

**LICENSE AGREEMENT
FOR
USE AND OCCUPANCY
OF
COUNTY-OWNED PROPERTY**

between

PADDLE SPORTS UNLIMITED, LLC

and

COUNTY OF NASSAU

Premises:
A Portion of Christopher Morley Park
Roslyn
Town of North Hempstead
County of Nassau
State of New York

This LICENSE AGREEMENT, (together with the schedules, appendices, attachments and exhibits, if any, this “Agreement”) made and entered as of the Effective Date (as defined in Section 1(d) below), between (i) **Nassau County**, a municipal corporation having its principal office at 1550 Franklin Avenue, Mineola, New York 11501 (the “County”), acting for and on behalf of the Department of Parks, Recreation & Museums having its principal office at Administration Building, Eisenhower Park, East Meadow, New York 11554 (“Parks”), and (ii) **Paddle Sports Unlimited, LLC**, a limited liability company organized in the State of New York, having its principal office at 147 Steamboat Road, Great Neck, New York 11024 (the “Licensee”, “Permittee” or “Operator”)

WITNESSETH:

WHEREAS, the County owns, controls and maintains Christopher Morley Park, Roslyn, New York (the “Park”) which provides public recreational opportunities for the residents of Nassau County.

WHEREAS the Park contains certain underutilized space consisting of approximately eight (8) acres of land, as generally depicted, on the Site Map of a portion of Christopher Morley Park attached hereto as Exhibit “A-2” and made a part hereof;

WHEREAS, the County desires to provide the opportunity for the construction, development, operation and maintenance of nine state-of-the-art courts, including eight (8) full panoramic Padel Courts and four (4) professional Pickleball Courts, all to be contained in an indoor facility (the “Facility”) to be constructed on the portion of Christopher Morley Park formerly known as the Boat Basin south of the ice rink (the “Premises” depicted and attached hereto as Exhibit “A-1” and made a part hereof), consistent with the interests of the surrounding communities and for the public recreational benefit of all County residents;

WHEREAS, in connection with the potential development of an indoor multi-use indoor multi-sport field facility on a portion of Christopher Morley Park, the County issued a Request for Proposals No. PK1210-2383 on December 10, 2023 (the “RFP”);

WHEREAS, the County selected the Operator as the winning proposer, based on the view that the Operator is well-qualified to develop, facilitate, improve and enhance the public use and enjoyment of the Premises and the County wishes to provide for the long-term operation and maintenance of the Premises consistent with recreational purposes, subject to the terms and conditions contained herein;

WHEREAS, the Operator has applied to the County for permission to use and occupy the Premises for the purpose of constructing and operating the Facility upon Premises;

WHEREAS, in connection with such use, Operator is desirous of entering into an agreement with the County to improve and enhance the recreational offerings at Christopher Morley Park;

WHEREAS, the use and occupancy of the Premises, according to the limitations and restrictions described herein, and agreed to by Operator, will not interfere with the use of the Premises and facilities by the public or by the agents, servants and/or employees of the County; and

WHEREAS, Operator is willing to abide by and carry out the conditions of this Agreement which shall not be considered a lease, but merely a license, revocable on notice as provided herein.

NOW, THEREFORE, in consideration of the promises and mutual covenants contained in this Agreement, the parties agree as follows:

DEFINITIONS

1. As used throughout this Agreement, the following terms shall have the meanings set forth below:
 - a. “Capital Improvements” shall mean all excavation, construction, reconstruction, relocation or renovation of the Premises necessary to implement the capital improvements as may be agreed upon by the parties, including construction of the Facility, as more particularly described below and Exhibit “C” herein. Capital Improvements also include installation of all “Alterations” as defined in this agreement and “Fixed Equipment”, as that term is defined in this Section, which the Operator installs or causes to be installed on the Premises. Operator must secure written permission from the Department to perform any Capital Improvement on the Premises. Maintenance shall not be allowed to count towards the Capital Improvement requirements.
 - b. “Comptroller” shall mean the Comptroller of the County of Nassau.
 - c. “County” shall mean the County of Nassau, its departments and political subdivisions.
 - d. “Effective Date” shall mean the date this Agreement becomes effective which shall be the date it is executed by the County Executive of Nassau County.
 - e. “Expendable Equipment” or “Personal Equipment” shall mean all equipment, other than Fixed Equipment, provided by the Operator.
 - f. “Final Completion” shall mean that the construction of an improvement to the Premises has been completed to such an extent that the Department certifies in writing that is has been finally completed and that no further work is required by Operator pursuant to this Agreement in connection with the construction of said improvement. Notwithstanding the issuance of such certification, Operator shall be liable for any claims related to such

- construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this Agreement.
- g. “Fixed Equipment” shall mean any property affixed in any way to Premises, whether or not removal of said equipment would damage Premises.
 - h. “Additional Fixed Equipment” shall mean Fixed Equipment affixed to Premises subsequent to the date of execution of this Agreement.
 - i. “Fixed and Additional Fixed Equipment” shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.
 - j. “Gross Receipts” shall include, without limitation, the following:
 - i. all funds received by, or accruing to Operator, without deduction or set off of any kind, from all revenue-producing activities as may be specifically allowed hereunder or approved by the Department of Parks, and directly related to and derived from Operator’s activities at the Premises (including without limitation any and all fees charged by the Operator), provided that Gross Receipts shall exclude: the amount of any federal, state or local sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by the Operator as against its revenues.
 - ii. all sales made by any Operator or Operators using the Premises under a properly authorized sublicense or subcontract (but not Special Event(s) as described in Section 16 herein) with Operator as provided in Section 17 herein, and shall include Operator’s income from rental and sublicense or subcontracting fees and commissions received by Operator in connection with all services provided by Operator’s subcontractors or sub-licensees, or instructors functioning as independent operators at the Premises.
 - iii. all sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of such sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by the Operator from all sources from the operation of this Agreement shall be included in Gross Receipts.
 - iv. all funds received by Operator from the sponsors of Special Events.
 - k. “Parks” shall mean the Nassau County Department of Parks, Recreation & Museums.
 - l. “Preliminary Term” shall mean the preliminary period as defined in Section 3.a
 - m. “Premises” or “Premises” shall mean the area on Exhibit “A” so designated and any buildings, structures and improvements contained thereon or constructed thereon whether below grade, at grade or above grade. The Premises shall also be deemed to include all facilities, above and below grade, located within the “approximate limit of work” as noted on site and utility plans as approved by DPW, including but not limited to:

storm drain systems, sanitary sewer systems, pathways, roadways, curbs, sidewalks, and lighting.

- n. "Special Event Permit" shall mean a permit given by the County to any third party to conduct an event on the Premises.
- o. "Substantially Completed" shall mean where all of the following have occurred with respect to the development of the Facility: (a) the only work items remaining to be completed are punchlist items and (b) the Department has given the Operator notice that work items have been completed (except for punchlist items) substantially in accordance with the plans, specifications, schematics and drawings approved by the Department; and (c) the Facility may be utilized by the public.
- p. "The Department" or "DPW" shall mean the Nassau County Department of Public Works.
- q. "Term" shall mean the term of this Agreement as defined in Section 3.1 herein.
- r. "Year" or "Operating Year" shall both refer to the period between the Term Commencement Date in any calendar year and the day before the anniversary of the Term Commencement Date in the following calendar year.
- s. "Facility" shall mean the completed Prefabricated Metal Structure including 8 Padel courts, 4 Pickleball courts, lobby, Pro Shop, Juice Bar and locker room contained therein as detailed in this document and attached exhibits.

RIGHT TO OPERATE/GRANT OF AGREEMENT

2.

- a. The County does hereby grant to Operator the non-exclusive right, privilege and license to construct the Facility and to use, occupy, operate, maintain and manage the Premises subject to and in accordance with the provisions set forth in this Agreement. It is expressly understood and agreed that no real property is leased to Operator as a result of this Agreement and that no landlord-tenant relationship exists between the County and the Operator. The Premises shall be restricted to the areas depicted in Exhibit "A", and the Operator shall have no rights beyond the delineated area of the Premises, except as provided specifically herein.
- b. Operator shall obtain any and all necessary approvals and permits required by federal, state and County laws, rules, regulations and orders, including without limitation, and if applicable, The United States Department of the Interior, National Park Service, State Environmental Quality Review Act (SEQRA) approval, which are or may become necessary for the Operator to lawfully construct the Facility and develop, occupy and operate the Premises in accordance with the terms of the Agreement. . Whenever any act, consent, approval or permission is required of the County, Parks or the Department under this Agreement, the same shall be valid only if it is in writing and signed by a duly authorized representative of the County department.

- c. It is expressly understood that no land, building, space, improvement, or equipment is leased to Operator, but that during the Term of the Agreement, Operator shall have the use of the Premises only so long as Operator is in compliance with each and every term and condition in this Agreement and this Agreement has not been terminated. None of the rights herein granted to Operator are, nor shall they be construed as, a lease, easement, or other interest in land.
- d. Operator shall provide, at all times, free access to the Premises to the Department, Parks or their representatives and to other County, State or Federal officials having jurisdiction, for inspection purposes.
- e. The rights and privileges set forth herein are granted subject to all requisite approvals, including, but not limited to, if required, review and approval by the Nassau County Planning Commission, as well as the County Legislature.
- f. As additional consideration to the County, Operator shall improve the existing landscaping directly adjacent to the Facility, all at its sole cost and expense. Also, Operator shall attempt to utilize as many environmentally friendly options as are feasible in the construction and maintenance of the Facility. Operator agrees that it shall use commercially reasonable efforts to obtain a “Certified” ranking under the LEED-ND Rating System for design and construction of the Facility.]

TERM OF AGREEMENT

- 3.
 - a. The preliminary term of this Agreement term (“Preliminary Term”) shall commence on the Effective Date. During the Preliminary Term, the parties will work cooperatively in furtherance of the development of the Facility. The Preliminary Term shall terminate, and the term (the “Term”) shall commence, on the date (the “Term Commencement Date”) that is the earlier of:
 - i. the date on which the Operator has “Substantially Completed” the construction of the Facility; or
 - ii. eighteen (18) months from the date (the “Construction Commencement Date”) when Operator receives written notice from the County that Operator may commence construction of the Capital Improvements, unless sooner terminated by revocation or as otherwise provided herein or extended by the mutual agreement of the parties. In the event that the Construction Commencement Date shall not have occurred on or before twenty (20) weeks after the Effective Date, then, in any such case, each of the County and Operator shall thereafter have the option to terminate this Agreement by giving thirty (30) days’ written notice to the other.
 - b. Notwithstanding anything to the contrary contained herein, if Operator takes occupancy (for the purposes set forth in below) of any portion of the Facility prior to the date that the Facility has been Substantially

Completed, then notwithstanding the fact that the Facility has not yet been Substantially Completed, the Term Commencement Date shall be deemed to be the first date of such occupancy by Operator.

- c. The Term of this Agreement shall expire on the **Twentieth (20th)** anniversary of the Term Commencement Date (hereinafter the “Agreement Expiration Date”), unless extended or terminated earlier as herein provided.
- d. Operator will have the option of renewing this Agreement for two (2) renewal options of:
 - i. a ten (10) year term, followed by an option for
 - ii. a five (5) year term,with the mutual consent of the parties, which consent shall not be unreasonably withheld, subject to a written amendment approved by the Legislature and signed by the County Executive, provided that Operator delivers written notice of its exercise of the renewal option to the County at least twelve (12) months prior to the Agreement Expiration Date (and, if applicable, at least twelve (12) months prior to the expiration of the first renewal term to extend to a second renewal term) and, at such time as Operator delivers notice of election to extend the Term: (i) this Agreement is in full force and effect, (ii) Operator is not in default of any of the terms, covenants or conditions of the Agreement after expiration of applicable notice and cure provisions as set forth in this Agreement, and (iii) Operator is in possession of the Premises (subject to all sublicenses and third-party occupancy rights permitted pursuant to this Agreement). If Operator shall validly exercise its extension option, the Agreement so extended shall be on the same terms, conditions and covenants as during the initial Term, except that Operator shall have no further previously agreed to right to extend or renew the Term following the expiration of the second extended Term and the Agreement Expiration Date shall be modified to be the applicable anniversary of the Term Commencement Date depending on exercise of the renewal option. Providing Operator is in substantial compliance with its obligations hereunder, the County will not unreasonably or arbitrarily withhold its consent.
- e. Notwithstanding any language contained herein, this Agreement, including without limitation the license granted herein, is terminable and revocable at will by the County in its sole and absolute discretion, at any time, provided, however, that such revocation shall not be exercised in an arbitrary or capricious manner. Such termination shall be effective sixty (60) days after written notice is sent to Operator. The Department, the County, its employees and agents shall not be liable for damages to Operator in the event that this Agreement is terminated by the Department as provided for herein except as provided for herein. In the event such

notice is not given, this Agreement shall terminate as described in Section 3 c or d or as otherwise provided for in this Agreement.

- f. Should Operator breach or fail to comply with any of the provisions of this Agreement, any federal, state or local law, rule, regulation or order affecting the Agreement or the Premises with regard to any and all matters, County may in writing order Operator to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Operator fails to comply with such written notice within thirty (30) days from the mailing thereof, or fails to promptly and diligently commence and pursue compliance within that time subject to unavoidable delays beyond the reasonable control of Operator (which shall be determined at the reasonable discretion of the County), then this Agreement shall immediately terminate. If said breach or failure to comply is corrected, and two (2) repeated violations of the same provision, law, rule, regulation or order follows within two (2) years thereafter and such failure is not cured within the twenty (20) day written notice provision provided herein, County, by notice in writing, may revoke and terminate this Agreement, such revocation and termination to be immediately effective on the mailing thereof.
- g. The following shall constitute events of default for which this Agreement may be terminated on one-day notice: (i) appointment of any receiver of Operator's assets; (ii) the making of a general assignment for the benefit of creditor's; (iii) the occurrence of any act which operates to deprive Operator permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this Agreement; (iv) the levy of any attachment or execution which substantially interferes with Operator's operations under this Agreement and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days; (v) should Operator be the subject of any proceeding under which all or any part of its assets may be subject to seizure, forfeiture or divestiture; (vi) should any principal of Operator be convicted of a crime involving moral turpitude.
 - i. Nothing contained in paragraphs above shall be deemed to imply or to be construed to represent an exclusive enumeration of circumstances under which County may terminate this Agreement.
- h. Upon expiration or sooner termination of this Agreement by County, all rights of Operator herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the County, or the Department, except as provided below.
- i. Operator shall, on or prior to the expiration or sooner termination of Agreement, remove all of its personal property from the Premises. Operator acknowledges that any personal property remaining on the

Premises after the expiration or sooner termination of this Agreement is intended by Operator to be abandoned. Operator shall remain liable to the County for any damages, including lost revenues and the cost of removal or disposal of property should Operator fail to remove all possessions from the premises on or before the expiration or termination date.

**LICENSE FEES, GROSS RECEIPTS,
ACCOUNTING PROCEDURES & RECORDS**

- 4.
- a. The Operator shall pay the County license fees for each Operating Year of this Agreement, including any renewal periods, consisting of:
 - i. an annual base fee (“Base Fee”) and
 - ii. a percentage of Gross Receipts fee (“Gross Receipts Percentage Fee”) derived from operator’s activities at the Premises as further provided below.

