

Incorporated Village of Port Jefferson  
Suffolk County, New York

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**REQUEST FOR PROPOSALS**  
**FOR**  
**CATERING SERVICES**  
**PORT JEFFERSON COUNTRY CLUB**

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ISSUANCE DATE: November 1, 2018

RESPONSE DUE DATE: November 30, 2018

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## **AUTHORIZED CONTACT PERSON**

Prospective firms are advised that the authorized Village of Port Jefferson contact person for all matters concerning this RFP is:

Barbara Sakovich  
Assistant to the Mayor  
Mayorsoffice@portjeff.com

## **INTRODUCTION**

Pursuant to section 104-b of the New York General Municipal Law and the written procurement policies and guidelines currently in effect in the Village of Port Jefferson (the “Village”), the Village of Port Jefferson hereby solicits your proposal to provide the Food and Beverage Service Concession, at the Port Jefferson Country Club (the “Facility”). The term of the contemplated License Agreement shall begin on January 1, 2019, and shall continue until December 31, 2029, unless extended in accordance with the terms of the License Agreement.

The intent of this RFP is to obtain the most qualified concessionaire to provide food and beverage service at the Facility. As set forth below, selection will be based upon consideration of the overall qualifications, experience, financial status, and benefit to the Village, the type, mode and features of proposed operations and management, and the proposer’s recommendations for any capital additions or improvements to the Facility.

The Village reserves the right to negotiate with any and all proposers, to decline any and all proposals, and to select the proposer which, in the Village’s sole judgment, will be serve the needs of the Village.

## **SITE DESCRIPTION**

The Country Club consists of a clubhouse limited to the restaurant, bar, catering hall, kitchen, bathrooms, storage and bridal room, excluding all other areas). The site shall not include “The Turn” Grill Room during the 2019 calendar year, which is subject to a separate concession agreement.

## **FORM OF LICENSE AGREEMENT**

The successful proposer will be required to execute a license agreement with the Village in substantially the form annexed hereto as Appendix “A” (the “License Agreement”). Any objections to the terms and conditions of the proposed License Agreement must be set forth in the proposer’s response to this RFP, as set forth below. However, it is the intention of the Village to adhere substantially to the form of license agreement annexed hereto, and the Village shall be under no obligation to modify any of the proposed terms and conditions of the form of License Agreement annexed hereto as Appendix “A.”

## **FORM OF PROPOSAL**

Proposers must submit ten (10) hard copies (one signed original and nine copies) and one (1) electronic copy of each proposal with additional relevant information. Proposals should be organized as described in Attachment No. 1 herein. The submission of extraneous or voluminous additional materials not expressly required pursuant to this Request for Proposals is not welcome and may be rejected and returned to the proposer.

## **SCHEDULE FOR PROPOSALS**

A non-mandatory proposer's conference shall be held at the Facility on November 16, 2018 at 2PM.

A non-mandatory site visit and walk-through of the Facility shall be held at the Facility at 3PM.

The Village reserves the right, at its sole option, to conduct personal interviews of one or more of the proposers prior to selection. The dates and times for such personal interviewees shall be scheduled for the mutual convenience of the Village and selected proposers.

Proposals must be submitted in hard copy to the attention of the Authorized Contact Person identified above by November 30, 2018. Email or facsimile responses will not be considered. In the interest of fairness to all participants, no extensions or exceptions will be permitted, unless issued as an Addendum to this RFP and applicable to all proposers.

## **QUESTIONS AND CLARIFICATIONS**

Any questions or requests for clarification of this RFP must be submitted in writing on or before to the Authorized Contact Person identified above. Questions must be submitted by email. Responses will be issued by the Village in the form of an Addendum to this RFP prior to the submission deadline. As such, be aware that all questions (and answers) will be shared amongst all parties.

All communications during the RFP process must be directed solely to the Authorized Contact person identified above. Communication, whether in writing or verbally, with any Village elected officials, employees or any member of the Village Evaluation Committee may be cause for disqualification from the RFP process.

## **QUALIFICATION BASED SELECTION PROCESS**

The Village, after receipt and review of responses to this RFP, reserves the right to reject all proposals based upon the information provided by the proposers in their proposal, any other source of reliable information concerning the proposers, and based upon subsequent negotiations between the Village and proposer firms. The review process of the RFPs submitted are described under the section entitled: "CRITERIA FOR EVALUATION AND AWARD."

## **CRITERIA FOR EVALUATION AND AWARD**

The process and criteria to be used by the Village in evaluating these proposals shall be the following:

- a. Evaluation of Proposals: The Village may invite proposers to make presentation to the Board of Trustees to demonstrate their qualifications and approach to the project. The final selection shall be made by the Village Board of Trustees.
- b. Award Criteria: The Award Criteria to be considered by the Board of Trustees shall include all of the criteria as set forth in the Village's Procurement Policies and Procedures, with particular emphasis on the following:
  - i. General Qualifications: Proposer's experience and expertise in providing similar services, and references reflecting similar work and related experiences.
  - ii. Proposed Services/Products: Responsiveness of proposed operating and management strategy, recognition of potential issues and problems, and effective, innovative and creative strategies for addressing same.
  - iii. Financial Strength and Resources: Proposer's demonstrated financial strength and resources and ability to fulfill the financial commitments and requirements of the RFP, including proposer's ability to finance and complete construction of any capital modifications or improvements to the Facility accepted by the Village.
  - iv. Proposed Capital Improvements: The attractiveness and potential benefits to the Village of the proper's proposals for future capital modifications or improvements to the Facility, if any.
  - v. Financial Proposal: The financial benefit to the Village of the proposer's financial proposal over the term and duration of the License Agreement.

