

**TRAILER CONCESSION LEASE**

**THIS LEASE** (“Lease”), effective upon full execution and approval by resolution of the municipality, by and between the Township of Long Beach (“Township”), and \_\_\_\_\_ (“Tenant”), with a principal address located at \_\_\_\_\_.

**RECITALS**

**WHEREAS**, pursuant to N.J.S.A. 40:61-1, Township is authorized to lease and rent any privilege in any of its parks, beaches, waterfronts, and places for public resort and recreation to the highest responsible bidder therefor; and

**WHEREAS**, the Township owns a trailer (“Trailer”) which it has located at Bayview Park and other public places from time to time, at the discretion of the Township, for the purpose of providing certain food and beverage concessions to the public; and

**WHEREAS**, the Township determined the existence of food and beverage concessions at Bayview Park and at other potential public locations will continue to provide for and enhance the seasonal and recreational needs of the Township, its residents, and its visitors; and

**WHEREAS**, the Township leased the Trailer to a private entity which was the highest bidder at an auction in 2017 and that lease has expired; and

**WHEREAS**, the Township has further determined the provision of food and beverage concessions as aforesaid did and shall continue to protect the public health, welfare, and safety, in that visitors of Bayview Park and other potential public parks and places will have the option of remaining at the public parks and places throughout the day, thereby assisting with the reduction of traffic to and from the parks and places at which the Trailer is located; and

**WHEREAS**, the award of this Lease to the highest bidder pursuant to N.J.S.A. 40:61-1 is contingent upon the Tenant complying with the terms set forth herein.

**NOW, THEREFORE**, based upon the foregoing Recitals, which are incorporated herein and made material terms of this Lease by reference, and in consideration of the mutual promises and representations set forth herein, Township and Tenant (collectively “Parties”) hereby and expressly agree as follows.

**ARTICLE 1**

**(GENERAL LEASE PROVISIONS)**

**1.1 BASIC LEASE PROVISIONS.** In addition to other terms defined in this Lease, the following defined terms shall have the meanings set forth in this Article, unless such meanings are expressly modified, limited, or expanded elsewhere herein.

- (a) Trailer: The Trailer purchased and owned by Township, which is more fully described in §1.2.

(d) Lease Term: Tenant shall have access to the Trailer and may begin the permitted Tenant’s Use beginning on or before May 24, 2024 (“Commencement Date”), through October 31, 2024 (“Termination Date”).

(e) Extension Option: Subject to the terms set forth in this Lease, Township may, at its sole discretion, elect to offer Tenant the right to renew this Lease for the 2024 Lease Term and potential successive terms, consistent with the terms of this Lease and at a Rental Rate which may be increased, at the discretion of the Township, from this Lease Rental Rate.

(f) Rental Rate: The Rental Rate shall be the highest responsible bid at the auction held pursuant to the Township’s public notice, but in no circumstance shall the Rental Rate be less than the minimum of Three-Thousand Dollars (\$3,000.00) for the Lease Term, which minimum amount shall be non-refundable and deemed earned by Township. Pursuant to the auction, the Rental Rate for the entire Lease Term shall be \_\_\_\_\_.

(g) Utilities: Defined herein.

(h) Security Deposit: Three-Thousand Dollars (\$3,000.00).

(i) Tenant’s Use: The Trailer shall be used by Tenant as food and beverage concession establishment pursuant to and in accordance with all federal, state, municipal regulations, and the terms of this Lease.

(j) Township’s Notice Address: Municipal Clerk  
Township of Long Beach  
6805 Long Beach Boulevard  
Brant Beach, New Jersey 08008  
Tel: (609) 361-6691  
E: dlavalle@longbeachtownship.com

Township’s Attorney: Tennant D. Magee, Sr.  
Tennant Magee Law  
400 Union Avenue  
Brielle, New Jersey 08730  
Tel: (732) 223-2413  
Fax: (732) 612-1004  
E: tdmagee@tennantmageelaw.com

(k) Tenant’s Notice Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tenant’s Attorney: \_\_\_\_\_  
\_\_\_\_\_

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In the event of a conflict between the terms, covenants, and conditions, or between Article 1 and the terms, covenants, and conditions set forth in the other articles, sections, exhibits, or riders to the Lease, then the provisions of Article 1 shall prevail.

**1.2 TRAILER.**

**1.2.1 SPECIFICATIONS AND FIXTURES.** The Trailer consists of the following specifications and fixtures: (a) VT 8.5' x 24' concession trailer; (b) inside height = 90"; (c) triple tongue; (d) 5,200 lbs and 2 axles; (e) v nose; (f) 3' x 5' concession door; (g) 3' x 5' vertical insert with /screens; (h) 5' flip up counter; (i) 36" access door; (j) sink and water; (k) ATP on floor; (l) 200 AMP panel w/outlets; (m) 8' hood system; (n) fire suppression system; (o) 28.7" x 33.3" x 78" commercial freezer; (p) 28.7" x 33.3" x 78" commercial refrigerator; (q) 36" commercial griddle w/stand; (r) commercial twin fryer; and (s) prep table.

**1.2.2 LOCATION OF TRAILER.** Use and occupancy by Tenant of the Trailer shall include the use of the Trailer at the designated location in Bayview Park approved by the Township and at other public parks and public places as designated and approved by the Township, in the Township's sole discretion.

**ARTICLE 2**  
**(USE AND TERMS)**

**2.1 USE OF TRAILER.** Tenant shall use the Trailer for the Tenant's Use (the provision and sale of permitted food and beverages) and for no other purpose. The Tenant shall not be permitted to sell prepackaged ice cream related items. The Tenant shall have access to the Trailer beginning on May 1, 2024, through May 24, 2024, to prepare the Trailer for the Tenant's Use and in order to obtain all necessary inspections and permits. The Tenant shall not move the Trailer from any location. The Trailer shall be moved and relocated only by the Township at the Township's discretion.