 - b. Commencing on the eighteen (18) month anniversary of the Effective Date of this Agreement, the Operator shall pay the initial annual Base fee in the sum of Ninety Thousand Dollars (\$90,000.00) in equal monthly installments of Seven Thousand Five Hundred Dollars (\$7,500.00) and continuing on the first day of each month throughout the Operating Year. The annual Base Fee shall be increased each Operating year, commencing on the one-year anniversary of the initial Base Fee payment, an amount equal two Percent (2%). The Base Fee, as adjusted annually, shall be due and payable monthly as of the commencement date of each subsequent Operating Year. (Attached hereto as “Exhibit B1” is the “Base Fee Schedule”)
 - i. If any payment of the Base Fee due to the County shall not be received by the County on or before the fifteenth (15th) day of any month, a late fee of two percent (2%) of such amount or any part thereof that remains unpaid, shall be due and payable to the County. The Operator shall immediately pay such late fees to the County. The Base Fee shall be paid by certified or bank check, payable to the “Treasurer of Nassau County” and delivered to the office of the Commissioner of Parks, Eisenhower Park Administration Building, Eisenhower Park, East Meadow, New York 11554. Additionally, payment to the County may be made under through the Treasure’s: [Vendor Accounts and Claims | Nassau County, NY - Official Website](#)

 - c. In addition to the annual Base Fee, commencing on the date which is the six (6) month anniversary of the Term Commencement Date and throughout the Term of this Agreement, including any renewal periods, the Operator shall pay Gross Receipts Percentage Fees on a monthly basis as follows:

- i. See Attached Exhibit “B2”- Percentage of Gross Receipt Chart
 - ii. The Gross Receipts Percentage Fees shall be paid as follows: The Operator shall be obligated to maintain a separate account (the “Reserve Fund Account”) to contain the Gross Receipts Percentage Fees derived from the operation of the Premises. The funds in said Reserve Fund Account shall be used solely to be reinvested back into the Premises and surrounding parkland, including, without limitation, funding public programs (including programs open to the general public and those programs run by the County) conducted at the Premises provided, however, that any such expenditure shall require the prior written approval of the Parks Commissioner, which shall not be unreasonably withheld. In the event this Agreement is terminated for any reason, the balance of the Reserve Fund Account shall be paid over to the County.
 - iii. Reserve Account monthly bank statements shall be furnished by the Permittee to the County. Electronic transmission of the monthly bank statements is an acceptable mode of delivery. Failure to maintain the Reserve Fund Account and/or to provide the monthly bank statements to the County shall constitute a material breach of this Agreement.
- d. The Operator shall pay to County ten percent (10%) of the amounts received by Operator pursuant to Section 7 (advertising inside the Premises) of this Agreement.
 - e. On or before the thirtieth (30th) day following each quarter of each Operating Year, Operator shall submit to the Parks, in a form reasonably satisfactory to the Parks, a statement of Gross Receipts and Expenditures, signed and verified by an officer of Operator, reporting any Gross Receipts generated and expenditures made as described in Section 4(a) and 4(c) above under this Agreement during the preceding quarter. Operator shall also submit a summary report of Gross Receipts and Expenditures for each Operating Year within ninety (90) days of the end of each Operating Year of this Agreement. Each of the reports shall include the Gross Receipts generated and expenditures made in connection with the Premises along with all other sources of revenue realized from the Operator’s operation of the Premises.
 - i. Operator shall indicate on its statement of Gross Receipts and Expenditures whether or not these amounts are inclusive of sales tax collected.
 - f. On or before the sixtieth (60th) day following each Operating Year, Operator shall submit to the Parks an income and expense statement

pertaining to all operations under this Agreement, signed and verified by an officer of Operator and prepared by a Certified Professional Accounting firm.

- g. The Operator shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually (“Records”), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Operator is a non-profit entity, must comply with the accounting guidelines set forth in the federal Office of Management & Budget Circular A-122, “Cost Principles for Non-Profit Organizations” (collectively, the “Accounting Standards”). Such Records shall at all times be available for audit and inspection by the Comptroller, the Parks and any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives.
- h. Independent Annual Financial Statements and Reports. In the event that the income and expense statements provided for in paragraph 4(e), above, are not adequate for the County’s needs and the County reasonably demands it, the Operator shall submit financial statements for the Operator’s most recent fiscal year, prepared in accordance with the Accounting Standards and accompanied by a report thereon from an independent certified public accountant, which report shall be based upon an examination conducted in accordance with Accounting Standards. Such financial statements shall be submitted within one hundred and eighty (180) days after the close of the relevant fiscal year. Upon written request of the Operator, the Comptroller, in his or her sole discretion, may extend the time for the submission of such financial statements, provided that (i) such extension is granted in writing, and (ii) the Operator provides the Comptroller with an un-audited financial statement covering the relevant fiscal year.
- i. Supplemental Information. Such financial statements shall include as supplemental information detailed schedules of the Operator’ revenues and all expenses and capital expenditures related to the development, repair, rehabilitation, operation and maintenance of the Premises. Such supplemental information shall be provided in a format mutually agreed upon by the Operator and the County, and shall be reconciled to the basic financial statements.
- j. Annual Reports. The Operator shall each fiscal year provide the County with a copy of its annual report, if issued by the Operator, and shall render such other reports and statements, and furnish such information, financial

or otherwise, relating to the Premises and/or the Operator' obligations under this Agreement as may reasonably be requested by the County.

- k. Proof of Payments. Within thirty (30) days of being requested to do so by the County, the Operator shall provide proof reasonably satisfactory to the County evidencing payment of any charge required to be paid by the Operator pursuant to this Agreement.
- l. Survival. The provisions of this Section shall survive the termination of this Agreement.

RIGHT TO AUDIT

5.

- a. The Parks Department, the Comptroller and other duly authorized representatives of the County shall have the right, during business hours, after giving the Operator forty-eight (48) hours' notice, to examine or audit the records, books of account and data of the Operator. Notwithstanding the requirement for forty-eight (48) hour advance notice with respect to access to the Operator's books for the purpose of audit, the Parks Department, the Comptroller or other duly authorized county representative reserves the right to conduct, and Operator hereby permits, periodic "spot" inspections of the Premises at any time during the Term of this Agreement for the purpose of inspecting the operations and activities of the Operator at the Premises and all reports or data generated from or by the Operator or its authorized subcontractors to include, without limitation regulatory inspections, maintenance inspections and quality assurance inspections. Operator shall cooperate fully and assist the Parks Department, the Comptroller or other duly authorized representative of the County in any inspection, examination or audit thereof. In the event that the Operator's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the County, the records must be brought to the County for examination and audit or Operator must pay food, board and travel costs incidental to two auditors conducting such examination or audit at said location.
- b. The failure or refusal of the Operator to permit the Parks Department, the Comptroller, or their designees to audit and examine the Operator's records, books of account and data or otherwise conduct an inspection of the type referred to therein, or the interference in any way by the Operator in such an audit, examination, or inspection, may be deemed by the County to be a failure to substantially comply with the terms and conditions of this Agreement and a default hereunder which shall entitle the Department to terminate this Agreement.

USE COVENANTS

6.
 - a. The Operator covenants and agrees that, during the Preliminary Term and the Term of this Agreement, it will develop, renovate, operate and manage the Premises, including the construction of the Facility, for the use and enjoyment of the general public in order to provide for the public sports and recreational activities described in the County's RFP. At a minimum, Operator shall develop, operate and manage athletic, fitness, recreational and entertainment facilities at the Premises to accommodate sports leagues, clubs, pay-to-play recreation experiences, and skill-building clinics along with related events such as tradeshow, conventions, exhibitions and parties. Operator's use of the Premises shall be compatible with, shall enhance and shall be in furtherance of the recreational and park purposes of the Christopher Morley Park.
 - b. The Operator shall provide to the County, for its approval, not to be unreasonably withheld, conditioned or delayed, on or before the Term Commencement Date, and at least thirty (30) days prior to the commencement of each subsequent Operating Year, an up-to-date one (1) year "Public Recreational Use Plan". Such Public Recreational Use Plan shall provide for sports and recreational activities, open and available to all residents of Nassau County which shall include, at a minimum, the public recreational activities described in the RFP and special activities and programs available to those disabled and the local veterans population, as well as time available for County use. The initial Public Recreational Use Plan shall also include the following information regarding the Operator and its use of the Premises under this Agreement:
 - (i) organizational structure of the Operator including names and credentials of all individuals and entities providing services in connection with this Agreement;
 - (ii) governance papers, bylaws and policies;
 - (iii) a detailed description of all activities (recreational or otherwise) held in the past year along with all upcoming activities planned or scheduled at the Facility, including all revenues, fees, costs and expenses allocated, budgeted and incurred for each activity;
 - (iv) operating procedures;
 - (v) personnel plan;
 - (vi) list of contracted services and details of each arrangement;
 - (vii) insurance summary;
 - (viii) capital equipment and supply list;
 - (ix) profit and loss statements;
 - (xv) cash flow analysis;
 - (xvi) balance sheet; and
 - (x) any other information relevant or material to the Operator and its use and occupancy of the Premises as reasonably requested by the County. The subsequent Public Recreational Use Plan(s) shall provide the schedule of recreational activities in a manner consistent with the initial Public Recreational Use Plan.
 - i. In addition to regular operations, Operator shall hold periodic clinics for disadvantaged youths of the County, with the Department's reasonable cooperation, including coordination by the County with responsible not-for-profit or other organizations

having similar experience with the County or other state or local agencies, but, in any event, no less than three (3) clinics per Operating Year.

- c. The Operator shall provide the Public Recreational Use Plan to the Commissioner of Parks (hereinafter, the “Commissioner”). The Public Recreational Use Plan shall be subject to the review and approval of the Commissioner. At all times throughout the Term of this Agreement, Parks reserves the right to oversee the Operator’s implementation of the Public Recreational Use Plan and all activities undertaken pursuant to the Public Recreational Use Plan, including all charges and fees for programs conducted at the Facility. Such fees and charges shall not be raised without the consent of the Commissioner which consent shall not be unreasonably withheld. At the Commissioner’s request, the Operator shall modify the Public Recreational Use Plan, as reasonably requested by the County, at Operator’s sole cost and expense. While the Operator shall be given priority to conduct its own recreational programs open to the public, the Operator shall work cooperatively with Parks to coordinate use of the Premises in such a manner as to minimize interference with the use of the Premises by the public or by agents, servants and/or employees of the County. The Operator has the right to deny renting of courts to anyone intending to use the courts and the Facility for instructional programs, clinics or other like kind activities that conflict or compete with programs or services being offered by the Operator.
- d. Monthly Schedules. The Operator shall provide the Commissioner with monthly schedules for all upcoming activities to be conducted upon the Premises. Such schedules shall be provided to the Commissioner at least fifteen (15) days prior to the upcoming implementation month and may be modified as necessary upon prior notice to the Department. Such monthly schedules shall be subject to the review and approval of the Commissioner, not to be unreasonably withheld or delayed, to ensure that all activities occurring at the Premises are consistent and compatible with the park and recreational purposes of Eisenhower Park. The dates and hours of all permitted activities to be conducted upon the Premises shall be included in the monthly schedules upon mutually agreed to dates and hours.
- e. Operator shall execute a performance bond or equivalent, in an amount of \$100,000.00, in a form satisfactory to Parks and DPW, from a surety licensed in New York, as security for the faithful performance of all the covenants, terms and conditions of this Agreement, with the understanding that the whole or any part thereof may be used by County to supply any deficiency that may arise from any default on the part of Operator. This performance bond shall remain in effect for the entire Term of this Agreement.

- f. The Operator shall not operate, or permit others to use all or a portion of the Premises for commercial events, except with the prior written approval of the County. Without limiting the generality of the foregoing, no t-shirts, souvenirs or other goods may be sold without a permit issued by the County and a fee paid to the County. However, the County acknowledges a ProShop or some other retail section of the Facility will engage in the sale of apparel or some other items, such as Padel sports apparel pertinent to the operation of the Facility by Operator will be sold; in addition to the sale of t-shirts and other items that pertain to events conducted at the Facility by Operator, provided that the proposed sale of such items is acceptable to the Parks Commissioner in all material respects and all revenues generated are included in “Gross Receipts” under this Agreement. Any permitted vendors must have all appropriate licenses and permits and comply with the insurance provisions of this Agreement naming the County as additional insured.
- g. The Operator acknowledges that the County has an existing concession agreement covering the sale of food and beverages, as well as vending machines, at the Premises and Operator expressly agrees that it will not sell food or beverages or interfere with the existing agreement without the prior consent of the current holder of the County’s parks food and beverage concessionaire as set forth below,. No outside food or beverage vendor may operate at the Premises unless an arrangement is made with the County and its concessionaire.
 - i. Concessions. Operator acknowledges that the County has a preexisting agreement in place with Dover Gourmet Corporation (“Dover”) to provide food and beverage concessions services on County property and/or events. Operator will negotiate in good faith an agreement with Dover that comports with the County’s contractual obligations to Dover. Any agreement that Operator enters into with Dover shall be approved by the County Executive and contain indemnification and hold harmless language in favor of the County. . All facilities constructed for the purpose of preparing, distributing, or selling concessions shall be compliant with all health, public safety and fire standards under Federal, State, and local law.

SPONSORSHIPS, ADVERTISING RIGHTS, MARKETING

7.

- a. The County hereby assigns, transfers and sets over to Operator the right to sell to advertisers the right to display advertising signs and banners within the interior of the Premises and to display and film other forms of advertisement, including sponsorships, within the interior of the Premises, subject to compliance with all applicable Laws and the Policies and

Standards for Marketing and Advertising (hereinafter, the “County’s Advertising Policy”) attached hereto as Exhibit “E”, as may be amended from time to time by the County. The Operator shall pay to the County ten percent (10%) of the amounts received by Operator pursuant to this Section.

- b. The Operator represents and warrants that its activities under this Agreement, including the advertising, will not infringe upon the patents or copyrights of any third party. The Operator shall pay all royalties and license fees, if any, which may be payable to third parties in respect of this representation and it shall defend all suits or claims alleging such infringement and hold County harmless from losses on account thereof provided that County shall have given notice to the Operator promptly as to any such suit or claim and shall fully cooperate with the Operator in its defense thereof.
- c. Operator shall establish and maintain an advertising and promotional program for the activities at the Premises. Such expenditures may be in cash or in kind. All brochures, media advertisement and similar copy to be released, disseminated to the public or distributed in any manner shall be in conformance with the County’s Advertising Policy. Operator shall submit documentation in a form acceptable to the Department and Parks at the end of each Operating Year to substantiate expenditure of this amount. Operator shall have the right to print or to arrange for the printing of programs for all activities and events at the Premises containing any advertising matter except advertising matter which is indecent, in obvious bad taste, or which demonstrates a lack of respect for public morals and conduct. Permittee shall submit to the Parks for the Commissioner’s approval any and all advertising and promotional materials for the Premises planned by Permittee and shall obtain written approval prior to the release.
- d. The County reserves the right to place advertising or any form of signage at the Premises, at any time during the Term of the Agreement, at locations determined through consultation with the Operator; provided, however, that no such advertising or signage shall unreasonably interfere with the Operator’s use of the Premises.
- e. Any sign posted by the Operator at the Premises and used in connection with the Premises, shall be in conformance with the County’s Advertising Policy, and shall be appropriately located. In addition, any signage or press, whether or not located on the Premises, promoting or identifying the Operator’s activities on the Premises shall acknowledge the County’s role in the ownership and operation of the Premises.

- f. Notwithstanding anything in this Agreement to the contrary, any and all revenues generated from activities under this Article, including without limitation, revenues resulting from, sponsorships, advertising, marketing and broadcast rights transactions, shall be included in “Gross Receipts” under this Agreement.