#### **USE OF SUBCONTRACTORS AND OTHER SUBORDINATE ENTITITES**

Prospective firms are advised that the Village will entertain proposals that include the use of subcontractors and/or other subordinate entities. In such event, the proposal must clearly state the extent and nature of the work proposed to be delegated to the proposed subcontractor other subordinate entity. The same information required by the RFP to be provided by the proposer shall also be provided for each proposed subcontractor or other subordinate entity.

#### **FAMILIARIZATION WITH CURRENT PROGRAMS, FACILITIES AND DOCUMENTS**

The Village makes no representation or warranty concerning the current status or condition of the Facility or the accurateness or completeness of any information provided as part of the RFP process.

It is the sole responsibility of the proposers to familiarize themselves with the Facility and any other information which is necessary and relevant to the scope of this RFP and proper's proposal hereunder.

## ATTACHMENT NUMBER 1

### FORMAT OF PROPOSAL

Proposals should be organized as shown below with tab dividers between sections and should include all the information indicated. Note that elaborate brochures or other presentations beyond those sufficient to present a complete and extensive response to this solicitation are not desired.

#### **SECTION A. INTRODUCTORY STATEMENT**

#### **SECTION B. QUALIFICATIONS AND APPROPRIATENESS OF PROPOSED STAFF**

Provide names and resumes of key personnel proposed for this project. The proposal should also include an organizational chart for the operation of the food and beverage service.

#### **SECTION C. APPROPRIATENESS AND QUALITY OF PROPOSER'S EXPERIENCE**

1. Proposer's experience and expertise in providing similar food and beverage services.
2. Minimum of five (5) references with contact information, reflecting similar work and related experience.

#### **SECTION D. PROPOSED MANAGEMENT AND OPERATING STRATEGY**

Proposed operating, management and marketing and sales strategy, recognition of potential issues and problems, and effective, innovative and creative strategies for addressing same. The response in this section should emphasize any and all ways that the proposer intends to deliver services in a manner that is consistent with the atmosphere at the Facility while maximizing the potential profit to the Village.

#### **SECTION E. FINANCIAL AND OTHER INFORMATION**

A complete statement detailing the current financial standing of the proposer and all principals holding an interest in the proper corporation. Both the proposer and all principal will be required to maintain, and should clearly demonstrate, financial resources and capability to properly conduct and promote a Food and Beverage Service and to complete any future capital improvements proposed by proposer. These statements should be supported by detailed documentation including, but not limited to, an audited financial statement of the proposer; bank, credit, and business references, corporate and personal tax returns, each of which will be maintained confidential to the extent permitted by law, but at all times consistent with the New York State Public Officers Law.

Further, both the corporate proposer and all principals must submit a sworn statement:

1. That neither the corporation or its principals are the subject of any on-going investigations or enforcement proceedings by the Federal and State law enforcement and taxing authorities;

2. That neither the corporation or its principals are the subject of any action or proceeding to collect a debt or to enforce any obligation relating to corporate affairs or, in the event of such an action or proceeding, disclosing the nature of same, together with any index or docket number and the venue of same;
3. That the corporation and its principals are in compliance with all applicable labor and wage statutes; and
4. Disclosing any and all wage and hour lawsuits to which the corporation and its principals ae been parties and the disposition of same.

The corporate proposer and all principals must also submit Village of Port Jefferson disclosure affidavits, samples of which are annexed hereto as Appendix B.

By submitting a proposal in response to this RFP, proposer consents to the conduct by the Village of such credit and background investigations as the Village in its sole discretion deems necessary and appropriate.

#### **SECTION F. FINANCIAL PROPOSAL**

Proposer shall provide a detailed financial proposal describing the form and amount of the proposed license fee and any other type of financial remuneration to be paid to the Village by the proper in consideration of the award of the concession and operating rights to the proposer. Said proposal must include a statement of a proposed monthly concession license fee to be paid to the Village, subject to the escalation set forth in the annexed form of license agreement (Appendix "A"). Proposer may also, at its discretion, propose any other form of alternative, additional or supplemental consideration it would like the Village to consider.

The proposal must contain an acknowledgment and commitment to pay the \$947,866.78 "Key Money" payment upon execution of the Agreement.

#### **SECTION G. CAPITAL IMPROVEMENTS**

The Village invites proposers to include a detailed capital improvement plan as part of its response to this RFP. In the event that the proposer elects to submit a capital improvement plan, the proposer shall include a complete description of any capital additions, modifications or improvements the proposer intends to propose for the Facility, including the estimated cost and schedule for completion of said additions or improvements. Said description shall be accompanied by such drawings, renderings and site plans as the proposer deems appropriate and necessary. The proposer shall describe in detail the justification for the proposed capital additions or improvements, including any anticipated operational and/or financial benefits to the Village to be derived therefrom.

The Village's selection of a vendor under this RFP shall not, however, constitute permission to construct any capital improvements. Rather, any such capital improvements shall be subject to review by the appropriate Village Departments, and must comply with all applicable laws, rules, and regulations as may be promulgated by the Village of Port Jefferson

and any other Federal or State agencies that have jurisdiction over the Facility and/or the surrounding properties.

**SECTION H. OBJECTIONS TO FORM OF LICENSE AGREEMENT**

Proposer shall identify any objections to the proposed form of license agreement annexed hereto as Appendix “A.” The failure to submit any objections shall be deemed to represent the proposers assert to the terms of the proposed license agreement.

