the month following the month in which the Gross Revenues were received or due. All Gross Revenues from Mini-Golf operations only shall be subject to Percentage Payment of Three Percent (3%), which shall also be paid by the 20th day of the month following the month in which the Gross Revenues were received or due. Upon the Director’s request, the Concessionaire shall collect revenue from the Driving Range. All revenue collected from the Driving Range by the Concessionaire shall be excluded from Gross Revenues; however, the Concessionaire shall report the Driving Range revenue collected on the monthly revenue report identified in Section VII.E. Driving Range services and revenue are not included in the Concessionaire’s Basic Service under Section IV of the Concession License. The Concessionaire shall properly and accurately account for Driving Range revenue to ensure that it is not included under the Concessionaire’s Gross Revenues.”

5. Section IX of the Concession License entitled “**INSURANCE COVERAGE**” shall be amended as follows:

“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.”

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

“Gross Revenues’ shall mean the aggregate of fees, receipts, sales, and income of any kind derived directly or indirectly from the operation of the Concession after deducting any discount at the point of sale, but before deducting any costs, expenses, or losses, except applicable excise taxes collected from customers on behalf of government agencies and tips and gratuities 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.”

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

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

[ELECTRONIC SIGNATURES FOLLOW]

Contract Control Number:

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

SEAL

CITY AND COUNTY OF DENVER

ATTEST:

By _____

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By _____

By _____

By _____



Contract Control Number: PARKS-201738451-01

Contractor Name: Flog, LLC

By: David Kofe

Name: David Kofe
(please print)

Title: President
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)