OPERATIONS

- 8.
 - a. The Operator shall maintain and operate the Premises for the benefit of all County citizens and the general public in an attractive, accessible, safe, operable, sanitary and inviting manner consistent with the operations and best practices of comparable public recreational facilities in the New York metropolitan area, and in such further manner as the County shall prescribe. The Operator shall take all actions necessary or appropriate to meet the obligations described herein, including obtaining and maintaining, and causing all of its agents to obtain and maintain, all approvals and certifications (“Approvals”) necessary or appropriate in connection with this Agreement.
 - b. The Operator shall employ or retain the services of an Operations Manager (the “Manager”) possessing appropriate qualifications to manage the public recreational activities and operations at the Premises in a manner that is satisfactory to the Department and Parks. The Manager must be available by telephone throughout the Term of this Agreement and Operator shall provide the Department and Parks with a telephone number at which the Manager may be contacted in the event of an emergency. Operator shall replace any Manager, employee or subcontractor whenever mutually agreed to by the Parks Commissioner and the Operator.
 - c. Operator shall provide equipment which will provide security for all monies received. Operator shall provide for the transfer of all monies collected to Operator’s banking institution. Operator shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this Agreement.
 - d. Operator shall, at its sole cost and expense, use its best efforts to recruit qualified personnel from the communities immediately surrounding the Premises, and provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of the Premises and compliance with this Agreement, including but not limited to:
 - i. Collecting and safeguarding all monies generated under this Agreement;
 - ii. Maintaining the Premises;
 - iii. Conducting and supervising all activities to be engaged in at the Premises.

iv. Securing the Premises.

- e. Operator shall provide access to the Premises to disabled members of the public. The accessibility shall be clearly indicated by signs and included in all advertising by Operator. Operator shall include in its advertising and promotion materials, a plan that describes how it intends to make available programs, services and activities at the Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the American with Disabilities Act and any similarly applicable laws.
- f. Operator shall promptly notify the Department and Parks of accidents or unusual incidents occurring at the Premises. Such notice, including documents filed with any County, law enforcement or insurance agencies, shall also be provided in writing within twenty-four (24) hours of the discovery of such accident or occurrence. Such accidents or incidents shall include, without limitation, damage to person or property, fire, flood and casualty. Operator shall also designate a person to handle all such claims, including all claims for loss or damage including all insured claims for loss or damage pertaining to the operation of the Premises, and Operator shall notify the Department and Parks in writing as to said person's name and address.
- g. Operator shall cooperate with the County in providing use of the Premises for programs conducted by or arranged for the County consistent with the operation and best practices of comparable public recreational facilities in the region during the Term of this Agreement. The Department and Parks shall consult with Operator in an effort to schedule such events at times mutually agreeable to Operator.
- h. The Operator will be required to pay the prevailing wage rate as published by the New York State Department of Labor, if applicable, and comply with all applicable New York State Labor laws and the Nassau County Living Wage Law.
 - 1. Operator shall make its best efforts to enter into project labor agreements, on commercially reasonable terms, with the various labor organizations that may be hired to provide services in connection with the construction of the facility, in substance and form acceptable to the county and the Operator.
 - 2. In addition, the Operator shall comply with, and shall cause all contractors and subcontractors engaged in construction of the Facility to comply with, the apprenticeship training program requirements pursuant to Local Law 9-2002 and all other applicable laws, rules and regulations.

- i. Operator shall, at its sole cost and expense, post throughout the Premises such signs as may be necessary to direct patrons to its services and facilities. It is expressly understood that if Operator contemplates placing any sign off-site, such as on nearby highways or streets, it shall be Operator's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to the Department and Parks prior approval. Should Operator make application for any such approvals or permits, the County will reasonably cooperate with such applications.
- j. Except for properly stored gasoline, or as otherwise agreed to in writing by the Department, Operator shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York. No fireworks, fireworks displays or performances involving pyrotechnics of any kind are authorized or permitted pursuant to this Agreement without the express prior written approval of the Commissioner of the Department and Parks.
- k. Operator shall be responsible for providing adequate onsite parking in connection with its activities under this Agreement, subject to coordination with and approval of the Department and the Department of Public Works. All design and construction of parking areas shall be in compliance with the terms and conditions of this Agreement. The County hereby agrees that Operator will satisfy the parking requirement in this Section 8(k) by use of the parking lot to the west, adjacent to the Pathway that connects to the Facility.
- l. For large events, Operator shall prepare, at its sole cost and expense, an "Event Parking Management Plan" to ensure spectators are directed to designated onsite and offsite parking areas, as deemed necessary by the Department or Parks, which may include shuttle arrangements, at Operator's expense, to accommodate increased parking demand. Such Event Parking Management Plan shall be submitted to Parks and the Department at least six (6) weeks prior to each scheduled event.

LIENS

9.
 - a. The Operator shall not permit the Premises to be encumbered by any Lien (defined below). As used in this agreement, the word "Lien" means any mortgage, deed of trust, lien (statutory or other), pledge, hypothecation, assignment, preference, priority, security interest, easement or other encumbrance affecting the real property constituting all or any portion of

the Premises, including, without limitation, any mechanics' or materialmen's lien, or any other matter or thing whereby the estate, rights or interest of the County in and to the Premises or any portion thereof might be impaired.

- i. The prohibition against liens set forth above shall not be construed to prohibit the financing of expenditures made or incurred by the Operator which are secured, in whole or in part, by a pledge of a security interest in revenues generated by exhibitions, events or other activities on the Premises, subject to the terms of this agreement.
- b. Except with respect to materials purchased or services directly procured by the County, if any mechanic's, laborer's, vendor's, material man's or similar statutory lien is filed against the Premises or any part thereof, or if any public improvement lien created or allowed to be created by the Operator shall be filed against any assets of, or funds appropriated to, the County, the Operator shall, within sixty (60) days after receiving notice of the filing of such lien, cause it to be vacated or discharged of record by payment, deposit, bond, order of a court of competent jurisdiction or otherwise. However, the Operator shall not be required to discharge any such lien if the Operator shall have (i) furnished the County with a cash deposit, bond or other security reasonably satisfactory to the County in an amount sufficient to pay the lien with interest and penalties, and (ii) brought an appropriate proceeding to discharge such lien and is prosecuting such proceeding with diligence and continuity. Notwithstanding the foregoing, if despite the Operator's efforts to seek discharge of the lien, the County believes, in its sole discretion, such lien is about to be foreclosed and so notifies the Operator, the Operator shall immediately cause such lien to be discharged of record.
- c. Nothing contained in this Agreement shall be deemed or construed to constitute the consent or request of the County, express or implied, to any contractor, subcontractor, laborer or material man for the performance of any labor or the furnishing of any materials for any specific improvement of, alteration to, or repair of, the Premises or any part thereof, nor as giving the Operator any right, power or authority to contract for, or permit the rendering of, any services or the furnishing of materials that would give rise to the filing of any lien, mortgage or other encumbrance against the Premises or any part thereof or against assets of, or funds appropriated to, the County. Notice is hereby given, and the Operator shall cause all construction agreements to which it is a party to provide, that to the extent enforceable under applicable law, the County shall not be liable for any work performed at the Premises or any part thereof for the Operator or any subcontractor or for any materials furnished to the Premises or any part thereof for any of the foregoing, and no mechanic's, laborer's, vendor's, materialmen's or other similar statutory lien for such work or materials

shall attach to or affect the Premises or any part thereof or any assets of, or funds appropriated to, the County.

**UTILITIES, MAINTENANCE, REPAIRS,
CONDITION OF THE PREMISES**

10.

- a. The County shall have no obligation to furnish heat, water, fuel, or any other service, maintenance, cleaning, snow removal (for clarification: the County will remove snow from the parking lots. Operator will be required to clear all walkways) , trash removal, to the Premises. It is understood by the Operator that the Operator shall, at the Operator' sole cost and expense and to the satisfaction of the County, (i) keep the Premises clean and neat and in every respect sanitary; (ii) collect and remove all litter, debris and rubbish generated from its operations at the Premises; (iii) pay for any utilities, fuel, water, telephone or other costs relating to the improved or unimproved portions of the Premises, whether furnished to the Operator by or through the County or obtained directly by the Operator from the utility provider, provided, however, that the Operator shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals, including the prior written consent of the County which consent shall not be unreasonably withheld; (iv) provide adequate security at all times for its equipment, products and personnel and invitees; and (v) make all structural and non-structural repairs, interior or exterior, required to keep the Premises in good condition at all times.
- b. All repairs, restorations and replacements by the Operator shall be in quality and in substantial compliance with the original work or installation and done in a good and workmanlike manner. Any structural repairs must be coordinated with the County who will have the right to review and approve all plans and specifications as more particularly set for in Section 18 entitled "Alterations" below. As used in this Agreement, the term "Structural" shall include the roof, roof structures, roof supports, roof drainage systems, sky lights, bearing walls, exterior walls including the interior surface of the exterior walls (except interior painting or interior wall finishes within the Premises); the foundations and all structural portions of the Premises; floors, concrete or otherwise (except interior floor coverings); poured concrete; utility lines serving the Premises (to the extent not maintained by a public utility company), and all components of Base Building Systems as defined below. As used in this Agreement, the term "Base Building Systems" shall include sprinkler systems, fire and life safety systems, wiring, mechanical systems, HVAC systems, electrical systems, plumbing, sewer systems, septic systems, shafts and conduits located on the Premises, as well as any other systems or components.
- c. Maintenance of Adjacent Areas and Walkways. The Operator, at its sole cost and expense, shall keep clean and free from ice, snow and rubbish,

and otherwise maintain the sidewalks and sidewalk areas abutting the Premises.

- d. The Operator is accepting the Premises in its “AS IS” condition “WITH ALL FAULTS” as of the date of this Agreement.
- e. The Operator covenants that it will surrender and give up the Premises to the County upon the termination of this Agreement. Operator shall be required to repair or otherwise maintain any buildings located on the Premises pursuant to the terms and conditions of the current agreement between the County and Operator. The Operator further covenants that upon vacating the Premises, it will forthwith remove all personal property belonging to it from the Premises; and that it will deliver the keys to the County, on the date that it surrenders the Premises, and that it thereupon will execute a full release to the County for any damages which may have resulted either to its property arising out of or due to its occupancy of the Premises. The Operator acknowledges that any personal property remaining on the Premises after the expiration, or sooner termination, of this Agreement, is intended by the Operator to be abandoned. The Operator shall remain liable to the County for any damages should the Operator fail to cease operations, vacate or remove all possessions from the Premises on or before the expiration or termination date.
- f. The Operator shall not use or permit the storage at the Premises of any hazardous substances or materials.
- g. Operator shall not undertake installation of the facilities stated above without first having obtained all necessary permits and approvals, including the prior written consent of the Department, which consent shall not be unreasonably withheld. The Operator shall be responsible, at its sole cost and expense, to maintain in good repair and condition all such storm drain systems, sanitary sewer systems, paths, roadways, curbs, sidewalk, lighting and other utility facilities within the “Approximate Limit of Work” during the Term of this Agreement and any renewal period(s), whether above grade, at grade or below grade.

EMERGENCY CONDITIONS

- 11. Should County, in its sole and reasonable judgment, decide that an unsafe or emergency condition exists on the Premises, Operator shall have twenty-four (24) hours to correct such unsafe or emergency condition after written notification. If such unsafe or emergency condition cannot be corrected within said period of time, the Operator shall notify the County in writing and indicate the period within such condition shall be corrected. County, in its sole discretion, may extend such period of time in order to permit Operator to cure, under such terms and conditions as appropriate.

FIXED EQUIPMENT

- 12.
- a. Operator shall in its sole and absolute discretion, at its sole cost and expense, provide and replace if necessary, all equipment necessary for the operation of the Premises, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Premises.
 - b. Operator in its sole discretion must reasonably acquire, replace, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of Premises as described herein in order to maintain the “state of the art” nature of the Facility.

EXPENDABLE OR PERSONAL EQUIPMENT

- 13.
- a. Operator shall supply at its own cost and expense all Expendable or Personal Equipment required for the proper operation of this Agreement and replace same as needed to satisfy its obligations under this Agreement.
 - b. Title to all Expendable or Personal Equipment obtained by Operator shall remain in Operator and such equipment shall be removed by Operator at the termination or expiration of this Agreement. In the event such equipment remains in the Premises following such termination or expiration, County may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Operator.
 - c. Any Equipment to be removed by Operator shall be removed from the Premises in such a way as shall cause no damage to the Premises. Notwithstanding its vacating and surrender of the Premises, Operator shall remain liable to County for any damage it may have caused to the Premises.

CONDITION UPON SURRENDER

14. Notwithstanding the foregoing, at the expiration or sooner termination of this Agreement, Operator shall surrender the Premises, to which County holds title, in at least as good a condition as said Premises were found by Operator, reasonable wear and tear excepted.

HOURS OPEN TO THE PUBLIC, ADMISSION FEES

- 15.
- a. The Premises shall be open to the public not less than seven (7) days a week. Special programs and events may occur on any day and at other hours appropriate therefore, subject to the prior written County consent

not to be unreasonably withheld. The Operator may institute a discretionary admissions fee policy with regard to its programs conducted at the Premises, provided that such policy and the suggested fees to be charged have been previously supplied in writing to Parks and may charge a reasonable fixed admission fee for special events and temporary exhibitions. The days and hours that the public areas are open to the public, and the general admission fees to be charged (including the suggested amount of any discretionary fee), shall not be changed without the prior written approval of the Commissioner of Parks, which will not be unreasonably withheld.

- b. Upon presentation of a valid Nassau County Leisure Pass, all such Nassau County Leisure Pass holders shall receive a ten percent (10%) discount on all fees charged directly by the Operator, including but not limited to, court fees, camps, leagues, and rentals. Upon presentation of a valid Nassau County Leisure Pass, all such Leisure Pass holders will receive a twenty percent (20%) discount on fees charged directly by the Operator for programs offered during peak hours. Senior Citizens and Veterans shall receive a twenty-five percent (25%) discount on all Operator programs.

RESERVATION FOR THE DEPARTMENT SPECIAL EVENTS
PUBLIC ACCESS

16.

- a. For the purpose of this Section, the term “Special Event(s)” shall mean any event for which the Department of Parks has issued a Special Event Permit. The Department of Parks agree to use its reasonable efforts to notify Operator at least thirty (30) days in advance of any such Special Event. Any events previously scheduled by Operator and Operator’s daily activities shall take precedence over any Special Event. It is expressly understood that this section shall in no way limit the Department’s or Park’s right to itself sponsor or promote Special Events, as defined herein, at the Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that the Department or Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Special Event. The Department and Parks represent to Operator that it has not granted to any other person or entity any Agreement, permit, or right of possession or use that would prevent Operator in any way from performing its obligations and realizing its rights under this Agreement, except as otherwise disclosed herein. The County shall be required to pay for any reasonable expenses actually incurred by Operator in connection with any Special Event(s) conducted by the County.
- b. Notwithstanding the above, the County shall be entitled to conduct any event (“County Special Event”) on the Premises and will take reasonable efforts to notify Operator at least thirty (30) days in advance of such event.

- c. The Department of Parks agrees to notify any third-party operator or sponsor of Special Events of Operator's access rights to the Premises and to provide same with the name and telephone number of Operator's manager.
- d. The Operator must maintain the Premises in a manner such that they are open to the general public. Any fees or charges, or any changes thereto, shall be subject to the prior written approval of the County.

ASSIGNMENT, AMENDMENT, WAIVER, SUBCONTRACTING

17.

- a. Except as provided in this Article 17, this Agreement and the rights and obligations hereunder may not be in whole or part (i) assigned, transferred or disposed of, (ii) amended, (iii) waived, or (iv) subcontracted, without the prior written consent of the County Executive or his or her duly designated deputy (the "County Executive") which consent will not be unreasonably withheld, and any purported assignment, other disposal or modification without such prior written consent shall be null and void. The failure of a party to assert any of its rights under this Agreement, including the right to demand strict performance, shall not constitute a waiver of such rights.
- b. Except as otherwise provided in Section 17(g) below with respect to passive financial members who shall not assume this Agreement and shall not be liable jointly and severally with Operator, if consent to assign, amend, waive or subcontract is granted, each assignee or successor to the Operator shall assume and be deemed to have assumed this Agreement and shall be and remain liable jointly and severally with the Operator for the performance of all the terms, covenants, conditions and agreements herein contained on Operator's part to be performed. In the event of a default of this Agreement by an assignee, the County will notify the Operator of such default.
- c. Except as otherwise provided in Section 17(g) below with respect to passive financial members who shall not assume this Agreement and shall not be liable jointly and severally with Operator, notwithstanding any consent by the County pursuant to this Section, no assignment shall be binding upon the County unless and until there shall be delivered to the County an instrument of assignment which shall also contain a covenant of assumption by the assignee of all of the obligations of the Operator under this Agreement.
- d. Any consent which may be given by the County to any assignment or encumbrance shall not constitute a waiver by the County, of the provisions of this Section or relieve the Operator of its liability for the full

performance by it of the covenants of this Agreement on the part of the Operator to be performed; and any consent given by the County to any assignment or encumbrance shall not relieve the Operator from obtaining the written consent of the County to any subsequent assignment or encumbrance if such consent is required under the provisions of this Section.