**Be advised that unless and until the Village Board of Trustees accepts and approves a proposal, and authorizes the execution of a license agreement, there is no enforceable agreement between the Village and the proposer. Under no circumstances shall the Village be held liable for any costs or damages incurred by the proposer as a part of this RFP process.**

**SECTION I. SUPPLEMENTAL INFORMATION**

Proposer may provide any additional information relevant to the proposer’s qualifications or proposal for this project at the proposer’s sole option.

# **APPENDIX A**



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[Sign Name]

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[Print Name]

Duly sworn to before me on the\_\_\_\_  
Day of \_\_\_\_\_, 2018.

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NOTARY PUBLIC

# APPENDIX B

LICENSE AGREEMENT

DATED: December \_\_, 2018

PARTIES: INCORPORATED VILLAGE OF PORT JEFFERSON, a municipal corporation of the State of New York, having its principal office at 121 West Broadway, Port Jefferson, New York 11777, and hereinafter referred to as the “VILLAGE”; and

[INSERT CONCESSIONAIRE NAME] having its principal place of business at [INSERT CONCESSIONAIRE PRINCIPAL BUSINESS ADDRESS], and hereinafter referred to as the “CONCESSIONAIRE.”

**WITNESSETH:**

WHEREAS, it is the general intent and purpose of this License Agreement (the “License Agreement”) to secure the efficient and beneficial operation of certain Food and Beverage Concession Services at the Port Jefferson Country Club (the “Country Club”), and to provide for such future repairs, improvements and modifications as shall be deemed acceptable to and in the best interests of the VILLAGE and its residents;

NOW, THEREFORE, it is mutually agreed by and between the parties hereto as follows:

USE

1. The CONCESSIONAIRE agrees to maintain and operate a food and beverage concession service, restaurant and catering service at the Country Club for the term set forth herein. The CONCESSIONAIRE shall use the FACILITIES (as hereinafter defined) allocated to it in this License Agreement, as set forth below, for no other purpose than the operation of a food and beverage concession service, restaurant and catering service in strict conformance with the terms and conditions of this License Agreement. “The Turn” or Grille Room located on the course will be included in this Agreement twelve (12) months after the commencement of this Agreement and the expiration of the separate license agreement.

## FACILITIES

2. The CONCESSIONAIRE's operation shall consist of all those facilities at the Country Club designated by the Board of Trustees (hereinafter, the "BOARD") to be used by the CONCESSIONAIRE, limited to: the existing Club House; one (1) bar; one (1) kitchen; front and side courtyards; east, west and south side patios; two (2) gazebos; two (2) restaurant dining rooms; related basements and offices; as designated and approved from time to time by the BOARD (the "FACILITIES"). The approximate location of the existing facilities subject to this License Agreement are depicted on the attached aerial photograph annexed hereto as Appendix "A".

## TENT AND OTHER ENCLOSURES

3. The use and location of any tent or other temporary enclosure or Facility to be used in connection with any event at the FACILITIES shall be subject to the advanced approval in writing of the BOARD.

## HOURS OF OPERATION

4. The CONCESSIONAIRE shall operate the restaurant/bar for ten consecutive months of the year for full dining service during breakfast, lunch, and dinner hours.

## PERSONNEL

5. The CONCESSIONAIRE agrees to have a sufficient number of trained, qualified, uniformed attendants on duty for the proper operation of the FACILITIES. The uniforms to be worn by CONCESSIONAIRE's employees and staff, which shall be furnished by the CONCESSIONAIRE, shall be of a design subject to the approval of the BOARD. Said personnel will be employed by, and will be employees of, the CONCESSIONAIRE. The CONCESSIONAIRE agrees to maintain an efficient staff, which at all times shall be courteous to

the public and reflect favorably upon the VILLAGE. The CONCESSIONAIRE shall require its employees to observe a strict impartiality as to rates and service at the Country Club.

#### VALET PARKING

6. The CONCESSIONAIRE shall provide valet parking for private parties of forty (40) persons or more, other than golf outings, held before 3:00 PM. After 3:00PM, valet parking is required for all catered events and private parties.

#### QUALIFICATIONS

7. The CONCESSIONAIRE warrants that it has (and will maintain during the term of this License Agreement) substantial financial capacity and resources sufficient to provide for the operation and maintenance of the FACILITIES in strict compliance with the terms and conditions of this License Agreement and has extensive experience in the operation and management of a fine dining restaurant, catering and concessions similar in nature to the operation of the FACILITIES.

#### GARBAGE REMOVAL

8. The CONCESSIONAIRE shall, at its own expense, arrange for a private refuse disposal service to dispose of rubbish, garbage, trash, and other waste matter produced by CONCESSIONAIRE's business at the FACILITIES, which shall be removed from the premises as frequently as is necessary to maintain, in the VILLAGE's sole judgment, the FACILITIES in good, clean and sanitary condition.

#### MAINTENANCE AND CARE OF PREMISES

9. The CONCESSIONAIRE agrees that:

(a) The CONCESSIONAIRE shall keep any room, space or area under its control or used in connection with its food and beverage service, including the bathrooms, in a clean and sanitary condition.

(b) The CONCESSIONAIRE shall be responsible for the maintenance, repair, or replacement of the FACILITIES' fixed equipment and furnishings, as well as the interior and exterior structure and the roofs of the FACILITIES, including, but not limited to, the HVAC and other mechanical systems, and all other structures and equipment included within the FACILITIES licensed herein, it being the intent that CONCESSIONAIRE be responsible for all costs and expenses related to the operation of the FACILITIES. All such structures and equipment shall be operated and maintained in strict accordance with all applicable federal, New York State, Suffolk County and VILLAGE codes, regulations and requirements as currently enacted and any future enactments, supplements or modifications. The CONCESSIONAIRE shall be responsible for all landscaping around the perimeter of building (north side of roadway) and Eastern circle, including signage, lighting and planting.