**2.2 CONDUCT OF BUSINESS.** Tenant shall conduct its business in the entire Trailer and designated area around the Trailer approved by the Township and remain open for the transaction of business and occupy the Trailer during the Lease Term between the hours of 11:00 a.m. and 9:00 p.m., unless otherwise approved in writing by the Township, which shall be at the Township's discretion. Tenant shall be open for and conduct its business at the Trailer seven (7) days per week between and including July 1, 2024, through the week of September 4, 2024, and shall be open a minimum of six (6) hours per day. Between and including the weeks of May 24, 2024, and June 30, 2024, and September 11, 2024, and the end of the Lease Term, the Tenant may be open for and conduct its business in the Trailer at its discretion.

**2.3 LEASE TERM.** The term of this Lease shall be for that period of time set forth in §1.1(d), unless sooner terminated as hereinafter provided.

**2.3.1** In accordance with §1.1(e) above, the Township may elect to renew the terms of this Lease for an additional and similar Lease Term for each successive year. Township

may increase the Rental Rate to a rate it elects, but in no circumstance may it decrease the Rental Rate, and Tenant may elect to accept the increased Rental Rate if it is offered by the Township.

**2.3.2** The Township shall provide Tenant with written notice of its intent to offer the Extension Option by delivering written notice thereof to Tenant on or before the Termination Date. Tenant shall accept the terms of the Extension Option in writing within fourteen (14) days. If the Tenant fails to accept within the aforesaid time period, the Extension Option shall be null and void.

**2.4** **COMMENCEMENT.** The term of this Lease shall commence at 12:01 a.m. on the Commencement Date, as hereinabove provided in §1.1(d).

**2.5** **END OF TERM.** Except for the provisions relating to the potential termination of this Lease, Tenant shall surrender the Trailer scrubbed, broom clean, and in as good condition as it was upon the leasing of the Trailer to Tenant, reasonable wear and tear and destruction by fire or casualty excepted and shall deliver all keys and combinations or codes to locks, safes, vaults, and security systems to the Township, if any, to the Trailer. Before surrendering said Trailer, Tenant shall remove all its personal property and unattached movable trade fixtures, equipment, and machinery. If Tenant fails to remove its personal property or unattached, moveable trade fixtures, equipment, and machinery owned by Tenant upon the expiration of this Lease, the said property shall, at the option of Township, either: (a) be deemed abandoned and shall become the property of The Township; or (b) The Township shall have the right to remove, dispose of, and/or store said property at the expense of Tenant and Tenant shall indemnify the Township as set forth in the Indemnification provisions of this Lease in so surrendering the Trailer including, without limitation, any claims made by any succeeding occupant founded on such delay.

**TENANT'S OBLIGATIONS AS SET FORTH IN THIS ARTICLE, SHALL SURVIVE THE END OF THE TERM OF THIS LEASE.**

**ARTICLE 3**  
(RENT)

**3.1** **LEASE RENTAL RATE.** The Rental Rate during the term of this Lease and shall be payable by Tenant at the rates hereinabove set forth in §1.1(f) and shall be payable as follows:  
\_\_\_\_\_ (\$ \_\_\_\_\_) in full on April 25, 2024.

**3.2** **UTILITIES.** Tenant shall be responsible for payment of the following utilities attributable to tenant: garbage, refuse, and rubbish collection relating to the Trailer and designated area surrounding the Trailer.

**ARTICLE 4**  
(SECURITY DEPOSIT)

**4.1** **SECURITY DEPOSIT.** Tenant, as security for the performance of its obligations hereunder has deposited or will deposit with the Township the sum hereinabove set forth in §1.1(h) on or before April 25, 2024. Should Tenant fail to perform any of the terms of this Lease, then the Township, at its option and without prejudice to any other remedy the Township may have

hereunder or otherwise, may appropriate and apply said entire deposit or as much thereof as may be necessary to compensate the Township for the loss or damage sustained by the Township due to such breach on the part of Tenant, and Tenant shall forthwith upon demand restore said security to the original sum deposited. Should Tenant comply with all the terms of this Lease, said deposit shall be returned in full to Tenant at the end of the term and after delivery to the Township of possession of the Trailer in broom clean condition, and in the condition required pursuant to the provisions of this Lease. In the event of bankruptcy or other creditor or debtor proceedings against Tenant, the Security Deposit shall be deemed to be applied first to other charges due the Township for all periods prior to the filing of such proceedings. The full or reduced Security Deposit, in the event it is applied by the Township pursuant to this Lease, shall be repaid to the Tenant within thirty (30) days of the Termination Date.

## **ARTICLE 5**

### (TRAILER ALTERATIONS AND ADVERTISEMENTS)

**5.1 TENANT'S ALTERATIONS.** Any alterations to be performed at the Trailer prior to or following the Commencement Date shall be done by Tenant at its own cost and expense. Tenant shall not do any construction work or alterations, nor shall Tenant install any equipment, other than unattached, moveable trade fixtures, without first obtaining the Township's written approval and consent, which shall not be unreasonably withheld, and Tenant shall be permitted without The Township's prior consent to perform the following: (a) affix non-permanent graphics and advertisements on the outside of the Trailer; (b) install a security system for the Trailer; and/or (iii) install any internet, telephone, computer, and/or telecommunications equipment or wiring in the Trailer. Upon written notice, the Township shall reasonably permit Tenant to enter the Trailer prior to the Commencement Date to perform such alterations and the Township shall provide Tenant with a contact person to schedule the alterations. All such work shall be at Tenant's sole cost and expense, and Tenant shall indemnify the Township as set forth in the Indemnification provisions of this Lease. Tenant shall not commence any such work without first delivering to the Township a policy or policies of workmen's compensation, comprehensive general liability, and property damage insurance, naming the Township as an additional insured, from any and all contractors and subcontractors working on the Trailer, with a hold harmless clause in favor of the Township, in limits and with companies acceptable to the Township. Tenant's approved alterations and fixtures installed or paid for by Tenant upon the Trailer, other than unattached moveable trade fixtures and decorations (except for vaults), shall upon the installation of same become the property of the Township.