- e. This Section shall not be deemed to prohibit the Operator from granting to any person, firm or corporation (“Person”) the right to use the Premises for purposes intended to implement the Operator’s use of the Premises as set forth in this Agreement, to charge admission therefore or to collect from any such Person fees or rentals for such use of the Premises subject to the Department’s or Park’s prior written consent.
- f. Subject to the provisions of this section above and all other terms and conditions of this Agreement, Operator may assign its interest in this Agreement, or any of its rights hereunder, and any subcontracts or sublicenses, as collateral security for financing obtained from an institutional lender of the construction of the Facility or for working capital, upon the condition that all rights assigned shall be subject to each and all of the terms and conditions of this Agreement and to all rights and interests of the County hereunder. Upon the reasonable request of Operator’s lender, the County and Operator shall execute and deliver such reasonable documents and/or estoppels necessary to effectuate the financing of the project as envisioned under this Agreement. Nothing contained herein shall be deemed to condition the obligations of the Operator under this Agreement upon the obtaining of financing, nor shall any financing entity obtain any lien, mortgage or other encumbrance upon the land, building, fixtures, Capital Improvements or any other real property located on or to be constructed upon the Premises.
- g. Operator may have passive financial LLC future members contributing up to 49% of the Capital Expenditures as spent by Operator and shall be subject to County approval, which shall not be unreasonably withheld. Prior to admission as an LLC member, such new members must complete all County disclosures and are subject to any further inquiry by the County or County related entities, including the Comptroller, the Department, the County Inspector General, any other governmental authority with jurisdiction over this Agreement, and any of their duly designated representatives. Operator must be in compliance of this Agreement before future LLC members may be added.

REQUIRED CAPITAL IMPROVEMENTS AND ALTERATIONS

18.

- a. Operator covenants to perform and complete, or cause to be completed by subcontractors acceptable to the County in its reasonable discretion, such

Capital Improvements as generally described in Exhibit "C" or as may be agreed upon by the parties subject to the terms of this Section 18 and the remainder of this Agreement. All Capital Improvements must be completed within Eighteen (18) months of the Construction Commencement Date of this Agreement. Failure to complete any and all of the Capital Improvements shall constitute a material breach of this Agreement. The Capital Improvements shall be completed in one (1) phase. The square footage of the facility after Phase II shall be approximately Forty Thousand (40,000) square feet. Operator shall be obligated to expend, at its sole expense, an amount of at least Seven Million Five Hundred Thousand Dollars (\$7,500,000.00) during the Term of this Agreement, including hard and soft costs, to make such Capital Improvements; of which Seven Million five Hundred Thousand Dollars (\$7,500,000.00) shall be expended during the Preliminary Term. Such funds shall be expended in cash or in kind. Any such Capital Improvements shall be made in accordance with the provisions of this Agreement, including, without limitation, the DPW guidelines attached hereto and shall be subject to the approval of the Department of Public Works. Operator may use its own employees in any and all phases of such Capital Improvements and receive credit against the above required payments for the reasonable value of the work, labor and services provided by such employees. Operator shall comply with all applicable laws, rules, regulations and County guidelines, including without limitation, the DPW Guidelines Annexed hereto.

- b. The Operator shall perform and complete all Capital Improvements, at its sole cost and expense, in accordance with the designs, plans and specifications approved by the Department and other governmental agencies having jurisdiction. Notwithstanding any other provision in this Agreement, (i) Operator shall not be required to maintain or improve existing buildings or structures on the Premises, except to the extent that Operator and County agree that Operator shall do so and except to the extent that Operator uses such buildings or structures, and (ii) County and Operator will cooperate in the creation and development of design specifications for the Facility and any other improvements to be constructed on the Premises. It is understood by the parties that the foregoing specifications and design documents shall include, at a minimum, the following components: (i) equipment and supply storage, and (ii) ADA compliant restroom facilities. Notwithstanding any other provision of this Agreement, the County shall not be responsible for constructing any of the buildings, structures or facilities described above. To ensure faithful completion of the Capital Improvements described herein, prior to any Capital Improvements being made pursuant to this Section, Operator shall execute both a Performance Bond and a Labor and Material Payment Bond to the Department, each in the amount of one hundred percent (100%) of the Total Cost of the hard costs of the Capital

Improvements as determined by the Commissioner of DPW, to remain in effect for the duration of the construction of the Capital Improvements, as the base amount of such bonds may be reduced from time to time consummate with completion of construction. Such bonds shall be executed by a surety company authorized to do business in the State of New York and acceptable to the County Comptroller; or bonds secured by collateral, or securities approved by the County Comptroller, and approved as to form and manner of execution by the County Attorney. The Attorney-in-fact who signs contract bonds, must file with such bonds a certified copy of the power of attorney to sign these bonds. All Bonds shall be issued by a Surety Company authorized to do business in the State of New York as evidenced by either the Surety Company's most recent Certificate of Solvency under Section 1111 of the New York Insurance Law, a copy of which must be attached to the Bond or issued by a Surety Company listed in the most recent copy of the Department of Treasury's Listing of Approved Sureties (Department Circular 570). The amount of said Bond shall not exceed the limits set by the aforesaid certificate of Solvency or Treasury Department Circular. Such Performance Bond and Labor and Material Payment Bond shall be the form attached as Exhibit "D" hereto.

- c. The Total Cost of the Capital Improvements shall be determined by the Department based upon construction documents, invoices, labor time sheets and such other supporting documents or other data as the Department may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in Exhibit C shall be included in the Total Cost in addition to architectural/engineering fees incurred by the Operator. In making the determination of the total cost of Capital Improvements, the Department may request any information it reasonably believes would be helpful to make such a determination. Operator shall forward such information to the Department upon its request. Operator shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 18, including any amount needed above any estimated cost shown.
- d. Operator shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in Exhibit C. Operator shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Operator (“Events of Force Majeure”) as determined by the Department, including, without limitation, acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty, material delays and labor shortage. In the event Operator fails to finally complete

construction of the Capital Improvements by the Close Out completion date specified in Exhibit C, as said Close Out completion date may be extended by Operator for six (6) months upon at least thirty (30) days' prior written notice from Operator to the County, Operator may be required to pay the County liquidated damages of One Thousand Dollars (\$1,000.00) per day until the Capital Improvements are completed, provided that such failure is not the result of Events of Force Majeure or delay by the Department or any County, State, or federal permitting authority, and provided further that the Department has given Operator a notice to cure such failure to complete and Operator has failed to cure within the period specified in such notice. In the event of any delay by the Department or any County, State, or federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay.

- e. Operator shall pay all applicable fees and shall submit to the Department and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer, who will oversee the entire construction project. Operator shall submit the architect's or engineer's qualifications to the Department for prior approval. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as the Department shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by the Department. The supervising architect or engineer is required to ensure that all construction conforms in all material respects to the plans approved by the Department. No Capital Improvement shall be deemed Finally Completed until the Department certifies in writing that the Capital Improvement has been completed to its satisfaction. The Department's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.
- f. Upon certification by the Department of Final Completion by Operator of the Capital Improvements required herein, Operator shall provide the Department with one complete set of final, approved "AS-DESIGNED" plans on 4 millimeter double matte Mylar. Plans are also to be submitted in digital format (CAD file extension and .pdf). Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. All "AS-DESIGNED"

drawings submitted must be so labeled. Each drawing shall contain the name, address & telephone number of the Architect / Engineer.

- g. Operator shall commence Capital Improvements only after written notice from the County that Operator may commence construction of the Capital Improvements.
- h. Operator shall perform all Capital Improvements in accordance with all federal, state, and County laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Operator shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable.
- i. During performance of the Capital Improvements and up to the date of Final Completion, Operator shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, Operator shall promptly replace or repair such Capital Improvements at its sole cost and expense.
- j. Operator shall provide written notice to the Department when the Capital Improvements are near Substantially Completed. After receiving such notice, the Department shall inspect such Capital Improvements. After such inspection the Department and Operator shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the reasonable satisfaction of the Department. Operator shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by the Department.
- k. Operator, within three (3) months of certification of Final Completion, shall furnish the Department with a certified statement, issued by Operator, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Operator shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Premises to permit audit by the Department or the County Comptroller upon request.

- l. Operator shall provide the Department with discharges for any and all liens which may be filed or levied against the Capital Improvements during construction of such improvements. Operator shall discharge or, if disputed, bond and diligently contest, such liens within thirty business days of receipt of lien by Operator. Upon Final Completion of all Capital Improvements, the Department shall return to Operator its remaining payment and performance bond on deposit with the County.
- m. Operator shall promptly repair, replace, restore, or rebuild, as the Department reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one-year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section shall constitute a default and may result in the termination of this Agreement.
- n. Neither the Department, nor any other County departments, agencies, officers, agents, employees or assigns thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this Agreement by the County, the Department, or any other department, officer, agent or employee of the County, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this Agreement and from demanding and recovering from the Operator such damages as the Department or the County may sustain by reason of Operator's failure to perform each and every part of this Agreement in accordance with its terms, unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section signed by the commissioner of the Department or her authorized representative.
- o. Upon installation, title to all construction, renovation, improvements, and fixtures made to the Premises shall vest in and thereafter belong to the County at the County's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the County chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Premises, it shall be the responsibility of Operator to remove its Expendable Equipment and restore the Premises to the satisfaction of the Department at the sole cost and expense of the Operator upon the Agreement Expiration Date or earlier termination of this Agreement. However, Operator shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures.

- p. In the event the County revokes the Agreement (except for cause) prior to the Agreement Expiration Date pursuant to Section 3 of the Agreement during the first twenty (20) years of this Agreement, the Operator shall be reimbursed, for Adjusted Unamortized Capital Expenditures (as defined below) for Capital Improvements actually completed, as reasonably determined by the County.
- i. “Adjusted Unamortized Capital Expenditures” shall mean the unamortized, third party, actually-incurred hard costs of the Capital Improvements. For the purposes of the above calculation, capital expenditures are to be amortized evenly over a twenty (20) year period. The calculation of Adjusted Unamortized Capital Expenditures shall be verified by the Department and subject to the review, approval and audit of the County Comptroller.
 - 1. For clarification, soft costs such as design fees, architects and engineering fees, survey fees, consultant fees, attorney fees, debt service, and other soft costs shall not be included in the County’s calculation of Adjusted Unamortized Capital Expenditures.
- q. One half (1/2) of one percent of the total cost (“Total Cost”) for all Capital Improvements, as described in Section 18 above, will be charged to the Permittee for design review and construction supervision by the Department and other authorized personnel (the “Review/Supervision Fee”). Upon the execution of this Agreement, Permittee shall pay to the County the Review/Supervision Fee as herein described.

ALTERATIONS

- r. “Alteration” shall mean (excepting ordinary repair and maintenance): any restoration (to the original Premises or in the event of fire or other cause), rehabilitation, modification, addition, improvement, Capital Improvement or construction work of any kind to Premises; or any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Premises.
- i. Operator may make Alterations to the Premises only in accordance with the requirements of subsection (ii) of this Section. Alterations shall become property of County upon their attachment, installation or affixing, unless otherwise directed by the County.
 - ii. In order to make Alterations to the Premises pursuant to subsection (b) of this Section, Operator must: (i) obtain the County’s written approval for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings that may pertain to contemplated purchases and/or work; (ii) ensure that

work performed and alterations made on Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Section, in a good and workmanlike manner, and within a reasonable time; and (iii) notify the County of completion of, and the making final payment for, any alteration within ten (10) days after the occurrence of said completion or final payment.

1. Notwithstanding the foregoing, and subject to approval which shall not be unreasonable withheld by Department of Parks and DPW, Operator may make Alterations to the interior of the Facility, except that Operator may, without any County approval, modify the configuration and/or mix, *i.e.* number, of Padel and Pickleball courts, so long as the resultant configuration and/or mix of Padel and Pickleball courts utilizes substantially the same Ground Floor space as shown in the original layout on Exhibit “C” for the Padel and Pickleball Courts ,
 2. Paddle may elect to not build the Juice Bar, or if built, discontinue at a future date. Additionally, any delays in the construction of the Juice Bar, shall not subject Paddle to construction penalties.
- iii. The County may, in its discretion, make repairs, alterations, decorations, additions or improvements to the Premises at the County’s expense, but nothing herein shall be deemed to obligate or require the County to make any repairs, alterations, decorations, additions or improvements, nor shall this provision in any way affect or impair Operator’s obligation herein in any respect.
- iv. The County reserves the right to perform construction or maintenance work in its discretion at the Premises at any time during the term of this Agreement subject to Operator’s reasonable consent. Operator agrees to cooperate with the County, to accommodate any such work by the County and provide public and construction access through the Premises as deemed necessary by the Department. The County shall use its best efforts to give Operator least fourteen (14) days written notice of any such work and not to interfere substantially with Operator’s operation or use of the Premises. The Operator shall be responsible for security of all Operators’ property on the Premises at all times.

INDEPENDENT CONTRACTOR

19. The Operator is an independent contractor of the County. The Operator shall not, nor shall any officer, director, employee, servant, agent or independent contractor of the Operator (a “Operator Agent”), be (i) deemed a County employee, (ii) commit the County to any obligation, or (iii) hold itself, himself, or herself out as a County employee or Person with the authority to commit the County to any obligation. As used in this Agreement the word “Person” means any individual person, entity (including partnerships, corporations and limited liability companies), and government or political subdivision thereof (including agencies, bureaus, offices and departments thereof).

NO ARREARS OR DEFAULT

20. The Operator is not in arrears to the County upon any debt or contract and it is not in default as surety, contractor, or otherwise upon any obligation to the County, including any obligation to pay taxes to, or perform services for or on behalf of, the County.