(c) The BOARD or his authorized representative shall have the right to enter upon and inspect the FACILITIES at any time during the term of this License Agreement. If, as a result of such inspection, the BOARD determines that any deficiencies exist in the condition of those areas within the CONCESSIONAIRE's area of responsibility, the BOARD shall provide notice to the CONCESSIONAIRE in writing. The CONCESSIONAIRE shall commence appropriate corrective work within five (5) business days of the date of such notice, or immediately if such deficiencies pose an immediate health or other danger to the public. If the CONCESSIONAIRE fails to complete the appropriate corrective work within a reasonable time of such notice, or immediately in case of health or other public danger, as determined by the BOARD in its sole discretion, the BOARD shall have the right to correct such deficiencies itself and to invoice the CONCESSIONAIRE for the cost of such work. The CONCESSIONAIRE shall pay the invoice for such work immediately upon presentation.

(d) The CONCESSIONAIRE agrees to remove snow from the premises surrounding and leading to the FACILITIES as needed to make the FACILITIES accessible to the public at the earliest possible opportunity.

(e) Upon termination of this License Agreement, the FACILITIES and any related premises, shall be returned to the VILLAGE broom clean and in as good order, condition and repair as they were in on the EFFECTIVE DATE (as defined in Paragraph 43), reasonable wear and tear excepted.

(f) The VILLAGE makes no representation or warranty concerning the present condition or state of maintenance, repair or code compliance of the FACILITIES. CONCESSIONAIRE accepts the FACILITIES in their “AS-IS” condition. Notwithstanding any other requirement of this License Agreement, it shall be the sole responsibility of the CONCESSIONAIRE, within ninety (90) days of the EFFECTIVE DATE, to bring all areas of the FACILITIES under the CONCESSIONAIRE’S occupancy and use into full compliance with all then applicable federal, New York State, Suffolk County and VILLAGE codes, regulations and requirements at its sole expense.

#### UTILITIES

10. The CONCESSIONAIRE shall be responsible for one-hundred (100%) percent of the utility costs of the FACILITIES and shall be responsible for separating the Facility meters from the Country Club meters. as read on Electric Meter Number (currently marked “CONCESSIONAIRE”), Gas Meter Numbers , charges for domestic water and sprinkler water service fees, and costs associated with the Simplex system or any other notification system installed at the FACILITIES. The CONCESSIONAIRE agrees to be billed directly for these charges by the utility provider and to make appropriate arrangements for said direct billing of such utility services within thirty (30) days of the EFFECTIVE DATE.

In the event that the CONCESSIONAIRE's failure to pay any utility bill results in a utility provider terminating any utility service and/or pursuing collection from the VILLAGE, the VILLAGE shall have the right to terminate the License Agreement without notice and to require the CONCESSIONAIRE to immediately vacate the FACILITIES and related premises.

#### PRICING

11. The CONCESSIONAIRE agrees that prices charged for its food and services, shall be comparable to those charged by catering halls/restaurants of similar quality and nature in Suffolk County. The CONCESSIONAIRE shall be required at all times to post a menu and schedule of prices at all FACILITIES (excluding catering). It is agreed and understood that all income derived from the operation of the FACILITIES pursuant to this License Agreement shall belong to the CONCESSIONAIRE, except as provided for in Paragraph 43.

#### LICENSES AND PERMITS

12. The CONCESSIONAIRE shall procure, at its own cost and expense, all licenses or permits necessary for the lawful operation of the FACILITIES and its business. The VILLAGE shall provide reasonable cooperation to the CONCESSIONAIRE to obtain such license or permits.

#### BOARD OF HEALTH REQUIREMENT

13. The CONCESSIONAIRE warrants and agrees that all food and beverage items that are offered for sale under this License Agreement shall be handled, served, and/or sold in a clean and sanitary manner and in accordance with the requirements of the Suffolk County Department of Health and any and all other applicable rules and regulations.

#### ASSUMPTION OF RISK

14. The CONCESSIONAIRE assumes all risk in the operation of the FACILITIES and agrees to comply with all federal, state, and local regulations and all rules,

regulations, and ordinances of the VILLAGE, as well as rules and regulations of the DEPARTMENT. To the extent not undertaken by CONCESSIONAIRE pursuant to this License Agreement, the VILLAGE agrees to comply with any rule, regulation, or ordinance under which it has sole responsibility as the owner of the Country Club.

In the event that the CONCESSIONAIRE and/or its employees, agents or contractors, including any valet service, utilizes any area outside marked parking stalls, the CONCESSIONAIRE shall be fully responsible for any damage or injury to person or property resulting from any golf ball used on the driving range or golf course.

#### ADVERTISING

15. The CONCESSIONAIRE shall be permitted to advertise its products offered at the FACILITIES, provided it does so in a reasonable manner and in good taste, which shall be determined by the BOARD in its sole and absolute discretion. The CONCESSIONAIRE shall bear all costs for advertising.

Subject to the provisions of Paragraphs 37 and 38, the CONCESSIONAIRE may, from time to time, and with the prior written approval of the BOARD, change the trade name under which it does business.

The CONCESSIONAIRE shall be permitted to erect signs, as necessary for the operation of its business to be conducted at the FACILITIES and on the perimeter of the golf course. The signs shall be made of wood or similar material. The size, design, copy, and location of any signs shall be subject to the prior written approval of the BOARD. The CONCESSIONAIRE agrees that any signs are intended solely to inform the public of the location and identity of the FACILITIES, including without limitation, the restaurant, catering, and clubhouse Facility, in a tasteful and appropriate manner. The BOARD shall make the final

decision as to what constitutes a tasteful and appropriate manner. The CONCESSIONAIRE shall bear the cost of any signs, including any utility and maintenance costs associated therewith.