## **ARTICLE 6**

### (COMPLIANCE, LAWS, AND REQUIREMENTS)

**6.1 COMPLIANCE WITH LAWS.** Tenant shall, at its own cost and expense: (a) comply with all laws, ordinances, orders, rules, and regulations of any governmental or quasi-governmental authority and with any directive of any public officer which shall impose any violation, order, or duty upon the Township or Tenant with respect to the Trailer relating to the environment, health or safety; and (b) not suffer, permit, or commit any waste or nuisance and Tenant shall maintain the Trailer free of any objectionable noises, odors, or disturbances.

**6.2 PROCUREMENT DOCUMENTS.** On or before May 15, 2024, the Tenant shall complete, execute, and return the following required documents: (a) business registration certificate; and (b) proof of insurance.

**6.2.1** In the event that the Tenant fails to provide the aforesaid approvals and documents on or before May 15, 2024, this Lease shall be deemed null and void and Three-Thousand Dollars (\$3,000.00) of the Rental Rate shall be non-refundable and be retained and deemed earned by the Township, any additional amounts of the Rental Rate shall be refunded to the Tenant, the Parties shall have no liability to each other, and the Township shall offer the Trailer to the next highest bidder.

**6.3 PERMITS.** Tenant shall, at its sole cost and expense, apply for, obtain, and maintain all municipal governmental approvals, permits, and consents necessary for its alterations to and use and operation of the Trailer, including, but not limited to, all approvals, permits, and certificates required by the Long Beach Island Health Department (“Health Department”).

**6.3.1** Tenant shall obtain and provide all approvals, permits, and certificates, including those required by the Health Department (food handlers’ permit, *etc.*), on or before May 24, 2024. In the event that the Tenant fails to provide the aforesaid approvals and documents, this Lease shall be deemed null and void and Three-Thousand Dollars (\$3,000.00) of the Rental Rate shall be non-refundable and be retained and deemed earned by the Township, any additional amounts of the Rental Rate shall be refunded to the Tenant, the Parties shall have no liability to each other, and the Township shall offer the Trailer to the next highest bidder.

**6.4 HAZARDOUS MATERIALS.**

**6.4.1** Tenant shall not cause or permit any Hazardous Material (as hereinafter defined) to be brought upon, kept, released, or used in or about the Trailer in violation of law. Tenant shall, at its sole cost and expense, at all times during the Term comply in all respects with the Environmental Laws (as defined below) in its use and operation of the Trailer. Nevertheless, if such action should have been undertaken by Tenant in compliance with this section and it did not, the Township may elect to undertake any such action at its sole expense and Tenant shall be liable for the cost thereof, which shall be paid within ten (10) days of demand. Tenant shall notify the Township promptly and in reasonable detail in the event Tenant becomes aware of or suspects: (i) the presence of any Hazardous Material in or about the Trailer (other than any Permitted Hazardous Materials, as defined below); or (ii) a violation of the Environmental Laws in or about the Trailer. If Tenant uses or permits the Trailer to be used so as to subject Tenant and/or the Township to a claim of violation of the Environmental Laws (unless contested in good faith by appropriate proceedings), Tenant shall, at its sole cost and expense, immediately cease or cause cessation of such use or operations and shall remedy and fully cure any conditions arising therefrom.

**6.4.2** If Tenant breaches the obligations stated in this Article, and (a) the presence of such Hazardous Material in or about the Trailer caused by Tenant results in contamination of any public place upon which the Trailer is or was located, or (b) if contamination of the Trailer by

Hazardous Material otherwise occurs for which Tenant is legally liable to the Township, either by law or by the terms, covenants, or conditions of this Lease, for damages resulting therefrom, then Tenant shall indemnify the Township as set forth in the Indemnification provisions of this Lease.

**6.4.3** In the event that Tenant fails to comply with the any of the foregoing requirements of this Article, after the expiration of the cure period permitted under the Environmental Laws, if any, the Township may, but shall not be obligated to: (a) elect that such failure constitutes a default under this Lease; and/or (b) take any and all actions, at Tenant's sole cost and expense, that the Township deems necessary or desirable to cure any such noncompliance. Tenant shall reimburse the Township for any costs incurred by the Township in exercising its options under this subsection within ten (10) day of the demand therefor.

## **6.5 DEFINITIONS.**

(a) The term "Hazardous Material" shall mean any petroleum or petroleum products and their by-products, flammable explosives, radioactive materials, toxic chemicals and substances, asbestos in any form that is or could become friable, urea formaldehyde film insulation, PCB's, medical waste or other biohazardous materials, or any chemicals, pollutants, materials, or substances defined as or included in the definition of "hazardous substances" as defined pursuant to the Federal Comprehensive Environmental Response, Compensation and Liability Act, "Regulated Substances" within the meaning of subtitle I of the Federal Resource Conservation and Recovery Act, and words of similar import under applicable laws governing or relating to the protection of the environment, natural resources or human health.