COMPLIANCE WITH LAW

21. Compliance With Law.

- a. Generally, Operator shall comply with any and all applicable Federal, State and local Laws, including those relating to conflicts of interest, human rights, a living wage, discrimination, disclosure of information and vendor registration in connection with its performance under this Agreement. In furtherance of the foregoing, the Operator is bound by and shall comply with the terms of Appendix EE attached hereto. As used in this Agreement the word “Law” includes any and all statutes, local laws, ordinances, rules, regulations, applicable orders, and/or decrees, as the same may be amended from time to time, enacted, or adopted. The Permittee shall obtain, at its sole cost and expense, any and all approvals, permits and other licenses required by federal, state and local laws, rules, regulations and orders which are or may become necessary including any Nassau County Department of Health permits required, any and all inspections of the Nassau County Fire Marshall’s Office.
- b. Personnel Screening. Consistent with Local Law 14-2003, and prior to the Operator’s use and occupancy, the Operator shall be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references and suitability for working with the public, including children. At a minimum, Operator shall comply with guidelines and procedures as may be enacted or adopted by the County or Parks provided to the Operator in writing, including the following:
 - i. Operator shall be responsible for screening all personnel, including substantiating credentials and reference checks. In addition,

- Operator shall check each prospective personnel against Statewide Sexual Offenders Registry.
- ii. Operator agrees not to hire or retain any personnel who refuse to: provide the names of references; provide documentation of credentials; provide information on criminal conviction records; or provide any other requested information that bears on the applicant's fitness to work with or in close proximity to the public, including children.
 - iii. Operator agrees not to hire or retain any personnel who have not completely and truthfully reported information concerning their criminal convictions; whose criminal convictions record directly bears on their fitness to work with or in close proximity to the public, including children, or whose employment would involve an unreasonable risk to the safety or welfare of the public, including children, subject to and consistent with Article 23-A of the New York State Correction Law; or who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with the Registry.
 - iv. Where the criminal history record of any personnel reveals a conviction of a crime, the Operator shall, upon notice from the head of the department charged with administering the contract, remove such personnel from duties involving unsupervised or regular and substantial contact with minors. Within five (5) business days of making any changes that involve adding or removing personnel who have unsupervised or regular and substantial contact with minors, the Operator shall notify the Department head, in writing, that such addition or removal has occurred, and the basis for such addition or removal. Failure to comply with a lawful order of the Department to remove personnel from duty shall constitute a material breach of this Agreement.
- c. Records Access. The parties agree that public access to records, documents and information produced under or as a result of this Agreement, shall be controlled by applicable State and Federal laws concerning the disclosure of governmental records and/or information. In the event, a party receives a request for disclosure of a record, document or information, reasonable efforts shall be used to notify the other party prior to disclosing the information in order to enable that party to take such action it deems appropriate.
- d. Prohibition of Gifts. In accordance with County Executive Order 2-2018, the Contractor shall not offer, give, or agree to give anything of value to any County employee, agent, consultant, construction manager, or other person or firm representing the County (a "County Representative"),

including members of a County Representative's immediate family, in connection with the performance by such County Representative of duties involving transactions with the Contractor on behalf of the County, whether such duties are related to this Agreement or any other County contract or matter. As used herein, "anything of value" shall include, but not be limited to, meals, holiday gifts, holiday baskets, gift cards, tickets to golf outings, tickets to sporting events, currency of any kind, or any other gifts, gratuities, favorable opportunities or preferences. For purposes of this subsection, an immediate family member shall include a spouse, child, parent, or sibling. The Contractor shall include the provisions of this subsection in each subcontract entered into under this Agreement.

- e. Disclosure of Conflicts of Interest. In accordance with County Executive Order 2-2018, the Contractor has disclosed as part of its response to the County's Business History Form, or other disclosure form(s), any and all instances where the Contractor employs any spouse, child, or parent of a County employee of the agency or department that contracted or procured the goods and/or services described under this Agreement. The Contractor shall have a continuing obligation, as circumstances arise, to update this disclosure throughout the term of this Agreement.
- f. Vendor Code of Ethics. By executing this Agreement, the Contractor hereby certifies and covenants that:
 - i. The Contractor has been provided a copy of the Nassau County Vendor Code of Ethics issued on June 5, 2019, as may be amended from time to time (the "Vendor Code of Ethics"), and will comply with all of its provisions;
 - ii. All of the Contractor's Participating Employees, as such term is defined in the Vendor Code of Ethics (the "Participating Employees"), have been provided a copy of the Vendor Code of Ethics prior to their participation in the underlying procurement;
 - iii. All Participating Employees have completed the acknowledgment required by the Vendor Code of Ethics;
 - iv. The Contractor will retain all of the signed Participating Employee acknowledgements for the period it is required to retain other records pertinent to performance under this Agreement;
 - v. The Contractor will continue to distribute the Vendor Code of Ethics, obtain signed Participating Employee acknowledgments as new Participating Employees are added or changed during the term of this Agreement, and retain such signed acknowledgments for the period the Contractor is required to retain other records pertinent to performance under this Agreement; and
 - vi. The Contractor has obtained the certifications required by the Vendor Code of Ethics from any subcontractors or other lower tier

participants who have participated in procurements for work performed under this Agreement.

- g. Nassau County Living Wage Law. Pursuant to LL 1-2006, as amended, and to the extent that a waiver has not been obtained in accordance with such law or any rules of the County Executive, the Operator agrees as follows:
 - i. Operator shall comply with the applicable requirements of the Living Wage Law, as amended;
 - ii. Failure to comply with the Living Wage Law, as amended, constitutes a material breach of this Agreement, the occurrence of which may be determined solely by the County. Operator has the right to cure such breach within thirty days of receipt of notice of breach from the County. In the event that such breach is not timely cured, the County may terminate this Agreement as well as exercise any other rights available to the County under applicable law.
 - iii. It shall be a continuing obligation of the Operator to inform the County of any material changes in the content of its certification of compliance, attached to this Agreement as Appendix L, and shall provide to the County any information necessary to maintain the certification's accuracy.

MINIMUM SERVICE STANDARDS

- 22. Regardless of whether required by Law:
 - a. The Operator shall, and shall cause Operator agents to, conduct its, his or her activities in connection with this Agreement so as not to endanger or harm any Person or property.
 - b. The Operator shall deliver services under this Agreement in a professional manner consistent with the best practices of the industry in which the Operator operates. The Operator shall take all actions necessary or appropriate to meet the obligation described in the immediately preceding sentence, including obtaining and maintaining, and causing all Operator agents to obtain and maintain, all Approvals necessary or appropriate in connection with this Agreement.

RELEASE, INDEMNIFICATION, DEFENSE, COOPERATION

- 23.
 - a. The County shall not be liable for any damage, injury or liability, including but not limited to personal injury or death, or property damage, suffered by Operator or any third party arising out of (i) the occupancy or use of the Premises or any property contained therein on the Premises, (ii) any casualty occurring on or about the Premises or any property contained therein, or (iii) the condition of the Premises (including but not limited to any latent or patent defects) or of any property contained therein. The

Operator hereby expressly release and discharges the County from any and all claims and action alleging or arising out of the foregoing.

- b. The Operator assumes all risk in its performance of all activities authorized by this Agreement and shall be solely responsible for and shall indemnify and hold harmless the County, the Department, Parks and its officers, employees, and agents (the “Indemnified Parties”) from and against any and all liabilities, claims, losses, costs, expenses (including, without limitation, attorneys’ fees and disbursements) and damages (“Losses”), arising out of or in connection with any acts or omissions of the Operator or an Operator Agent, including without limitation, Operator’s operations pursuant to this Agreement, regardless of whether due to negligence, fault, or default, including Losses in connection with any threatened investigation, litigation or other proceeding or preparing a defense to or prosecuting the same provided, however, that the Operator shall not be liable for a Loss, if any, caused by the negligence or willful misconduct of the County.
- c. The Operator shall, upon the County’s demand and at the County’s direction, promptly and diligently defend, at the Operator’s own risk and expense, any and all suits, actions, or proceedings which may be brought or instituted against one or more Indemnified Parties and the Operator shall pay and satisfy any judgment, decree, loss or settlement in connection therewith.
- d. The Operator shall, and shall cause Operator agents to, cooperate with the County and the Department in connection with the investigation, defense or prosecution of any action, suit or proceeding.
- e. The provisions of this Section shall survive the termination of this Agreement.

INSURANCE

24.

- a. Types and Amounts. The Operator shall obtain and maintain throughout the term of this Agreement, at its own expense: (i) one or more policies for commercial general liability insurance, which policy(ies) shall name “Nassau County” as an additional insured and have a minimum single combined limit of liability of not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate, (ii) if contracting in whole or part to provide professional services, one or more policies for professional liability insurance, which policy(ies) shall have a minimum single combined limit liability of not less than one million dollars (\$1,000,000) per claim, (iii) compensation insurance for the benefit of the Operator’s employees (“Workers’ Compensation Insurance”), which insurance is in compliance with the

New York State Workers' Compensation Law, and (iv) such additional insurance, including, without limitation, builder's all risk, if applicable, automobile liability insurance and umbrella liability insurance, as the County may from time to time specify.

- b. Acceptability; Deductibles; Subcontractors. All insurance obtained and maintained by the Operator pursuant to this Agreement shall be (i) written by one or more commercial insurance carriers licensed to do business in New York State and acceptable to the County, and (ii) in form and substance acceptable to the County. The Operator shall be solely responsible for the payment of all deductibles to which such policies are subject. The Operator shall require any subcontractor hired in connection with this Agreement to carry insurance with the same limits and provisions required to be carried by the Operator under this Agreement.
- c. Delivery; Coverage Change; No Inconsistent Action. Prior to the execution of this Agreement copies of current certificates of insurance evidencing the insurance coverage required by this Agreement shall be delivered to the Department and Parks. Not less than thirty (30) days prior to the date of any expiration or renewal of, or actual, proposed or threatened reduction or cancellation of coverage under, any insurance required hereunder, the Operator shall provide written notice to the Department and Parks of the same and deliver to the Department and Parks renewal or replacement certificates of insurance. The Operator shall cause all insurance to remain in full force and effect throughout the term of this Agreement and shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages. The failure of the Operator to maintain Workers' Compensation Insurance shall render this contract void and of no effect. The failure of the Operator to maintain the other required coverages shall be deemed a material breach of this Agreement upon which the County reserves the right to consider this Agreement terminated as of the date of such failure.

CONSENT TO JURISDICTION AND VENUE GOVERNING LAW

- 25. Unless otherwise specified in this Agreement or required by Law, all claims or actions with respect to this Agreement shall be resolved exclusively by a court of competent jurisdiction located in Nassau County in New York State and the parties expressly waive any objections to the same on any grounds, including venue and forum non conveniens. This Agreement is intended as a contract under, and shall be governed and construed in accordance with, the Laws of New York State, without regard to the conflict of laws provisions thereof.

TERMINATION

- 26.
- a. Generally. This Agreement may be terminated (i) for any reason by the County upon thirty (30) days' written notice to the Operator (ii) for "Cause" by the County immediately upon the receipt by the Operator of written notice of termination, (iii) upon mutual written agreement of the County and the Operator, and/or (iv) in accordance with any other provisions of this Agreement expressly addressing termination.
 - b. As used in this Agreement the word "Cause" includes: (i) a breach of this Agreement; (ii) the failure to obtain and maintain in full force and effect all Approvals required for the services described in this Agreement to be legally and professionally rendered; and (iii) the termination or impending termination of federal or state funding for the services to be provided under this Agreement.
 - c. By the Operator: This Agreement may be terminated by the Operator if performance becomes impracticable through no fault of the Operator, where the impracticability relates to the Operator's ability to perform its obligations and not to a judgment as to convenience or the desirability of continued performance. Termination under this subsection shall be effected by the Operator delivering to the commissioner or other head of the Department (the "Commissioner"), at least sixty (60) days prior to the termination date (or a shorter period if sixty days' notice is impossible), a notice stating (i) that the Operator is terminating this Agreement in accordance with this subsection, (ii) the date as of which this Agreement will terminate, and (iii) the facts giving rise to the Operator's right to terminate under this subsection. A copy of the notice given to the Commissioner shall be given to the Deputy County Executive who oversees the administration of the Department (the "Applicable DCE") on the same day that notice is given to the Commissioner.

ACCOUNTING PROCEDURES, RECORDS

27. The Operator shall maintain and retain, for a period of six (6) years following the later of termination of or final payment under this Agreement, complete and accurate records, documents, accounts and other evidence, whether maintained electronically or manually ("Records"), pertinent to performance under this Agreement. Records shall be maintained in accordance with Generally Accepted Accounting Principles and, if the Operator is a non-profit entity, must comply with the accounting guidelines set forth in the applicable provisions of the Code of Federal Regulations, 2 C.F.R. Part 200, as may be amended. Such Records shall at all times be available for audit and inspection by the Comptroller, the Department, the County Inspector General, any other governmental authority with jurisdiction over the provision of services hereunder and/or the payment therefore, and any of their duly designated representatives. The provisions of this Section shall survive the termination of this Agreement.

**LIMITATION ON ACTIONS AND SPECIAL PROCEEDINGS
AGAINST COUNTY**

28. No action or special proceeding shall lie or be prosecuted or maintained against the County upon any claims arising out of or in connection with this Agreement unless:
- a. Notice. At least thirty (30) days prior to seeking relief the Operator shall have presented the demand or claim(s) upon which such action or special proceeding is based in writing to the Applicable DCE for adjustment and the County shall have neglected or refused to make an adjustment or payment on the demand or claim for thirty (30) days after presentment. The Operator shall send or deliver copies of the documents presented to the Applicable DCE under this Section to each of (i) the Department and the (ii) the County Attorney (at the address specified above for the County) on the same day that documents are sent or delivered to the Applicable DCE. The complaint or necessary 6 moving papers of the Operator shall allege that the above-described actions and inactions preceded the Contractor's action or special proceeding against the County.
 - b. Time Limitation. Such action or special proceeding is commenced within the earlier of:
 - i. one (1) year of the first to occur of:
 - 1. final payment under or the termination of this Agreement, and
 - 2. the accrual of the cause of action, or
 - ii. the time specified in any other provision of this Agreement.

WORK PERFORMANCE LIABILITY

29. The Operator is and shall remain primarily liable for the successful completion of all work in accordance this Agreement irrespective of whether the Operator is using a Contractor Agent to perform some or all of the work contemplated by this Agreement, and irrespective of whether the use of such Contractor Agent has been approved by the County.

NOTICES

- 30.
- a. Any demand, request, consent or other notice given or required to be given under this Agreement shall be deemed to have been duly and sufficiently given only if in writing and sent as follows:
 - i. by personal delivery with proof of delivery (any notice so delivered shall be deemed to have been received at the time so delivered);
 - ii. by Federal Express (or other similar overnight courier) designating priority delivery (any notice so delivered shall be deemed to have been received on the next business day following receipt by the courier);

- iii. by United States registered or certified mail, return receipt requested, postage prepaid (any notice so delivered shall be deemed to have been received on the third (3rd) business day after the delivery of any such notice to the United States Postal Registry Clerk); or
- iv. by telecopier or facsimile machine which automatically generates a transmission report that states the date and time of the transmission, the length of the document transmitted and the telephone number of the recipient's telecopier or facsimile machine (with a copy thereof sent in accordance with subparagraph (ii) or (iii) above) (any notice so delivered shall be deemed to have been received (1) on the date of transmission, if so transmitted before 5:00 p.m. (local time of the recipient) on a business day, or (2) on the next business day, if so transmitted on or after 5:00 p.m. (local time of the recipient) on a business day or if transmitted on a day other than a business day).

b. All notices shall be addressed to the parties at the following addresses:

- i. To Operator: Paddle Sports Unlimited, LLC
147 Steamboat Road
Great Neck, New York 11024
Attn: Scott Johns, CEO & Partner
Telecopy Number: (718)228-5850

with a copy to: Harris Beach, Attorneys for Operator
333 Earle Ovington Blvd, suite 901
Uniondale, NY 10005

Attn: Tom Garry, Esq.
Facsimile Number: (516) 880-8483

- ii. To County: County of Nassau
Department of Parks, Recreation & Museums
Administration Building
Eisenhower Park
East Meadow, New York 11554
Attn: Commissioner
Facsimile Number: 516-572-0227

with a copy to: Nassau County Attorney's Office
One West Street
Mineola, New York 11501
Attention: Chief, Transactions Bureau

c. Either party may, by notice given pursuant to the provisions of this Section, change the person or persons and/or address or addresses, or designate an additional person or persons or an additional address or

addresses, for its notices, but notice of a change of address shall only be effective upon receipt.

ALL LEGAL PROVISIONS DEEMED INCLUDED
SEVERABILITY, SUPREMACY

- 31.
- a. Every provision required by Law to be inserted into or referenced by this Agreement is intended to be a part of this Agreement. If any such provision is not inserted or referenced or is not inserted or referenced in correct form then (i) such provision shall be deemed inserted into or referenced by this Agreement for purposes of interpretation and (ii) upon the application of either party this Agreement shall be formally amended to comply strictly with the Law, without prejudice to the rights of either party.
 - b. In the event that any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
 - c. Unless the application of this subsection will cause a provision required by Law to be excluded from this Agreement, in the event of an actual conflict between the terms set forth above the signature page to this Agreement and those contained in any schedule, exhibit, appendix, or attachment to this Agreement, the terms and conditions set forth above the signature page shall control. To the extent possible, all the terms of this Agreement should be read together as not conflicting.