#### TELEPHONE

16. The CONCESSIONAIRE shall pay for its telephone usage in the conduct of its business at the FACILITIES.

#### EQUIPMENT

17. The CONCESSIONAIRE has the right to use any fixed equipment belonging to the VILLAGE at the FACILITIES as of the EFFECTIVE DATE and any fixed equipment installed by the VILLAGE thereafter. The CONCESSIONAIRE may, with prior approval of the BOARD, purchase additional fixed equipment required and necessary for the operation of the FACILITIES.

#### SUPPLIES

18. The CONCESSIONAIRE agrees to provide, at its own cost and expense, all furnishings, equipment, fixtures, materials and supplies required or desired for the operation of a food and beverage service, restaurant and catering service as contemplated under this Agreement.

#### REAL ESTATE TAXES

19. The CONCESSIONAIRE shall be responsible for paying real estate taxes or assessments, if any, on the real property subject to this concession.

#### SUPERVISION

20. The CONCESSIONAIRE shall at all times have a manager, assistant manager, or other designated person in charge on duty. The BOARD shall have the right to approve the CONCESSIONAIRE's appointed senior manager. The CONCESSIONAIRE shall replace its senior manager if directed to do so by the BOARD. The BOARD may direct the replacement of the senior manager if the BOARD, in his or her sole discretion, determines that the

CONCESSIONAIRE's senior manager has failed to perform his or her duties in a professional manner.

#### ACCESS

21. The CONCESSIONAIRE shall grant access to the FACILITIES at all reasonable times to the MAYOR or BOARD or their duly designated representatives, the VILLAGE ATTORNEY or his duly designated representative, and the VILLAGE ADMINISTRATOR or his duly designated representative.

#### VENDING MACHINES

22. The CONCESSIONAIRE agrees that it will not install any amusement, jukebox, arcade or other vending machines without the prior written approval of the BOARD.

#### CATERING

23. The CONCESSIONAIRE shall maintain a current list of all scheduled catered events at the FACILITIES setting forth the amount of any deposits paid and listing the reserving party's name, address and telephone number and shall provide such list and copies of all signed contracts to the BOARD within five (5) business days of the end of every month during the term of this License Agreement. The CONCESSIONARIRE shall not reserve or schedule any events after the expiration of the term of this License Agreement set forth in Paragraph 43 without the express written approval of the BOARD.

The CONCESSIONAIRE shall honor all existing contracts and reservations for previously scheduled catering events booked prior to the EFFECTIVE DATE at the same prices and upon the same terms and conditions. Within ten (10) days after the EFFECTIVE DATE, CONCESSIONAIRE shall contact all customers of such previously booked catering events and shall provide such customers the option of either cancelling the event with a full refund of any previously paid deposits, or to proceed with such event at the same price and upon the same

terms and conditions as previously agreed to. It shall be the responsibility of the former CONCESSIONAIRE to provide CONCESSIONAIRE with copies of the contracts in its possession for all such previously booked catering events and to remit to CONCESSIONAIRE the full amount of any previously paid deposit applicable to any event to be held after the EFFECTIVE DATE. The existing CONCESSIONAIRE shall turn over a list of scheduled catered events and the deposit amounts for the events to the new CONCESSIONAIRE. The CONCESSIONAIRE shall make a payment of \_\_\_% of the catered event contract total to the former CONCESSIONAIRE after each event.

#### ALTERATIONS

24. Any proposed modifications, alterations, repairs, replacement or construction to the FACILITIES made by the CONCESSIONAIRE, except those required on an emergency basis, must be approved in advance by the BOARD. The CONCESSIONAIRE shall be responsible for obtaining any necessary building permits, site plan approvals, or variances required to make such modifications, alterations, repairs, replacement or construction to the FACILITIES, at the sole expense of the CONCESSIONAIRE. The VILLAGE may, in its sole discretion, make any alterations, decorations, additions, or improvements to the FACILITIES and related premises at the VILLAGE's expense. Nothing herein shall be deemed to obligate or require the VILLAGE to make any such alterations, decorations, additions, or improvements.

#### RECORDS AND ACCOUNTS

25. The CONCESSIONAIRE shall keep books and records of account in accordance with Generally Accepted Accounting Procedures. On or before the first day of April of each calendar year of this License Agreement, the CONCESSIONAIRE shall provide the VILLAGE with a copy of a Statement of Income and Expenses and a Balance Sheet, in accordance with the Uniform System of Accounts or other previously established format, covering the

CONCESSIONAIRE's operation under this License Agreement for the previous calendar year certified by its Chief Financial Officer. The CONCESSIONAIRE shall permit the VILLAGE or its duly authorized representative to inspect and audit appropriate books and records at any reasonable time during business hours after giving the CONCESSIONAIRE twenty-four (24) hours notice of the time and day of such inspection and audit.

#### EXCLUSIVITY

26. So long as no Event of Default (as defined in Paragraph 35) exists, the VILLAGE shall not permit any person, entity, or corporation to sell or bring onto the FACILITIES' premises, for general sale to the public, any goods or services permitted to be sold by CONCESSIONAIRE under this Agreement.

#### FIRE INSURANCE

27. The VILLAGE agrees to include the FACILITIES' buildings and VILLAGE-owned furnishings and equipment on the VILLAGE's property insurance policy. The CONCESSIONAIRE agrees to obtain fire insurance for any personal property owned by the CONCESSIONAIRE.