(b) The term "Environmental Laws" shall mean any and all requirements of environmental, ecological, health, or industrial hygiene laws or regulations or rules of common law related to the Trailer, including all requirements imposed by any law, rule, order, or regulation of any federal, state, or local executive, legislative, judicial, regulatory, or administrative agency, board, or authority, which relate to: (i) noise; (ii) pollution or protection of the air, surface water, ground water, or land; (iii) solid, gaseous, or liquid waste generation, treatment, storage, disposal, or transportation; (iv) exposure to Hazardous Materials; or (v) regulation of the manufacture, processing, distribution and commerce, use, or storage of Hazardous Materials.

(c) The term "Permitted Hazardous Material" shall mean any Hazardous Material which is necessary and commercially reasonable for the provision of any goods or services related to the Permitted Use.

**6.6 COMBUSTIBLE MATERIALS.** In the event Tenant engages in the use or storage of flammable or combustible materials, Tenant shall comply with the federal, state, and municipal law relating to same and the rules of the fire insurance rating organization or any insurance company or companies insuring the Trailer, including the installation of chemical extinguishing devices, and shall keep these devices under service as required. If Tenant fails to install said extinguishing devices or fails to service same, the Township shall have the right to enter the Trailer to make necessary installations and charge the cost of such installations and the servicing thereof to Tenant, which shall be paid within ten (10) days of demand. Nothing contained herein shall imply any consent or agreement on the part of the Township to subject the Township

to liability under any mechanic's or other lien law. Tenant's entry or occupancy of the Trailer prior to the Commencement Date shall be governed by, and subject to, all the provisions of this Lease.

**6.7 BACKGROUND CHECK.** Each owner of the Tenant is required to complete and submit a New Jersey State Bureau of Investigation background check to the Township Police Department within seven (7) days of April 24, 2024, and each application shall be referred to the Chief of Police or the Chief's designee, who shall instigate investigation of the Tenant's business, responsibility, moral character, and ability to properly conduct the licensed activity, as is necessary for the protection of the public health, welfare, and safety. Written investigation findings shall be provided to the Municipal Clerk within a reasonable time after the application has been filed. The Chief of Police or the Chief's designee may recommend, on a reasonable basis, against the approval of the Tenant, in which case, this Lease shall be deemed null and void, the Tenant shall be refunded the Rental Rate payable to the Township, the Parties shall have no liability to each other, and the Township shall offer the Trailer to the next highest bidder.

**TENANT'S OBLIGATIONS AS SET FORTH IN THIS ARTICLE, SHALL SURVIVE THE END OF THE TERM OF THIS LEASE.**

#### **ARTICLE 7**

(ASSIGNMENT AND SUBLETTING)

**7.1 TOWNSHIP'S CONSENT REQUIRED.** Tenant expressly covenants that Tenant shall not assign, mortgage, or encumber this Lease or any of its rights hereunder, in whole or in part, or sublet all or any part of the Trailer, or suffer or permit the Trailer, or any part thereof, to be used or occupied by others.

#### **ARTICLE 8**

(REPAIRS AND ALTERATIONS)

**8.1 TENANT'S OBLIGATIONS.** Tenant shall, at its own cost and expense, take good care of the Trailer, and the fixtures and equipment in and/or serving the Trailer and appurtenances thereto. "Repairs" as used herein shall mean all repairs, changes, improvements, replacements, renewals, alterations, additions, and betterments. The Township shall not be responsible to make any repairs occasioned by Tenant's acts, omissions, or negligence or the acts, omissions, or negligence of any of Tenant's agents, licensees, or contractors, and/or any of its or their employees and servants.

**8.2 THE TOWNSHIP'S OBLIGATIONS.** Except as provided in section 8.1, the Township shall be required to maintain and repair the Trailer, and the fixtures and equipment in and/or serving the Trailer and appurtenances thereto.

**8.3 TENANT'S FAILURE TO REPAIR.** If Tenant refuses or neglects to make repairs or otherwise fails to perform any of Tenant's work or maintenance obligations hereunder, or if the Township is required to make exterior or structural repairs by reason of Tenant's negligent acts or omissions, the Township shall have the right, but not the obligation, after ten (10) days' notice, except in the case of emergency repairs for which no notice is required, to make such repairs



or perform on behalf of and for the account of Tenant. In such event, such work shall be paid for by Tenant within ten (10) days of the demand therefor.

**8.4 GENERAL CONDITIONS RELATING TO ALTERATIONS.** Any Repairs shall be subject to the following conditions:

**8.4.1** No Repairs shall be undertaken until all required permits and authorizations of all municipal departments and governmental subdivisions having jurisdiction.

**8.4.2** Any Repairs shall be made promptly and in a good workmanlike manner by properly qualified and licensed personnel, and in compliance with all applicable permits and authorizations and building and zoning laws and all laws.

**8.5 TOWNSHIP'S IMPROVEMENTS.** The Township shall have full right to make any and all improvements to the Trailer or surrounding property at its sole expense.

## **ARTICLE 9** (LIENS)

**9.1** Tenant shall do all things necessary to prevent the filing of any construction, mechanic's or other liens or encumbrances against the Trailer, or any part thereof, or upon any interest of the Township by reason of labor, services or materials supplied, or claimed to have been supplied to Tenant, or anyone holding the Trailer, or any part thereof, through or under Tenant. If any such lien or encumbrance shall at any time be filed against all or any portion of the Trailer, Tenant shall: (a) provide the Township with written notice of the same immediately; and (b) either cause same to be discharged of record within thirty (30) days after the date of filing of same (Tenant must provide the Township with all such documentation and filings) or, if Tenant in good faith determines that such lien should be contested, Tenant shall either: (i) bond over such lien in accordance with applicable law; or (ii) furnish such security as the Township shall, in its sole discretion, determine to be necessary and/or required to prevent any proceedings against all or any portion of the Trailer during the pendency of such contest. If Tenant shall fail to discharge or bond over such lien or encumbrance or fail to furnish such security within such period, then, in addition to any other right or remedy of the Township resulting from said default of Tenant, the Township may, but shall not be obligated to, discharge the same either by paying the amount claimed to be due or by procuring the discharge of such lien by giving security or in such other manner as is, or may be, prescribed by law, and charge any expenses including attorneys' fees incurred by the Township, in connection therewith, to Tenant as additional rent to be paid within ten (10) days of demand.