SECTION AND OTHER HEADINGS

32. The section and other headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of this Agreement.

ENTIRE AGREEMENT

33. This Agreement represents the full and entire understanding and agreement between the parties with regard to the subject matter hereof and supersedes all prior agreements (whether written or oral) of the parties relating to the subject matter of this Agreement.

EXECUTORY CLAUSE

34. Notwithstanding any other provision of this Agreement:

- a. Approval and Execution. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person unless (i) all requisite approvals have been obtained, including, if required, approval by the County Legislature and any other governmental authorities, (ii) this Agreement has been executed by the County Executive or a Deputy County Executive, and (iii) this Agreement has been approved by all applicable Federal Agencies and/or Departments.
- b. Availability of Funds. The County shall have no liability under this Agreement (including any extension or other modification of this Agreement) to any Person beyond funds appropriated or otherwise lawfully available for this Agreement, and, if any portion of the funds for this Agreement are from the state and/or federal governments, then beyond funds available to the County from the state and/or federal governments.

NO WAIVER OF COUNTY'S RIGHTS.

35. The failure of the County at any time to demand strict performance by Permittee of any of the terms, covenants or conditions set forth herein shall not be construed as a continuing waiver or relinquishment thereof and County may, at any time, demand strict and complete performance by Permittee of said terms, covenants and conditions or of any other term and conditions of this Permit.

WAIVER OF TRIAL BY JURY

36. OPERATOR HEREBY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY THE COUNTY AGAINST OPERATOR IN ANY MATTER RELATED TO THIS AGREEMENT.

CONFLICT OF INTEREST

37. Operator represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest, directly or indirectly which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Operator further represents and warrants that in the performance of this Agreement no person having such an interest or possible interest shall be employed by it. No elected official or other officer or employee of the County or the Department, nor any person whose salary is payable, in whole or part, from the County treasury, shall participate in any decision relating to this Agreement which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this Agreement or in the proceeds thereof.

PROCUREMENT OF AGREEMENT

- 38.
- a. Operator represents and warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage fee or any other compensation. Operator further represents and warrants that no payment, gift or thing of value has been made, given, or promised to obtain this or any other agreement between the parties. Operator makes such representation and warranties to induce the County to enter into this Agreement and the County relies upon such representations and warranties in the execution hereof.
 - b. For such a breach or violation of such representations or warranties, the County shall have the right to annul this Agreement without liability entitling the County to recover all monies paid hereunder, if any, and the Operator shall not make any claim for, or be entitled to recover any sums or sums due under this Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the County for the falsity or breach, nor shall it constitute a waiver of the County's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this Agreement.

JUDICIAL INTERPRETATION

39. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of conclusion that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this Agreement and that legal counsel was consulted by each responsible party before the execution of this Agreement.

NO INTERPRETATION AGAINST DRAFTSMAN

40. County and Operator hereby agree that no provision of this Agreement shall be construed against either the County or Operator on the basis that the provision was drafted by such party or such party's counsel.

FORCE MAJEURE

41. The parties shall be excused from performance of any of each party's obligations hereunder when such performance has been delayed, hindered or prevented by any cause or causes beyond such party's reasonable control, which shall include, without limitation, actions of the other party, labor disputes, riots, civil commotion or insurrection, war or war-like operations, invasion, rebellion,

military or usurped power, sabotage, governmental restrictions, regulations or controls, court order and the acts of superior governmental authorities, inability to obtain any materials or services, fire or other casualties, natural disasters or acts of God or sudden failure of subsurface structures.

SUCCESSORS AND ASSIGNS

42. This Agreement, terms, covenants and conditions herein shall be binding upon, and inure to the benefit of, the County and Operator and, except as may otherwise be provided herein, their respective successors and assigns.

RIGHTS RESERVED BY THE COUNTY/CONCESSIONS

43. All rights not specifically granted to Permittee in this Agreement shall be reserved by the County.

MISCELLANEOUS

- 44.
- a. **Bond Status.** The Operator shall not take any action, or omit to take any action, the result of which act or omission shall have an adverse impact on the tax exempt status of any bond issued by, or on behalf of, the County, specifically including but not limited to, Federal laws, rules and regulations regarding private activity and arbitrage. The Operator shall consult with the County and the County's bond counsel when appropriate to ensure compliance with such laws, rules and regulations.
 - b. **Taxes and Impositions.** The Operator shall pay directly to the appropriate taxing authority, as and when due and payable, any and all real property taxes, assessments or substitutes therefore imposed or levied against the Premises or which arise in respect of the operation, occupancy or use of the Premises.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Operator and the County have executed this Agreement as of the Effective Date.

PADDLE SPORTS UNLIMITED, LLC.

By: _____
Name: _____
Title: _____
Date: _____

NASSAU COUNTY

By: _____
Name: _____
Title: County Executive
Date: _____

PLEASE EXECUTE IN BLUE INK

EXHIBIT "A-1"

SITE MAP



EXHIBIT "A-2"

SITE MAP



- 1 PATHWAY
- 2 BOAT BASIN
- 3 SKATE HOUSE / ICE SKATING RINK
- 4 PRIMARY ENTRANCE
- 5 ADMINISTRATION BUILDING
- 6 POOL COMPLEX
- 7 LARGE GAME COURTS
- 8 PLAYGROUND
- 9 SMALL GAMES COURTS

0 100' 200'

EXHIBIT “B1 and B2”

Base Rent Schedule and Gross Receipts Schedule

BASE RENT SCHEDULE

Year:	Guaranteed Minimal Annual Flat Fee:
Year 1:	\$90,000.00
Year 2:	\$91,800.00
Year 3:	\$93,636.00
Year 4:	\$95,508.72
Year 5:	\$97,418.89
Year 6:	\$99,367.27
Year 7:	\$101,354.62
Year 8:	\$103,381.71
Year 9:	\$105,449.34
Year 10:	\$107,558.33
Year 11:	\$109,709.50
Year 12:	\$111,903.69
Year 13:	\$114,141.76
Year 14:	\$116,424.60
Year 15:	\$118,753.09
Year 16:	\$121,128.15
Year 17:	\$123,550.71
Year 18:	\$126,021.73
Year 19:	\$128,542.16
Year 20:	\$131,113.01

EXHIBIT “B1 and B2”

Base Rent Schedule and Gross Receipts Schedule

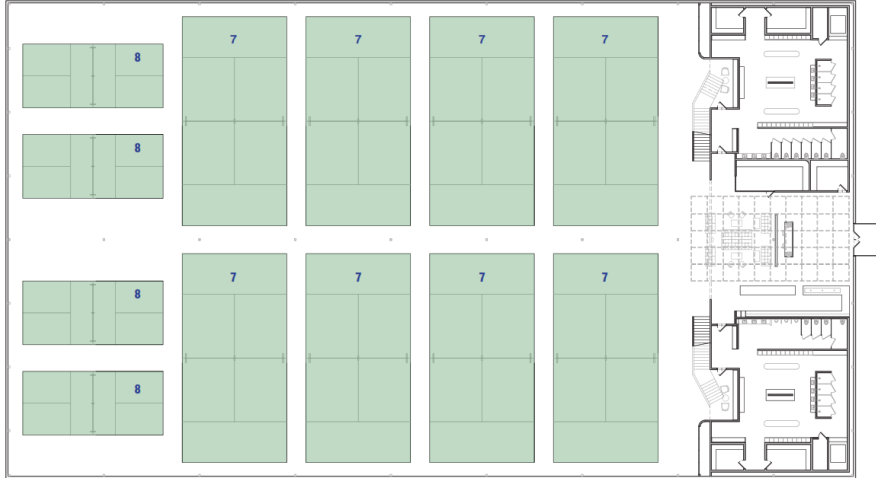
GROSS RECEIPTS SCHEDULE

Year:	% of Gross Receipts:
Year 1:	2.00%
Year 2:	2.25%
Year 3:	2.50%
Year 4:	2.60%
Year 5:	2.70%
Year 6:	2.80%
Year 7:	2.90%
Year 8:	3.00%
Year 9:	3.10%
Year 10:	3.20%
Year 11:	3.30%
Year 12:	3.40%
Year 13:	3.50%
Year 14:	3.60%
Year 15:	3.70%
Year 16:	3.80%
Year 17:	3.90%
Year 18:	4.00%
Year 19:	4.10%
Year 20:	4.20%

EXHIBIT "C"

DESCRIPTION OF CAPITAL IMPROVEMENTS, BUDGET, and TENTATIVE BUILDOUT SCHEDULE

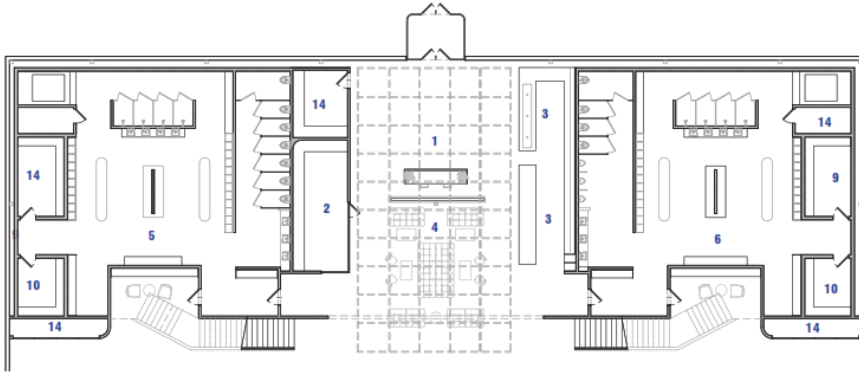
Facility Map



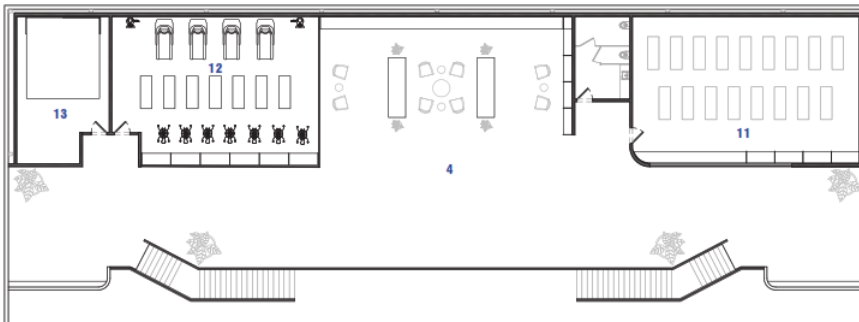
KEY

1. Entry / Reception
2. Pro Shop
3. Juice Bar / Cafe
4. Lounge Area
5. Womens Locker room
6. Mens Locker Room
7. Padel Court
8. Pickleball Court
9. Steam Room
10. Sauna
11. Yoga Studio
12. Gym
13. Golf Simulator
14. Storage / Mech

Ground Floor / Court Plan



Enlarged Amenities Plan - Ground Floor



Enlarged Amenities Plan - Mezzanine

EXHIBIT “C”

DESCRIPTION OF CAPITAL IMPROVEMENTS, BUDGET, and TENTATIVE BUILDOUT SCHEDULE

Estimated Budget

SOURCES AND USES	
<u>USES</u>	<u>AMOUNT</u>
Site Costs (Horizontal Construction)	
Site Remediation	500,000
Excavation	200,000
Drainage	200,000
Walkways	100,000
Fencing	25,000
Landscaping	100,000
Total Hard Costs (Horizontal)	1,125,000
Hard Costs (Vertical Construction)	
Structure: Prefab	708,000
Foundation	500,000
Structure Installation	550,000
Plumbing	250,000
Electrical	300,000
HVAC	480,000
Fire Suppression	280,000
Interior Buildout	350,000
Lobby Finish	300,000
Locker room Finish	400,000
Concession Finish	250,000
Pro Shop Finish	35,000
Court Build Out	500,000
FFE	255,000
Contingency	-
Total Hard Costs (Vertical)	5,158,000
Soft Costs	
Architecture	100,000
Engineering	150,000
Attorney Fees	150,000
Insurance	150,000
Finance Fees	500,000
Construction Management Fees	420,000
Total Soft Costs	1,470,000
Total Project Cost before Financing	7,753,000

EXHIBIT “C”

DESCRIPTION OF CAPITAL IMPROVEMENTS, BUDGET, and TENTATIVE BUILDOUT SCHEDULE

Tentative Buildout Schedule

Project: Christopher Morley - Paddle Sports Unlimited

Paddle Sports Unlimited LLC

Project start date: 4/1/2025

Milestone description	Assigned to	Progress	Start	Completion	Days
Site					
Site Remediation		0%	4/1/2025	6/30/2025	90
Excavation		0%	6/1/2025	7/1/2025	30
Drainage		0%	7/1/2025	8/15/2025	45
Walkways		0%	3/1/2026	3/31/2026	30
Fencing		0%	4/1/2026	5/1/2026	30
Landscaping		0%	4/1/2026	5/1/2026	30
Vertical Construction					
Foundation		0%	7/1/2025	8/30/2025	60
Structure Installation		0%	9/1/2025	11/15/2025	75
Interior Buildout		0%	11/15/2025	2/13/2026	90
Plumbing		0%	1/15/2026	3/16/2026	60
Electrical		0%	1/15/2026	3/16/2026	60
HVAC		0%	1/15/2026	3/16/2026	60
Fire Suppression		0%	1/15/2026	3/16/2026	60
Lobby Finish		0%	3/15/2026	4/29/2026	45
Locker room Finish		0%	3/15/2026	4/29/2026	45
Concession Finish		0%	3/15/2026	4/29/2026	45
Pro Shop Finish		0%	3/15/2026	4/29/2026	45
Court Build Out		0%	3/15/2026	4/29/2026	45
Close Out		0%	4/15/2026	5/15/2026	30

EXHIBIT "D"

**PERFORMANCE BOND SAMPLE
LABOR AND MATERIAL PAYMENT BOND SAMPLE**

PERFORMANCE BOND

FORM OF PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS,

that _____ (hereinafter called the "Contractor") and _____ a corporation created and existing under the laws of the State of _____, and licensed to do business in the State of New York, having its principal office in the city of _____ (hereinafter called the "Surety"), are held firmly bound unto the COUNTY OF NASSAU, a municipal corporation of the State of New York (hereinafter called the "Owner"), in the full and just sum of

_____ Dollars (_____) good and lawful money of the United States of America, to the payment of which said sum of money, will and truly to be made and done, the said Contractor binds themselves (himself, itself), their (his, its) heirs, executors and administrators, successors and assigns, and the said Surety binds itself, its successors and assigns jointly and severally, firmly by these presents.

Signed, sealed and dated this _____ day of _____, 20

WHEREAS, said Contractor has entered into a certain written contract, bearing even date with these premises with the COUNTY OF NASSAU, for the

_____ which contract is hereby made a part of this bond as if herein set forth in full.

NOW, THEREFORE, THE CONDITION OF THE FOREGOING OBLIGATION IS SUCH, that if the said Contractor shall well, truly and faithfully comply with and perform all the terms, covenants and conditions of said contract on their (his, its) part to be kept and performed, according to the true intent and meaning of said contract, and shall protect the said Owner against, and pay any and all amounts, damages, cost and judgments which may or shall be recovered against said Owner or its officers or agents or which the said Owner may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the doing of said work, or the manner of doing the same, or the neglect of the said Contractor or his (their, its) agents or servants, or the improper performance of the said work by the said Contractor, or his (their, its) agents or servants, or the infringement of any or patent rights by

reason of the use of any materials furnished or work done as aforesaid or otherwise, and

also pay or cause to be paid the wages and compensation for labor performed and services rendered of all persons engaged in the prosecution of the work provided for therein, whether such persons be agents, servants or employees of the contractor, or his (their, its) successors or of any subcontractor or of any assignee thereof, (including all persons so engaged who perform the work of laborers or of mechanics regardless of any contractual relationship between the Contractor, or his (their, its) successors, or assigns, or any subcontractor or any assignee thereof) and such laborers or mechanics, but not including office employees not regularly stationed at the site of the work, and, further, shall pay or cause to be paid all lawful claims of subcontractors and of material men and other third persons arising out of or in connection with said Contract, and the work, labor, services, supplies and material furnished in and about the performance and completion thereof,

then this obligation shall be null and void, otherwise to remain in full force and virtue.