The VILLAGE will determine the cost of such fire coverage and will invoice the CONCESSIONAIRE for the same which shall be paid to the VILLAGE within 30 days of receipt of the invoice. In the event of a loss, the VILLAGE will promptly make a claim against the policy, and reserve all proceeds received for necessary repairs or reconstruction. The CONCESSIONAIRE shall perform all necessary repairs or reconstruction in accordance with all applicable provisions contained in this License Agreement. CONCESSIONAIRE agrees to promptly commence and diligently pursue the restoration and repair of the FACILITIES and to restore the FACILITIES to the same or substantially similar condition as existed before the loss. The CONCESSIONAIRE shall bear any expense incurred beyond the insurance proceeds. The

CONCESSIONAIRE shall be responsible for any policy deductible. Such policy deductible is subject to change at any time based upon the VILLAGE's property policy.

#### POSSESSION

28. It is expressly understood and agreed that no building space or equipment is leased to the CONCESSIONAIRE, but that during the term of this License Agreement, the CONCESSIONAIRE shall have unrestricted use and possession of the FACILITIES, except as provided in this License Agreement. The CONCESSIONAIRE has the right to occupy the spaces assigned to it, operate under the license hereby granted to it, and continue in possession of the FACILITIES subject to the terms of this License Agreement only so long as the CONCESSIONAIRE strictly and properly complies with every provision contained in this License Agreement. No interest in real property is conveyed by virtue of or under this License Agreement.

#### TITLE TO EQUIPMENT

29. Title to all non-fixed equipment provided by the CONCESSIONAIRE shall remain with the CONCESSIONAIRE, and such equipment shall be removed by the CONCESSIONAIRE at the termination of this License Agreement. If any property remains on the FACILITIES or anywhere on the Country Club premises after the expiration or termination of this License Agreement, the VILLAGE shall notify the CONCESSIONAIRE, and if the CONCESSIONAIRE fails to remove such property within ten (10) days from the date of such notification, the VILLAGE may deal with such property as though it had been abandoned and charge all costs and expenses incurred in the removal thereof to the CONCESSIONAIRE.

The CONCESSIONAIRE may move non-fixed equipment between the FACILITIES and its other facilities as needed.

### DAMAGE TO EQUIPMENT

30. The CONCESSIONAIRE agrees to be responsible to the VILLAGE for any damage or loss to VILLAGE equipment that occurs by reason of the CONCESSIONAIRE's negligence or other fault, or that of its patrons, employees, agents, contractors or suppliers.

### BAILMENT

31. The CONCESSIONAIRE agrees to be responsible for loss or damage to property turned over to it by any patron of the FACILITIES. CONCESSIONAIRE may limit its ability for any such loss or damage as provided under applicable law.

### WAIVER OF CLAIMS

32. The CONCESSIONAIRE waives any and all claims for compensation from the VILLAGE for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the structures, equipment, water supply systems, drainage systems, gas mains, electrical apparatuses, or wires furnished for the premises, or by reason of any loss of any gas supplies, water supplies, heat, or current, which may occur from time to time from any cause, or for any loss or damage resulting from fire, water, tornado, wind, or storm of any kind, civil commotion, or riot, and the CONCESSIONAIRE releases and discharges the VILLAGE and its agents from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, unless caused by the negligence of the VILLAGE, its agents, or employees. The CONCESSIONAIRE further waives any and all claims for compensation or refund of any capital investment or investment in maintenance, repairs, furnishings or equipment, in the event this License Agreement is terminated by the VILLAGE for cause sooner than the fixed term pursuant to Paragraph 35.

Nothing herein should be construed as a waiver of the insurance claims described in Paragraph 27.

INSURANCE AND WORKERS' COMPENSATION; INDEMNITY

33. The CONCESSIONAIRE agrees to obtain, from an insurance company authorized to do business in the State of New York and rated \_\_\_ by Best's Rating, and to keep in force during the term of this License Agreement, a policy of comprehensive general liability on which the CONCESSIONAIRE and the VILLAGE are each named insured, including, but not limited to, for the torts and negligence of the CONCESSIONAIRE's personnel, with a combined single limit of \$2,000,000 per occurrence for bodily injury and property damage plus excess liability insurance for all coverages included in the general liability policy in the amount of \$3,000,000 per occurrence. Employment Practices Liability Insurance.

The CONCESSIONAIRE shall comply with all provisions of New York Workers' Compensation Law and shall furnish a certificate showing evidence of current coverage.

All insurance coverage required by this Paragraph shall be subject to the approval of the VILLAGE Attorney.

All policies shall be issued in the name of the CONCESSIONAIRE, and the VILLAGE shall be listed as a named insured. The insurance policies required by this Paragraph shall not be canceled without thirty (30) days prior written notice to the VILLAGE. If the CONCESSIONAIRE fails to maintain such insurance policies and to obtain such policies and furnish certificates evidencing such coverage within thirty (30) days of the receipt of notice by the VILLAGE regarding this deficiency, the VILLAGE shall have the right to terminate this License Agreement.

The CONCESSIONAIRE agrees to indemnify, defend and hold the VILLAGE harmless for and against any personal injury, wrongful death or property damage or claim of monetary or other damages which occurs (i) during the term of this Agreement, (ii) during any lapse in insurance coverage or as a result of any failure by the CONCESSIONAIRE to abide by

any notice or other term or provision of the policy, (iii) by the failure of CONCESSIONAIRE to abide by any term or condition of this License Agreement, (iv) by negligence or intentional acts of CONCESSIONAIRE, its employees, agents or contractors, or (v) with respect to the elements covered under Paragraph 14 – Assumption of Risk.

The indemnity and hold harmless provisions of this Paragraph shall survive and be of full force and effect notwithstanding any lapse in the insurance coverage required under this Paragraph.