## **ARTICLE 10** (UTILITIES)

**10.1 COSTS.** The Township shall provide and pay for the electricity and water for the Trailer. The Tenant shall be responsible for the filling of the water tank for the Trailer with the Township's water supply.

**10.2 RUBBISH AND GARBAGE REMOVAL.** Tenant shall be responsible for the removal of any and all rubbish, garbage, refuse, and debris from the Trailer and its immediate area. Tenant shall keep the Trailer and the area surrounding the Trailer free and clear of any and all debris, garbage, rubbish, and refuse at all times. Tenant shall be further responsible to separate general trash and recyclables. In the event that the Tenant fails to clear and clean the aforesaid, the Township may elect to perform the foregoing services and invoice the Tenant for the costs of the services, which shall be payable within ten (10) days of demand.

**ARTICLE 11**  
(TAXES)

**11.1 TAXES.** Tenant shall pay and be responsible for any and all taxes relating to the operation and conduct of its business with the Trailer.

**ARTICLE 12**  
(INDEMNITY AND LIABILITY)

**12.1 TENANT'S INDEMNITY.** Tenant expressly, knowingly, and, to the fullest extent permitted by law, agrees to and shall release, indemnify, defend, and hold harmless the Township, its elected and appointed officials, officers, employees, agents, volunteers, and others working on behalf of the Township, from and against any loss, damages, claims, causes of action, liabilities, obligations, penalties, demands, and any and all other costs and expenses, including attorneys' fees and costs, threatened against, suffered, and/or incurred by the Township, its elected and appointed officials, officers, employees, agents, volunteers, and others working on behalf of the Township arising out of and/or in any manner relating to the this Lease, the Trailer, and the Tenant, and the acts and/or omissions of the Tenant, its officers, owners, agents, employees, independent contractors, guests, volunteers, others working on behalf of the Tenant, and/or customers. The Tenant shall be responsible and liable for the payment of any and all of the foregoing attorney's fees and costs, to attorneys of the Township's selection, for any investigation and review, pre-litigation, litigation, post-judgment litigation, and any and all appeals arising out of and/or relating to this Lease. The existence of any available and/or applicable insurance shall not waive or release the Tenant from the Tenant's obligations set forth in this Lease.

**12.2 RELEASE AS TO PERSONAL PROPERTY.** In addition to the provisions set forth in section 12.1, for clarification purposes, Tenant shall store its property in and shall occupy the Trailer and all other portions of the public places at its own risk. The Township shall not be responsible or liable at any time for any loss, theft, or damage to Tenant's merchandise, equipment, fixtures, or other personal property of Tenant.

**ARTICLE 13**  
(INSURANCE)

**13.1 TENANT'S GENERAL LIABILITY INSURANCE.** Tenant shall keep in force throughout the term of this Lease: (a) a Commercial General Liability insurance policy or policies to protect the Township against any liability to the public or to any invitee of Tenant incidental to the use of or resulting from any accident occurring in or upon the Trailer with a limit of not less than \$1,000,000.00 per occurrence and not less than \$2,000,000.00 in the annual aggregate, covering bodily injury and property damage liability and \$1,000,000.00 products/completed operations aggregate; (b) Business Auto Liability covering owned, non-owned and hired vehicles with a limit of not less than \$1,000,000.00 per accident; (c) insurance protecting against liability under Worker's Compensation Laws with limits at least as required by statute; (d) All Risk or Special Form coverage protecting Tenant against loss of or damage to Tenant's alterations, additions, improvements, decorations, fixtures, inventory and other business personal property situated in or about the Trailer to the full replacement value of the property so insured. Each of the aforesaid policies shall (a) be provided at Tenant's expense; (b) name the Township and the Township's mortgagee, if any, as additional insureds; (c) be issued by an insurance company with a minimum Best's rating of A minus (A-) during the term of this Lease; and (d) provide that said insurance shall not be cancelled unless thirty (30) days prior written notice (ten (10) days for non-payment of premium) shall have been given to the Township; and said policy or policies or certificates thereof shall be delivered to the Township by Tenant upon the Commencement Date and at least thirty (30) days prior to each renewal of said insurance.

**13.2 TENANT'S GENERAL PROPERTY AND FIRE DAMAGE INSURANCE.** Tenant shall keep in force throughout the terms of this Lease: (a) a Commercial General Property Damage and Fire Damage insurance policy or policies to protect the Township against property and fire damage arising out of Tenant's acts or omissions for the full replacement value of the Trailer.

**13.3 FAILURE TO PROCURE.** In the event Tenant shall fail to procure and maintain any or all of the insurance set forth above, the Township, at its option, shall have the right after five (5) days' notice to Tenant to carry any or all of the insurance hereinabove provided for and for which Tenant failed to carry, and, in such event, the Tenant agrees to reimburse the Township for the entire cost of the same within ten (10) days.