And the said Surety, for value received, hereby stipulates and agrees, if requested to do so by the Owner to fully perform and complete the work mentioned and described in said contract and specifications, pursuant to the terms, conditions and covenants thereof, if for any cause, said Contractor fails or neglects to so fully perform and complete said work, and said Surety further agrees to commence said work of completion within twenty days after notice thereof from the Owner, and to complete the same within twenty days from the expiration of the time allowed said Contractor in said contract and specifications for the completion of said work. When the contractor is declared in default by the Commissioner, the Surety Company must honor default notice and immediately progress the work to completion in the same manner as though the contractor were bankrupt or had willfully defaulted.

And the Surety, for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligations of said Surety and of its successors and assigns, and this bond shall in no way be impaired or affected by any extension of time, modification, omission, addition or change in or to the said contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provision thereof, or by any assignment, subletting or other transfer thereof, or any part thereof, or of any work to be performed, or of any moneys due or to become due thereunder; and the said Surety for itself and its successors and assigns, does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments, subcontracts, and transfers, and hereby stipulates and agrees that any and all things done or omitted to be done by and in relation to the executors, administrators, successors, assignees, subcontractors and other transferee of the Contract shall have the same effect as to said Surety and its successors and assigns, as though done

or omitted to be done by and in relation to said Contractor.

IN TESTIMONY WHEREOF, the said Contractor has hereunto set his (their, its) hand and seal and the said Surety has caused this instrument to be signed by its duly authorized officer (s) or representative (s), and its corporate seal to be hereunto affixed, the day and year first above written.

Contractor

by _____ (L.S.)

(Corporate seal of Contractor if a corporation)

by _____ (L.S.)

Title

by _____ (L.S.)

Title

Surety

by _____ (L.S.)

Title of Officer

Attest: _____ (L.S.)

Title of Officer

(Corporate seal of Surety)

(Acknowledgment by Contractor if a corporation)

STATE OF _____)
)
SS.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say for himself, that he resides in _____ that he is the _____ of the the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

(Acknowledgment by Contractor if a partnership)

STATE OF _____)
)
SS.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be a member of the firm described in and which executed the foregoing bond or obligation, and he acknowledged to me that he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

Notary Public

(Acknowledgment by Contractor if an individual.)

STATE OF _____)
)
SS.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and he duly acknowledged that he executed the same.

Notary Public

(Acknowledgment by Surety Company)

STATE OF _____)

)

SS.:

COUNTY OF _____)

On this _____ day of _____, 20____, before personally came _____ to me Known, who being by me duly sworn, did depose and say that he resides in _____

that he is the _____ of the _____, the corporation described in and which executed the within instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by the order of the Board of Directors of said corporation, and that he signed his name thereto by like order; and that the liabilities of said company do not exceed its assets as ascertained in the manner provided by the laws of the State of New York, and the said _____ further said that he is acquainted with _____ and knows him to be the _____ of said company; that the signature of the said _____ subscribed to the within instrument is in the genuine handwriting of the said _____ and was subscribed thereto by like order of the Board of Directors, and in the presence of him, the said _____.

Notary Public

POWER OF ATTORNEY
FINANCIAL STATEMENT

CERTIFICATE OF SOLVENCY

Page 7

LABOR AND MATERIAL PAYMENT BOND

FORM OF LABOR AND MATERIAL PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS:

that _____ as Principal,
(Here insert the name and address, or legal title, of the Contractor)

_____,
hereinafter called Principal, and _____,
a corporation of the State of _____, and licensed
to do business in the State of New York, with its home office in

_____, as Surety, hereinafter called Surety,
are held and firmly bound unto the County of Nassau, as Obligees, here-
in-after called Owner, for the use and benefit of claim-ants as herein
below defined, in the amount of

_____ Dollars (\$_____) (Here insert a sum equal to the contract price), for the payment whereof
Principal and Surety bind themselves, their heirs, executors,
administrators, successors and assigns, jointly and severally, firmly
by these presents.

WHEREAS,
Principal has by written agreement dated _____ entered into
a contract with Owner for,

_____,
which contract is by reference made a part hereof, and is hereafter
referred to as the CONTRACT.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that, if the
Principal shall promptly make payment to all claimants as hereinafter
defined, for all labor and material used or reasonably required for use
in the performance of the CONTRACT, then this obligation shall be void;
otherwise it shall remain in full force and effect, subject, however, to
the following conditions:

1. A claimant is defined as one having a direct contract with the
Principal or with a sub-contractor of the Principal for labor,
material, or both, used or reasonably required for use in the
performance of the contract, labor and material being construed to
include that part of water, gas, power, light, heat, oil, gasoline,
telephone service or rental of equipment directly applicable to the
CONTRACT.

2. The above named Principal, and Surety hereby jointly and severally agree with the Owner that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant in the name of the Owner, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon, provided, however, that the Owner shall not be liable for the payment of any cost or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant.
 - a. Unless claimant shall have given written notice to the following: Principal, the Owner, and the Surety above named, within ninety(90) days after such claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Principal, Owner and Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - b. After the expiration of one (1) year following the date on which Principal ceased work on said CONTRACT.
 - c. Other than in a court of competent jurisdiction in and for the County of Nassau.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics liens which may be filed of record against said improvement, whether or not claim for the amount of such lien be presented under and against this bond.

Signed and sealed this _____ day of _____ 20

Contractor	
by _____ (L.S.)	(Corporate seal of Contractor Title if a corporation)
by _____ (L.S.)	Title
	Surety
by _____ (L.S.)	(Corporate seal of Surety)
Title of Officer	
Attest: _____ (L.S.)	(Corporate seal of Surety)
Title of Officer	

(Acknowledgment by Contractor if a corporation)

STATE OF _____)
)

ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say for himself, that he resides in _____ that he is the _____ of the _____ the corporation described in, and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

Notary Public

(Acknowledgment by Contractor if a partnership)

STATE OF _____)
)

ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally came _____ to me known and known to me to be a member of _____ the firm described in and which executed the foregoing bond or obligation, and he acknowledged to me that he subscribed the name of said firm thereto on behalf of said firm for the purpose therein mentioned.

Notary Public

(Acknowledgment by Contractor if an individual.)

STATE OF _____)

)

ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally
came _____ to me
known and known to me to be the person described in and who executed the
foregoing instrument, and he duly acknowledged that he executed the
same.

Notary Public

(Acknowledgment by Surety Company)

STATE OF _____)

)

ss.:
COUNTY OF _____)

On this _____ day of _____, 20____, before me personally
came _____ to me
Known, who being by me duly sworn, did depose and say that he resides
in _____

that he is the _____ of the _____,
the corporation described in and which executed the within instrument;
that he knows the seal of said corporation; that the seal affixed to
said instrument is such corporate seal; that it was so affixed by the
order of the Board of Directors of said corporation, and that he signed
his name thereto by like order; and that the liabilities of said company
do not exceed its assets as ascertained in the manner provided by the
laws of the State of New York, and the said
further said that he is acquainted with _____
and knows him to be the _____ of said company;
that the signature of the said _____
and was subscribed thereto by like order of the Board of Directors, and
in the presence of him, the said _____.

Notary Public

POWER OF ATTORNEY
FINANCIAL STATEMENT

CERTIFICATE OF SOLVENCY

DPW GUIDELINES

All suppliers participating in the design and construction are subject to the approval of Nassau County and will provide all vendor agreements & permits to Nassau County Department of Public Works (contact to be identified). All plans and specifications for all new construction and renovation must be submitted to the Department and the Department of Public Works, or their designee for formal approval prior to the commencement of any work. The Operator will pay Nassau County a design review fee equal to 0.5% of the project value upon approval of the plans. Said fee shall be payable within thirty (30) days of acceptance of the bid and prior to commencement of construction. The Operator will be responsible for securing the site during the construction phase. No construction can commence or ground disturbed prior to receiving a building permit. The Operator will be required to demonstrate and document that the any amount listed in the proposal for capital improvement expense has been spent upon completion of the renovation. All monies spent for these mandated works are to be specifically itemized and scheduled in order to permit auditing and concurrence. No contracts for materials, equipment or labor are to be made except with the concurrence of The Department its designee. The following guidelines apply for any Capital Improvement executed pursuant to the terms of the Agreement between the County and the Operator:

a. The Operator must have the work designed by a New York State Engineer or Architect and constructed in accordance with all applicable codes including, but not limited to, the following codes and standards, unless more stringent requirements are appropriate:

- A. New York State Uniform Fire Prevention & Building Code
- B. New York State Energy Conservation Construction Code
- C. New York State Sanitary Code
- D. National Electric Code
- E. Occupational Safety and Health Administration Code
- F. State Laws, Local Ordinances, and Utility Company Regulations
- G. New York State Industrial Code
- H. Nassau County D.P.W. Standard Specs. For Construction of Highways and Bridges
- I. Nassau County D.P.W. Standard Specs. for Construction of Sanitary Sewers
- J. Americans With Disabilities Act
- K. Nassau County D.P.W. Drainage Requirements

b. If the Operator proposes a pre-engineered metal building system, it shall be manufactured and built per the guidelines of the Metal Building Manufacturers Assoc. (MBMA); and the producer/manufacturer of the building shall be a member of the MBMA.

c. The contract documents shall be signed and sealed by the Architect/Engineer of record.

d. The Operator or its Architect/Engineer shall obtain all applicable approvals, permits, and certificates required by all regulatory and permitting agencies having jurisdiction, including; village, town, county, state and federal agencies.

e. The Architect/Engineer of record shall certify in writing to Nassau County and all other public agencies having jurisdiction that the facility was constructed in accordance with the contract documents and all applicable codes and standards (and if a pre-engineered metal building, the guidelines of the MBMA)

f. Record “as-built” drawings sealed and certified by the Architect/Engineer of record shall be submitted to the County if the improvement is a permanent improvement to a County facility.

g. The Operator agrees to be responsible for, and save the County harmless from any and all claims, loss or liability which may arise from the construction of the proposed facility.

h. The Operator shall provide bonds and insurances, in such amounts, with such companies and in such form, as are all acceptable in form and substance to the County, in its sole discretion, for all capital improvement projects. Bonds and insurances will include (but not be limited to): Performance Bond, Labor and Material Payment Bond, Public Liability Insurance, Worker’s Compensation Insurance, Owner’s Protective Public Liability Insurance, Builders All Risk Insurance.

i. Further, any proposed Capital Improvement project that involves electrical or HVAC equipment must use equipment that qualifies for the Long Island Power Authority (LIPA) Clean Energy Initiative program.

j. All contracts for construction or improvements to the Premises shall provide for the payment of prevailing wage rates set by the New York State Department of Labor.

EXHIBIT “E”
POLICIES AND STANDARDS FOR MARKETING AND ADVERTISING

I. PURPOSE

A. Objectives. Through this policy, Nassau County (the “County”) intends to establish definite, objective, uniform, and enforceable standards for advertising and marketing on County-owned properties, assets and events (“Advertising”). In setting such standards, the County seeks to fulfill certain goals and objectives, including but not limited to:

- (a) maintaining the safe and orderly operation of Departments facilities;
- (b) maximization of revenue generated by Advertising;
- (c) maintaining a safe and welcoming environment for County residents and visitors, including minors;
- (d) avoiding the identification of the County with advertisements or the viewpoints of the advertisers;
- (e) maintaining an image of neutrality on political matters and other noncommercial issues that are the subject of public debate and concern; and

B. Nonpublic Forum. By allowing limited types of Advertising, the County does not intend to create a public forum for public discourse or expressive activity, or to provide a forum for all types of advertisements. Advertising is intended only to generate revenue for the County. The County intends that Departments assets and events constitute nonpublic forums that are subject to the restrictions set forth in Section II.

C. Reservation of Rights. The County reserves the right, from time to time, to waive, suspend, modify, or revoke the application of any or all of these policies and standards as it deems necessary to comply with legal mandates and to fulfill the goals and objectives referred to herein. All of the provisions of these policies and standards shall be deemed severable.

D. Disclaimer. The County reserves the right, in all circumstances, to require that an advertisement include a disclaimer indicating that it is not sponsored by, and does not necessarily reflect the views of, the County.

E. Applicability. These policies and standards shall apply to all property governed by the Departments pursuant to this Agreement.

II. ADVERTISING STANDARDS

A. Commercial Advertisements Only. Except for Advertising defined in Section II.C or Section II.D., only advertisements promoting primarily the sale of commercial goods or services are permitted.

B. Prohibited Advertising. Advertisements shall not be accepted, displayed or maintained on Departments assets or events if the advertisements fall within one or more of the following categories:

- 1) Demeaning or disparaging. The advertisement contains material that demeans or disparages an individual, group, or entity. An advertisement will be deemed to contain such material where a reasonably prudent person using prevailing community standards would believe that the advertisement contains material that ridicules or mocks, is abusive or hostile to, or debases the dignity or stature of, an individual, group, or entity.
- 2) Tobacco. The advertisement’s purpose or effect is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes, cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product.

- 3) Profanity. The advertisement contains profane, vulgar, or scatological language.
- 4) Firearms. The advertisement either (a) contains an image of a firearm in the foreground of the main visual; or (b) contains image(s) of firearm(s) that occupy 15% or more of the overall advertisement; or (c) contain images or depictions of illegal firearms or other illegal weapons, or the unlawful use of firearms or other weapons.
- 5) Violence. The advertisement contains an image or description of graphic violence, including, but not limited to (1) the depiction of human or animal bodies or body parts, or fetuses, in states of mutilation, dismemberment, decomposition, or disfigurement, and (2) the depiction of weapons or other implements or devices used in the advertisement in an act or acts of violence or harm on a person or animal.
- 6) Unlawful goods or services. The advertisement contains any material that promotes or encourages, or appears to promote or encourage, the use or possession of unlawful or illegal goods or services.
- 7) Unlawful conduct. The advertisement contains any material that promotes or encourages, or appears to promote or encourage, unlawful or illegal behavior or activities.
- 8) Obscenity. The advertisement contains obscene material. For purposes of these policies and standards, the term “obscene” shall have the meaning contained in New York Penal Law Section 235.00, as such provision may be amended, modified or supplemented from time to time.
- 9) Indecent Material. The advertisement contains material which, if sold or loaned to a minor for monetary consideration with knowledge of its character and content would give rise to a violation of New York Penal Law Section 235.21, as such provision may be amended, modified, or supplemented from time to time.
- 10) Offensive Sexual Material. The advertisement contains material which constitutes public display of offensive sexual material in violation of New York Penal Law Section 245.11, as such provision may be amended, modified, or supplemented from time to time.
- 11) Patently Offensive Material. The advertisement contains material that would be deemed patently offensive by a reasonably prudent person of average sensitivity in the community.
- 12) Political or “Issues” Advertising. The advertisement (1) refers to a specific ballot question, initiative petition, or referendum; (2) refers to any candidate for public office; or (3) promotes, opposes or otherwise directly relates to issues of public debate on economic, political, or social issues.
- 13) Endorsement. The advertisement contains any material that implies or declares an endorsement by the County of any service, product or point of view, without prior written authorization of the County.
- 14) False, misleading, or deceptive material. The advertisement contains any material which is false, misleading, or deceptive.
- 15) Libelous speech, copyright infringement, etc. The advertisement contains any material which is libelous or an infringement of any copyright, trade or service mark, title or slogan, or is otherwise unlawful or illegal or likely to subject the County to litigation.
- 16) Right of Privacy. The advertisement contains any material which violates New York Civil Rights Law Section 50, as such provision may be amended, modified, or supplemented from time to time.