#### TERMINATION OF AGREEMENT

34. The VILLAGE has the right to terminate this License Agreement for either cause or at will. A termination at will may be for any reason or no reason at the sole election of the VILLAGE.

35. The VILLAGE shall be permitted to terminate for cause if any one of the following events (“Events of Default”) occurs:

- (a) The BOARD reasonably determines that the CONCESSIONAIRE has failed to fulfill its material obligations with sufficient diligence to ensure proper services within the term of this License Agreement, including any authorized extension;
- (b) The CONCESSIONAIRE fails to pay its utility costs as described in Paragraph 10 and such failure continues beyond the notice and cure period set forth below;
- (c) The CONCESSIONAIRE fails to maintain the insurance policies described in Paragraphs 27 or 33, or fails to furnish certificates and endorsement pages evidencing such policies within thirty (30) days

of the receipt of notice from the VILLAGE sent in accordance with Paragraphs 27 and 33;

- (d) The CONCESSIONAIRE does not comply with all laws, ordinances, rules, or provisions governing this License Agreement;
- (e) The CONCESSIONAIRE engages in any immoral or illegal conduct or otherwise violates any law, rule, regulation, or judicial order applicable to the CONCESSIONAIRE, this License Agreement, or the CONCESSIONAIRE's operation of food and beverage services and catering services;
- (f) The CONCESSIONAIRE assigns, or otherwise transfers, all or any of its interest in the License Agreement or in the premises, or otherwise causes a change in control in the CONCESSIONAIRE's ownership, without the prior written consent of the VILLAGE as described in Paragraphs 38 and 39;
- (g) The CONCESSIONAIRE is in default of any of the terms and conditions of this License Agreement and such failure continues beyond the notice and cure period set forth below;
- (h) The CONCESSIONAIRE does not timely make all payments to the VILLAGE required under this License Agreement, or under any other license or concession agreement then pending between the VILLAGE and CONCESSIONAIRE including, but not limited to, the monthly concession fee payments and such failure continues beyond any notice and cure period as set forth below;

- (i) Any representation made by CONCESSIONAIRE in the Request for Proposal For the Catering Services (“RFP”), a copy of which is attached hereto and made a part hereof, or at the presentation before the VILLAGE Board on December \_\_\_, 2018 (the “VILLAGE Board Presentation”), is breached or determined to be untrue or inaccurate.

Upon the occurrence of any of the Events of Default described in (b), (d), (g) and (h) above, the VILLAGE, without prejudice or waiver of any of its rights or interests under the License Agreement or its remedies at law, shall give the CONCESSIONAIRE written notice of the Event of Default. The CONCESSIONAIRE shall have (i) five (5) days with respect to any monetary default and (ii) thirty (30) days with respect to any other such default, from the date of such notice to cure the Event of Default, except if such default is not a payment default or otherwise susceptible to cure within thirty (30) days so long as the CONCESSIONAIRE commences to cure the default within thirty (30) days and thereafter diligently pursues the same to completion within a reasonable period of time (the “Cure Period”). If any Event of Default occurs for which there is no Cure Period or if the CONCESSIONAIRE fails to cure an Event of Default within the applicable Cure Period, the VILLAGE shall have the right to declare the CONCESSIONAIRE in default and to terminate the License Agreement and assume possession and control of the Facilities and all materials, equipment, and operations under this License Agreement. The VILLAGE may in addition thereupon, but shall not be required to, undertake all necessary and appropriate measures to complete any uncompleted capital improvements and repairs at the sole cost of the CONCESSIONAIRE. The CONCESSIONAIRE shall be responsible for obtaining any necessary

building permits, site plan approvals, or variances required to make such capital improvements and repairs to the FACILITIES, at the sole expense of the CONCESSIONAIRE.

36. The VILLAGE shall be permitted to terminate at will by providing thirty (30) days written notice to the CONCESSIONAIRE. If the VILLAGE terminates at will, the VILLAGE shall pay to the CONCESSIONAIRE a sum equal to the actual cost of construction of capital improvements made to the FACILITIES after the EFFECTIVE DATE, if any, as certified through the process described in Paragraph 44, less 5% for each year or part of a year elapsed since the completion of the improvement unless same were reimbursed or paid for by insurance proceeds, and in such event CONCESSIONAIRE shall not be reimbursed for its capital improvements to the extent thereof. In addition, the VILLAGE will pay the CONCESSIONAIRE for lost profits on catering events which were booked prior to receipt of a notice of termination for any reason other than a termination for cause, subject to any offset for any amounts due to the VILLAGE for any reason under this License Agreement. The amount of lost profits shall be certified by an independent public accountant selected by CONCESSIONAIRE, at its sole cost and expense, and subject to the reasonable approval of the BOARD.

In the event of a termination of this License Agreement prior to the expiration the term hereof for any reason, CONCESSIONAIRE shall deliver to BOARD within two (2) business days a schedule of all future events for which a deposit has been paid to CONCESSIONAIRE, together with a copy of the contract and the amount of said deposit in cash or by certified check, which amounts shall be remitted to the VILLAGE and held in escrow by the VILLAGE pending either the satisfactory occurrence or cancellation of the event.