**13.4 WAIVER OF SUBROGATION.** Each of the parties waives its rights of recovery against the other for loss or damage occurring to the Trailer to the extent the same is covered by the insurance carried by the other party, notwithstanding that said loss or damage may result from the negligence or fault of the culpable party. Insurance policies required to be procured by either party shall contain a clause waiving any rights of subrogation. The foregoing waivers of subrogation shall be operative only so long as available in the jurisdiction where the Trailer are located and so long as no policy of insurance is invalidated thereby.

## **ARTICLE 14** **(DESTRUCTION)**

**14.1 DESTRUCTION OF TRAILER.** In the event of partial or total destruction of the Trailer and any part thereof, for any reason other than the acts and/or omissions of the Tenant, for which the Tenant shall be responsible and the full Rental Rate shall be retained and deemed earned by the Township in addition to the damages that shall be the responsibility of the Tenant as

determined by the Township, the Rental Rate paid by the Tenant shall be refunded on a pro-rated basis, calculated beginning on May 24, 2024, through the date of the destruction of the Trailer, and this Lease shall be declared null and void, effective on the date of destruction, and the parties shall have no liability to each other relating to and/or arising out of this Lease.

**ARTICLE 15**  
(TERMINATION AND DEFAULT)

**15.1 TERMINATION.** In addition to the Default provisions provided in this Article herein, the Township reserves the right to terminate this Lease on the basis of public complaints and/or its own investigation and observations regarding and relating to the operation of the food and beverage concession in the Trailer that have any negative effect upon the public health, welfare, and safety. If the Township deems the basis for termination to be emergent, the Township may immediately elect to take possession of the Trailer and preclude the Tenant's access to the Trailer and the notice and cure provisions of §15.3 shall not apply. In the event of such termination, the full Rental Rate shall be deemed earned by the Township and Tenant shall have no right to the return of any of the Rental Rate.

**15.2 DEFAULT.** Subject to the notice and cure provisions of §16.3, any of the following events shall constitute a default on the part of Tenant:

(a) Tenant fails to pay any rental or other payment due hereunder, or otherwise fails to comply with any lawful requirement of the Township and/or Health Department;

(b) Tenant fails to perform any other of the terms of this Lease to be observed or performed by Tenant or otherwise breaches this Lease;

(c) Tenant shall become bankrupt or insolvent, or files any debtor proceedings or takes or has taken against Tenant in any court pursuant to any statute either of the United States or of any State a petition in bankruptcy or insolvency or for reorganization or for the appointment of a receiver or trustee of all or a portion of Tenant's property;

(d) Tenant makes an assignment for the benefit of creditors, or petitions for or enters into an arrangement, or suffers this Lease to be taken under any writ of execution or attachment;

(e) Any statement, representation, or information made or furnished by or on behalf of Tenant to the Township in connection with or to induce the Township to enter into this Lease shall prove to have been materially false or misleading when made or furnished.

**15.3 NOTICES.** In the case of any one or more of such events set forth in §15.2, upon the Township's serving a written ten (10) day notice for Tenant's failure to pay any payment due hereunder or failure to perform any other term of this Lease, which notices shall specify the nature of said default, and if, at the expiration of said ten (10) day period, Tenant shall have failed to comply with or remedy such default, the Township may give Tenant a five (5) day notice of termination of this Lease and at the expiration of such five (5) day period, this Lease and the term hereunder shall terminate and come to an end, and Tenant shall quit and surrender the Trailer to the Township as if the term hereunder ended

by the expiration of the time fixed herein, but Tenant shall remain liable as hereinafter provided.

**15.4 ADDITIONAL REMEDIES.** After the expiration of the notices specified in §16.3 and the term ending as aforesaid, or should the Township elect not to terminate this Lease then the Township shall be entitled to the relief set forth below.

**15.4.1** Should the Township take possession pursuant to this Lease, legal proceedings, or pursuant to any notice provided for by law, it may make such alterations and repairs as may be necessary in order to relet the Trailer, and may relet the Trailer or any part thereof for such term or terms which may be for a term extending beyond the term of this Lease and at such rentals and upon such other terms and conditions as the Township in its sole discretion may deem advisable. Upon each such reletting, all rentals received by the Township from such reletting shall be applied, (i) to the payment of any indebtedness other than rent due hereunder from Tenant to the Township; (ii) to the payment of any costs and expenses of such reletting, including the fees and costs of such alterations and repairs; (iii) to the payment of any amount due and unpaid hereunder, and the residual, if any, shall be held by the Township and applied in payment of future rent as the same may become due and payable hereunder. The Township may recover from Tenant all damages it may incur by reason of Tenant's default, including the cost of recovering the Trailer, reasonable attorneys' fees and costs, and costs of repairs and/or replacement of the Trailer.

**15.4.2** In the event of a breach or threatened breach by Tenant of any provision of this Lease, the Township shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for herein.

**15.4.3** Suit or suits for the recovery of such damages, or any installments thereof, may be brought by The Township from time to time at its election, and nothing contained herein shall be deemed to require The Township to postpone suit until the date when the term of this Lease would have expired if it had not been so terminated under the provisions of this Article 17 or under any provision of law. Nothing herein contained shall be construed to limit or preclude recovery by The Township against Tenant of any sums or damages to which, in addition to the damages particularly provided above, the Township may lawfully be entitled by reason of any default hereunder on the part of Tenant.

**15.4.4** No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies provided in this Section or otherwise available at law or in equity.

**15.5 DAMAGES.** In computing such damages, there shall be added to the said deficiency such expenses as the Township may reasonably incur in connection with reletting, such as legal expenses, actual attorneys' fees, and other fees and expenses including, without limitation, the cost and expenses of preserving the Trailer and/or putting the Trailer in good order, or for preparing (including, without limitation, alteration costs and expenses) the same for re-rental. In the event of a breach or threatened breach by Tenant of any of the covenants or provisions hereof, the Township shall have the right to request an injunction and the right to invoke any remedy allowed at law or in equity.