- 17) “Adult”-oriented goods or services. The advertisement promotes or encourages, or appears to promote or encourage, a transaction related to, or uses brand names, trademarks, slogans or other materials which are identifiable with, films rated "X" or “NC-17,” adult book stores, adult video stores, nude dance clubs and other adult entertainment establishments, adult telephone services, adult Internet sites, and escort services, or other similar places, things or services.
- 18) Distractions and Interference. The advertisement (i) displays the words “Stop,” “Drive In,” “Danger,” or any other word, phrase, symbol or character that, as determined by the County, may interfere with, mislead, direct or distract vehicular traffic and/or (ii) comprises rotating, revolving, or flashing light devices or any moving parts.
- 19) Advertisements Adverse to the County. The advertisement is (i) directly adverse to the commercial or administrative interests of the County; or (ii) harmful to the morale of County employees.
- 20) Alcohol Advertising. The advertisement promotes the sale of wine, liquor, beer, or distilled spirits or other alcoholic beverages; provided, however, that such advertisement may be accepted, displayed or maintained if it would not otherwise qualify under one of the above categories, does not promote the abuse alcoholic products and does not use lewd or salacious content. In addition, such advertising must be removed in the event that a municipality in which the advertising is located requests that such advertising be removed. In such event, the County shall endeavor to work with the Franchisee to locate another suitable location for such advertising. However, the Franchisee shall not be entitled to a reduction in any of its payment obligations to the County in the event another suitable location cannot be found.

C. County Operations. Nothing in this policy shall limit the County’s right to display on Departments assets and events any advertisements and notices that pertain to County operations or initiatives.

D. Existing Laws. All advertisements must comply with all applicable federal, state, and local laws, rules, and regulations.

III. REVIEW OF ADVERTISING DECISIONS

A. Initial Reviews. The Licensee will review each advertisement to determine whether the advertisement is in conformity with the policies and standards set forth in Section II. If Licensee determines that an advertisement is not or may not be in conformity with such standards:

- a) The Licensee shall promptly notify designated County staff of its determination and the reasons for its determination. Upon receipt of such notification, the County shall advise the Licensee whether the County concurs with the contractor’s determination concerning the advertisement.
- b) In the event that the County concurs in the determination of the Licensee, the Licensee may, in consultation with designated County staff, discuss with the advertiser one or more revisions to the advertisement, in order to bring the advertisement into conformity with the policies and standards set forth in Section II. The advertiser shall then have the option of submitting a revised advertisement for review in accordance with these policies and standards.
- (c) In the event that the Licensee and the advertiser do not reach agreement with regard to a revision of the advertisement, or in the event that the Licensee and the County determine that no appropriate revision could bring the advertisement into conformity with the policies and standards set forth in Section II, the Licensee shall promptly provide the advertiser with a copy of these Policies and Standards and written notice of the determination, the reason(s) for the determination, and the advertiser’s right to a review before the County’s Designated Advertising Review Committee. The Licensee shall provide such committee with a copy of the written notice to the advertiser and the advertisement at issue.

B. Appeals to Advertising Review Committee. An advertiser may appeal a decision to reject or remove an advertisement by filing a written request with the Advertising Review Committee within ten (10) business days after receipt of the rejection or removal decision. The advertiser's request must state why the advertiser disagrees with the decision in light of the County's Advertising policies and standards. The Advertising Review Committee at a minimum shall consist of supervisory personnel from the Planning Department and the County Attorney's Office. The Advertising Review Committee shall review the basis for the rejected or removed advertisement and shall consider the advertiser's reasons for filing the request. The Advertising Review Committee shall make a decision on the request and shall notify the advertiser of its decision in writing within fifteen (15) business days after receiving the advertiser's request.

Appendix EE Equal Employment Opportunities for Minorities and Women

The provisions of this Appendix EE are hereby made a part of the document to which it is attached.

Definitions:

As used in this Appendix EE the term “**Executive Director**” shall mean the Executive Director of the Nassau County Office of Minority Affairs; provided, however, that Executive Director shall include a designee of the Executive Director except in the case of final determinations issued pursuant to Section (a) through (l) of these rules.

As used in this Appendix EE the term “**Subcontract**” shall mean an agreement consisting of part or parts of the contracted work of the County Contractor.

As used in this Appendix EE, the term “**Subcontractor**” shall mean a person or firm who performs part or parts of the contracted work of a prime contractor providing services, including construction services, to the County pursuant to a county contract. Subcontractor shall include a person or firm that provides labor, professional or other services, materials or supplies to a prime contractor that are necessary for the prime contractor to fulfill its obligations to provide services to the County pursuant to a county contract. Subcontractor shall not include a supplier of materials to a contractor who has contracted to provide goods but no services to the County, nor a supplier of incidental materials to a contractor, such as office supplies, tools and other items of nominal cost that are utilized in the performance of a service contract.

As used in this Appendix EE the term “**Best Efforts Checklist**” shall mean a list signed by the Contractor, listing the procedures it has undertaken to procure Subcontractors in accordance with this Appendix EE.

As used in this Appendix EE the term “**County Contract**” shall mean (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of twenty-five thousand dollars (\$25,000), whereby a County contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the County; or (ii) a written agreement in excess of one hundred thousand dollars (\$100,000), whereby a County contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon. However, the term “County Contract” does not include agreements or orders for the following services: banking services, insurance policies or contracts, or contracts with a County contracting agency for the sale of bonds, notes or other securities.

As used in this Appendix EE the term “**County Contractor**” means an individual, business enterprise, including sole proprietorship, partnership, corporation, not-for-profit corporation, or any other person or entity other than the County, whether a contractor, licensor, licensee or any other party, that is (i) a party to a County Contract, (ii) a bidder in connection with the award of a County Contract, or (iii) a proposed party to a County Contract, but shall not include any Subcontractor.

As used in this Appendix EE “**Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises**” shall include, but is not limited to the following:

Proof of having advertised for bids, where appropriate, in minority publications, trade newspapers/notices and magazines, trade and union publications, and publications of general circulation in Nassau County and surrounding areas or having verbally solicited M/WBEs whom the County Contractor reasonably believed might have the qualifications to do the work. A copy of the advertisement, if used, shall be

included to demonstrate that it contained language indicating that the County Contractor welcomed bids and quotes from M/WBE Subcontractors. In addition, proof of the date(s) any such advertisements appeared must be included in the Best Effort Documentation. If verbal solicitation is used, a County Contractor's affidavit with a notary's signature and stamp shall be required as part of the documentation.

Proof of having provided reasonable time for M/WBE Subcontractors to respond to bid opportunities according to industry norms and standards. A chart outlining the schedule/time frame used to obtain bids from M/WBEs is suggested to be included with the Best Effort Documentation

Proof or affidavit of follow-up of telephone calls with potential M/WBE subcontractors encouraging their participation. Telephone logs indicating such action can be included with the Best Effort Documentation

Proof or affidavit that M/WBE Subcontractors were allowed to review bid specifications, blueprints and all other bid/RFP related items at no charge to the M/WBEs, other than reasonable documentation costs incurred by the County Contractor that are passed onto the M/WBE.

Proof or affidavit that sufficient time prior to making award was allowed for M/WBEs to participate effectively, to the extent practicable given the timeframe of the County Contract.

Proof or affidavit that negotiations were held in good faith with interested M/WBEs, and that M/WBEs were not rejected as unqualified or unacceptable without sound business reasons based on (1) a thorough investigation of M/WBE qualifications and capabilities reviewed against industry custom and standards and (2) cost of performance. The basis for rejecting any M/WBE deemed unqualified by the County Contractor shall be included in the Best Effort Documentation.

If an M/WBE is rejected based on cost, the County Contractor must submit a list of all sub-bidders for each item of work solicited and their bid prices for the work.

The conditions of performance expected of Subcontractors by the County Contractor must also be included with the Best Effort Documentation

County Contractors may include any other type of documentation they feel necessary to further demonstrate their Best Efforts regarding their bid documents.

Rule:

The Contractor shall comply with all federal, State and local statutory and constitutional anti-discrimination provisions. In addition, Local Law No. 14-2002, entitled "Participation by Minority Group Members and Women in Nassau County Contracts," governs all County Contracts as defined herein and solicitations for bids or proposals for County Contracts. In accordance with Local Law 14-2002:

The Contractor shall not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status in recruitment, employment, job assignments, promotions, upgradings, demotions, transfers, layoffs, terminations, and rates of pay or other forms of compensation. The Contractor will undertake or continue existing programs related to recruitment, employment, job assignments, promotions, upgradings, transfers, and rates of pay or other forms of compensation to ensure that minority group members and women are afforded equal employment opportunities without discrimination.

At the request of the County contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, union, or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability, or marital status and that such employment agency, labor union, or representative will affirmatively cooperate in the implementation of the Contractor's obligations herein.

The Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the County Contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

The Contractor shall make best efforts to solicit active participation by certified minority or women-owned business enterprises (“Certified M/WBEs”) as defined in Section 101 of Local Law No. 14-2002, for the purpose of granting of Subcontracts.

The Contractor shall, in its advertisements and solicitations for Subcontractors, indicate its interest in receiving bids from Certified M/WBEs and the requirement that Subcontractors must be equal opportunity employers.

Contractors must notify and receive approval from the respective Department Head prior to issuing any Subcontracts and, at the time of requesting such authorization, must submit a signed Best-Efforts Checklist.

Contractors for projects under the supervision of the County’s Department of Public Works shall also submit a utilization plan listing all proposed Subcontractors so that, to the greatest extent feasible, all Subcontractors will be approved prior to commencement of work. Any additions or changes to the list of subcontractors under the utilization plan shall be approved by the Commissioner of the Department of Public Works when made. A copy of the utilization plan any additions or changes thereto shall be submitted by the Contractor to the Office of Minority Affairs simultaneously with the submission to the Department of Public Works.

At any time after Subcontractor approval has been requested and prior to being granted, the contracting agency may require the Contractor to submit Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises. In addition, the contracting agency may require the Contractor to submit such documentation at any time after Subcontractor approval when the contracting agency has reasonable cause to believe that the existing Best-Efforts Checklist may be inaccurate. Within ten working days (10) of any such request by the contracting agency, the Contractor must submit Documentation.

In the case where a request is made by the contracting agency or a Deputy County Executive acting on behalf of the contracting agency, the Contractor must, within two (2) working days of such request, submit evidence to demonstrate that it employed Best Efforts to obtain Certified M/WBE participation through proper documentation.

Award of a County Contract alone shall not be deemed or interpreted as approval of all Contractor’s Subcontracts and Contractor’s fulfillment of Best Efforts to obtain participation by Certified M/WBEs.

A Contractor shall maintain Documentation Demonstrating Best Efforts to Obtain Certified Minority or Women-owned Business Enterprises for a period of six (6) years. Failure to maintain such records shall be deemed failure to make Best Efforts to comply with this Appendix EE, evidence of false certification as M/WBE compliant or considered breach of the County Contract.

The Contractor shall be bound by the provisions of Section 109 of Local Law No. 14-2002 providing for enforcement of violations as follows:

- a. Upon receipt by the Executive Director of a complaint from a contracting agency that a County Contractor has failed to comply with the provisions of Local Law No. 14-2002, this Appendix EE or any other contractual provisions included in furtherance of Local Law No. 14-2002, the Executive Director will try to resolve the matter.
- b. If efforts to resolve such matter to the satisfaction of all parties are unsuccessful, the Executive Director shall refer the matter, within thirty days (30) of receipt of the complaint, to the American Arbitration Association for proceeding thereon.
- c. Upon conclusion of the arbitration proceedings, the arbitrator shall submit to the Executive Director his recommendations regarding the imposition of sanctions, fines or penalties. The Executive Director shall either (i) adopt the recommendation of the arbitrator (ii) determine that no sanctions, fines or penalties should be imposed or (iii) modify the recommendation of the arbitrator, provided that such modification shall not expand upon any sanction recommended or impose any new sanction or increase the amount of any recommended fine or penalty. The Executive Director, within ten days (10) of receipt of the arbitrator’s award and recommendations, shall file a determination of such matter and shall cause a copy of such determination to be served upon the respondent by personal service or by certified mail return receipt requested. The award of the arbitrator, and the fines and penalties imposed by the Executive Director, shall be final determinations and may only be vacated or modified as provided in the civil practice law and rules (“CPLR”).

(m) The contractor shall provide contracting agency with information regarding all subcontracts awarded under any County Contract, including the amount of compensation paid to each Subcontractor and shall complete all forms provided by the Executive Director or the Department Head relating to subcontractor utilization and efforts to obtain M/WBE participation.

Failure to comply with provisions (a) through (m) above, as ultimately determined by the Executive Director, shall be a material breach of the contract constituting grounds for immediate termination. Once a final determination of failure to comply has been reached by the Executive Director, the determination of whether to terminate a contract shall rest with the Deputy County Executive with oversight responsibility for the contracting agency.

Provisions (a), (b) and (c) shall not be binding upon Contractors or Subcontractors in the performance of work or the provision of services or any other activity that are unrelated, separate, or distinct from the County Contract as expressed by its terms.

The requirements of the provisions (a), (b) and (c) shall not apply to any employment or application for employment outside of this County or solicitations or advertisements therefor or any existing programs of affirmative action regarding employment outside of this County and the effect of contract provisions required by these provisions (a), (b) and (c) shall be so limited.

The Contractor shall include provisions (a), (b) and (c) in every Subcontract in such a manner that these provisions shall be binding upon each Subcontractor as to work in connection with the County Contract.

Provisions requiring contractors to retain or submit documentation of best efforts to utilize certified subcontractors and requiring Department head approval prior to subcontracting shall not apply to inter-governmental agreements. In addition, the tracking of expenditures of County dollars by not-for-profit corporations, other municipalities, States, or the federal government is not required.

Appendix L
Certificate of Compliance

In compliance with Local Law 1-2006, as amended (the "Law"), the Contractor hereby certifies the following:

1. The chief executive officer of the Contractor is:
_____ (Name)
_____ (Address)
_____ (Telephone Number)

2. The Contractor agrees to either (1) comply with the requirements of the Nassau County Living Wage Law or (2) as applicable, obtain a waiver of the requirements of the Law pursuant to section 9 of the Law. In the event that the contractor does not comply with the requirements of the Law or obtain a waiver of the requirements of the Law, and such contractor establishes to the satisfaction of the Department that at the time of execution of this agreement, it had a reasonable certainty that it would receive such waiver based on the Law and Rules pertaining to waivers, the County will agree to terminate the contract without imposing costs or seeking damages against the Contractor

3. In the past five years, Contractor _____ (HAS) _____ (HAS NOT) not been found by a court or a government agency to have violated federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If a violation has been assessed against the Contractor, describe below:

4. In the past five years, an administrative proceeding, investigation, or government body-initiated judicial action _____ (HAS) _____ (HAS NOT) been commenced against or relating to the Contractor in connection with federal, state, or local laws regulating payment of wages or benefits, labor relations, or occupational safety and health. If such a proceeding, action, or investigation has been commenced, describe below:

5. Contractor agrees to permit access to work sites and relevant payroll records by authorized County representatives for the purpose of monitoring compliance with the Living Wage Law and investigating employee complaints of noncompliance.

I hereby certify that I have read the foregoing statement and, to the best of my knowledge and belief, it is true, correct and complete. Any statement or representation made herein shall be accurate and true as of the date stated below.

Dated

Signature of Chief Executive Officer

Name of Chief Executive Officer

Sworn to before me this

_____ day of _____, 20____.

Notary Public