Mention in this Lease of any particular remedy shall not preclude the Township from any other remedy in law or in equity.

**15.6 WAIVERS.** The rights and remedies given to the Township and Tenant in this Lease are distinct, separate, and cumulative remedies and the exercise of any of them shall not be deemed to exclude the Township's and Tenant's right to exercise any or all of the others.

**ARTICLE 16**  
(ACCESS TO TRAILER)

**16.1 TOWNSHIP'S ACCESS.** The Township shall have the right to place, maintain, and repair such utility equipment in, upon, or under the Trailer as may be necessary for the servicing of the Trailer. The Township shall also have the right to enter the Trailer at all reasonable times to inspect and to make such repairs, additions, alterations, or improvements as may be reasonably necessary. The Township shall be allowed to store and to take all material in, to, through, and upon said Trailer that may be required therefor or anywhere else within the Trailer without the same constituting an eviction or constructive eviction of Tenant in whole or in part and Tenant shall have no claim for damages, except as otherwise provided in this Lease. If Tenant shall not be personally present to permit an entry into the Trailer when for any reason an entry therein shall be permissible, the Township may enter the same by a master key or by the use of force without rendering the Township liable therefor (except to repair any damage to the entry point by reason of any forcible entry) and without in any manner affecting Tenant's obligations under this Lease. Despite the foregoing, no such access shall unreasonably interfere with Tenant's Quiet Enjoyment and use of the Trailer.

**ARTICLE 17**  
(PLACE AND MANNER OF PAYMENTS)

**17.1** All payment required to be paid by Tenant to the Township shall be made payable to the order of the Township or its designee, which shall be provided to Tenant in writing, and all such payments and all reports required to be rendered by Tenant to the Township shall be delivered to the office of the Township's Agent as above mentioned, or at such other place as the Township may from time to time designate.

**ARTICLE 18**  
(QUIET ENJOYMENT)

**18.1** The Township warrants that it and no other person or corporation has the right to lease the Trailer hereby demised. Tenant, upon paying the rents and performing all of the terms on its part to be performed, shall peaceably and quietly enjoy and use the Trailer subject, nevertheless, to the terms of this Lease.

**ARTICLE 19**  
(NOTICES)

**19.1** Any notice, demand, request or other instrument which may be or is required to be given under this Lease shall be in writing and mailed by United States certified or registered mail,

postage prepaid, or by overnight courier, such as Federal Express, and shall be addressed (a) if to the Township, at the address given in Article 1, with a copy to the Township's Agent; and (b) if to Tenant, at the address given in Article 1. Either party may designate such other address for notices as shall be given by prior written notice. Any notice, demand, request or other instrument which may be given by the Township, may be given by the Township's attorney with the same force and effect as if given by the Township. Either party may by notice to the other specify a different address for notice purposes.

## **ARTICLE 20**

### (REPRESENTATIONS AND WARRANTIES; FINANCIAL REPORTING)

**20.1 REPRESENTATIONS AND WARRANTIES OF TENANT.** To induce The Township to enter into this Lease, Tenant represents and warrants to the Township as is set forth below.

(a) This Lease is an enforceable obligation of Tenant.

(b) Tenant is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as such terms are defined in the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder).

(c) There are no actions, suits or proceedings pending, or to the best of Tenant's knowledge, threatened, against, or affecting it or the Trailer or any Guarantor which, if adversely determined, would materially impair the ability of Tenant or a Guarantor to satisfy their obligations under or relating to this Lease.

(d) Tenant is not in default under any obligation for the payment of borrowed money, for the deferred purchase price of property, or for the payment of any rent under any lease agreement, which, either individually or in the aggregate, would adversely affect the financial condition of Tenant, or the ability of Tenant to perform its obligations hereunder, or comply with the terms of this Lease.

## **ARTICLE 21**

### (MISCELLANEOUS)

**21.1 RULES AND REGULATIONS.** Tenant agrees to comply with the Rules and Regulations of the Building as promulgated from time to time by The Township.

**21.2 IMAGE OF TRAILER.** Tenant will, at all times, maintain a high-quality image and operation at the Trailer and in this regard Tenant agrees not to hang any posters or other display materials in the store front windows of the Trailer or display any other material within the Trailer in a manner which the Township may deem inappropriate, unsightly, or not in keeping with the image and dignity of the Building which the Township would like to project, establish, and maintain.

**21.3 CORPORATE LEASES.** In the event the Tenant hereunder is a corporation, the persons executing this Lease on behalf of the Tenant hereby covenant and warrant that: (i) they have full right and authority to bind the corporation; (ii) the Tenant is a duly

constituted corporation qualified to do business in the State; (iii) all Tenant's franchise and corporate taxes have been paid to date; (iv) all future forms, reports, fees and other documents necessary for Tenant to comply with applicable laws shall be filed by Tenant when due; and, (v) such persons are duly authorized by the governing body of such corporation to execute and deliver this Lease on behalf of the corporation.

**21.4 GENDER.** Words of any gender used in this Lease shall be construed to include any other gender, and words in the singular shall include the plural and vice versa, unless the context otherwise requires.

**21.5 ATTORNEYS' FEES.** In the event that this Lease is breached by the Tenant, the cure period expires without the breach being cured, if any, the Township shall be entitled to the payment of reasonable attorneys' fees and costs, inclusive of any and all attorney's fees and costs relating to and arising out of pre-litigation, litigation, any and all appeals, and any post-judgment proceedings.

**21.6 WAIVER OF JURY TRIAL AND PUNITIVE DAMAGES.**

**21.6.1 THE TOWNSHIP AND TENANT EACH HEREBY WAIVE ALL RIGHT TO A TRIAL BY JURY IN ANY CLAIM, ACTION, PROCEEDING OR COUNTERCLAIM BY EITHER THE TOWNSHIP OR TENANT AGAINST THE OTHER ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE, THE RELATIONSHIP OF THE TOWNSHIP AND TENANT AND/OR TENANT'S USE OR OCCUPANCY OF THE TRAILER.**

**21.6.2 THE COURT WILL HAVE NO AUTHORITY TO AWARD PUNITIVE, EXEMPLARY OR OTHER DAMAGES NOT MEASURED BY THE PREVAILING PARTY'S ACTUAL DAMAGES, EXCEPT AS MAY BE REQUIRED BY STATUTE. IT IS HEREBY STIPULATED BY THE PARTIES HERETO THAT TRIAL BY JURY IS HEREBY SPECIFICALLY WAIVED AS TO ALL CLAIMS OR DEFENSES BETWEEN THE PARTIES.**

**21.7 NO MERGER.** There shall be no merger of this Lease, or the leasehold estate created by this Lease, with any other estate or interest in the Trailer, or any part thereof, by reason of the fact that the same person, firm, corporation or other entity may acquire or own or hold, directly or indirectly, (i) this Lease or the leasehold estate created by this Lease, or any interest in this Lease or in any such leasehold estate, and (ii) any such other estate or interest in the Trailer or any part thereof; and no such merger shall occur unless and until all persons, corporations, firms and other entities having an interest (including a security interest) in (1) this Lease or the leasehold estate created by this Lease; and (2) any such other estate or interest in the Trailer, or any part thereof, shall join in a written instrument effecting such merger and shall duly record the same.

**21.8 RELATIONSHIP OF THE PARTIES.** Nothing in this Lease shall create a partnership, joint venture, employment relationship, borrower and lender relationship, or any other relationship between The Township and Tenant, other than the relationship of the Township and tenant.



**21.9 NOT BINDING UNTIL EXECUTED AND APPROVED.** This Lease is not binding until fully executed and a resolution is adopted by the Township authorizing this Lease.

**21.10 ASSIGNMENT.** This Lease and all rights, duties, and obligations contained herein may not be assigned by the Tenant.

**21.11 AMENDMENT BY OPERATION OF LAW.** Any provision of this Lease which is affected by any changes in federal or state law or administrative regulations will necessarily and accordingly be modified automatically and such changes shall be deemed incorporated herein by reference as if set forth fully herein, without any action by the Parties required, so as to render this Agreement consistent with such changes in federal or state law or administrative regulations.

**21.12 SEVERABILITY.** If any term of this Lease or the application thereof to any extent be held invalid or unenforceable, the remainder of this Lease, or the application of such term to the Parties or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term of this Lease shall be valid and enforceable to the fullest extent permitted by law.

**21.13 GOVERNING LAW.** The Parties acknowledge that this Lease was prepared under the laws of the State of New Jersey, and, therefore, that this Lease shall be interpreted under the laws of the State of New Jersey.

**21.14 COUNTERPARTS.** This Lease may be executed in counterparts, and multiple copies of this Lease may be executed, each of which, however, shall be one and the same document. Facsimile signatures shall be binding to the same effect as originals and the Parties agree to be bound thereby and to waive any argument that such facsimile signatures are invalid.

**21.15 BINDING EFFECT.** The terms of this Lease shall inure to the benefit of, and shall be binding upon, the Parties' successors.

**21.16 AMENDMENTS.** This Lease may not be amended, altered, or modified in any manner except in writing signed by the Parties.

**21.17 CONSTRUCTION.** The Parties waive the defense of *contra proferentem*, i.e., that this Lease or any part thereof may be ambiguous and therefore construed against any party as the drafter thereof.

**21.18 ENTIRE AGREEMENT.** This Lease comprises the entire agreement and understanding between the Parties and it is acknowledged that there is and supersedes all previous understandings and agreements between the Parties, whether oral or written. The Parties hereby acknowledge and agree that they have not relied on any representation, assertion, guarantee, warranty, collateral contract or other assurance, except those set out in this Lease. The Parties hereby waive all rights and remedies, at law or in equity, arising or which may arise as the result of a party's reliance on such representation, assertion, guarantee, warranty, collateral contract or other assurance.

**21.19 WAIVER.** Any failure or delay in the enforcement of any of the provisions of this Lease by either of the Parties shall not be construed as a waiver of those provisions.

**21.20 AUTHORIZATION.** The Parties represents and warrants that he/she/it has the authority to enter into, and be bound by the terms of this Lease.

**21.21 HEADINGS.** The headings preceding the text of sections of this Lease are for convenience only and shall not be deemed part of this Lease.

**21.22 FORCE MAJEURE.** Neither party is liable for any default or delay in the performance of any of its obligations under this Agreement (other than failure to make payments when due) if such default or delay is caused, directly or indirectly, by forces beyond such party's reasonable control, including, without limitation, fire, flood, acts of God, labor disputes, accidents, pandemic, acts of war or terrorism, interruptions of transportation or communications, supply shortages or the failure of any third party to perform any commitment relative to the production or delivery of any equipment or material required for such party to perform its obligations hereunder.

[INTENTIONALLY OMITTED]

**IN WITNESS WHEREOF,** the parties hereto have executed this Lease as of the day set forth below.

**THE TOWNSHIP**

Dated:

\_\_\_\_\_  
\_\_\_\_\_

**TENANT**

Dated:

\_\_\_\_\_