In the event that CONCESSIONAIRE does not vacate the FACILITIES as required following a termination or the expiration of the term of this License Agreement, CONCESSIONAIRE shall pay to the VILLAGE a monthly holdover fee equal to 200% of the Concession Fee (as defined in Paragraph 43). Because of the difficulty or impossibility of determining the VILLAGE's damages resulting from CONCESSIONAIRE's holding over and to avoid unnecessary litigation to determine same, the parties hereby agree to and adopt the holdover fee which represents a reasonable estimate of the license fee and liquidated damages to the VILLAGE. CONCESSIONAIRE acknowledges and agrees that the holdover fee is not a penalty of any kind. Notwithstanding anything to the contrary herein contained, in the event that CONCESSIONAIRE shall holdover in excess of sixty (60) days, then in addition to liability for the payment of the holdover fee, CONCESSIONAIRE shall be liable to the VILLAGE for all losses and damages, including consequential damages, which the VILLAGE may reasonably incur or sustain by reason of such holding over, including, without, limitation, damages incurred or sustained by reason of the VILLAGE's inability to timely place a new operator as licensee of the FACILITIES or any portion thereof as a result of such holding over. The foregoing shall not be deemed or construed as an extension or renewal of the term of this License Agreement and the VILLAGE reserves all legal rights to remove CONCESSIONAIRE from the FACILITIES.

#### MODIFICATION

37. The express terms of this License Agreement control and supersede any course of performance or usage of the trade inconsistent with any of the terms hereof. The License Agreement may be modified only by a writing duly executed by the VILLAGE and the CONCESSIONAIRE, and no modification of this License Agreement shall be effective until the

modification has been agreed to in writing and duly executed by the VILLAGE Supervisor or his duly designated representative after approval by the VILLAGE Board.

#### TRANSFER OR ASSIGNMENT

38. The CONCESSIONAIRE may not assign, or otherwise transfer, all or any part of its interest in this License Agreement or in the FACILITIES or otherwise cause a change in control in the CONCESSIONAIRE's ownership without the prior written consent of the VILLAGE Board, which consent may be withheld in the VILLAGE's commercially reasonable discretion. The term "assign" shall mean the transfer or setting over of a right or interest. The term "change in control" shall mean any change in ownership equal to the percentage of votes or membership interests required to exercise decision-making authority.

39. In the event that the VILLAGE Board consents to the assignment or transfer of this License Agreement or the change in control in the CONCESSIONAIRE's ownership, the assignee, transferee, or new owner shall operate the food and beverage service and catering service in a fashion substantially similar to the CONCESSIONAIRE's operation and in strict conformance with the terms, conditions and requirements of this License Agreement.

#### FINANCING

40. Any collateralization or mortgage of this License Agreement in full or in part, or any of the CONCESSIONAIRE'S revenues, financial interests or rights hereunder, or any other financing agreement in connection with CONCESSIONAIRE's performance hereunder shall be subordinate to this Agreement and limited solely to financing in connection with the operation and improvements of the FACILITIES, and shall be submitted to the VILLAGE Attorney for review and subject to the prior approval of the VILLAGE Board, which shall not be unreasonably withheld. Under no circumstances shall the VILLAGE be liable or responsible for any indebtedness incurred by the CONCESSIONAIRE nor shall any improvements to the

FACILITIES be mortgaged or a lien granted to any other party in connection with any financing obtained by the CONCESSIONAIRE for the operation of the FACILITIES.

INDEPENDENT CONTRACTOR STATUS

41. The CONCESSIONAIRE agrees that it is, and shall at all times be deemed to be, an independent contractor, and it shall not, in any manner whatsoever, by its actions or deeds, commit the VILLAGE to any obligation irrespective of the nature thereof, and it shall not, at any time or for any purpose, be deemed an employee of the VILLAGE. It is further understood and agreed that no agent, servant, or employee of the CONCESSIONAIRE shall, at any time or under any circumstances, be deemed to be an agent, servant, or employee of the VILLAGE.

TERM

42. The term of this License Agreement shall be for a period of ten (10) years commencing on the issuance by the VILLAGE of a NOTICE OF AWARD (the “EFFECTIVE DATE”). The License Agreement may be renewed or extended for two (2) periods of FIVE (5) years each by mutual written consent and approval by the VILLAGE Board. The CONCESSIONAIRE must provide the VILLAGE with notice of intention to renew or extend the License Agreement eight (8) months prior to the end of the term.

CONCESSION FEES

43. (a) The CONCESSIONAIRE shall pay the VILLAGE in accordance with the following schedule: \$\_\_\_\_\_ per month commencing on the [TBD] until [12 months thereafter] (such month and day being referred to as the “ANNIVERSARY DATE”); followed by annual increases of 3% on each ANNIVERSARY DATE during the term of this License Agreement (the “Concession Fee”).

(b) Simultaneously with the execution of this Agreement CONCESSIONAIRE shall pay to the VILLAGE the amount of \$\_\_\_\_\_ as a partial

prepayment of the Concession Fee (the "Prepayment"). The Prepayment shall be credited against the monthly Concession Fees otherwise payable pursuant to (a) above until the Prepayment equals the Concession Fees due; thereafter CONCESSIONAIRE shall commence payment of the Concession Fee described above.

(c) The CONCESSIONAIRE agrees to pay a late charge of five (5%) percent of the monthly Concession Fee due if the Concession Fee is received by the VILLAGE after the 20th day of any month. The VILLAGE further reserves the right to require Concession Fees to be paid by certified check or by ACH. The VILLAGE shall exercise this option at its sole discretion by notifying the CONCESSIONAIRE by certified mail.

(d) In addition to the Concession Fee, if the CONCESSIONAIRE's annual gross receipts exceed \$\_\_\_\_\_ ("Sales Base"), CONCESSIONAIRE shall pay to the VILLAGE an annual fee of \_\_\_% of the annual gross receipts in excess of the Sales Base. Such annual fee shall be paid to the VILLAGE on or before April 1<sup>st</sup> of each calendar year on the annual gross receipts for the prior calendar year (or partial calendar year). In the event of any partial calendar year, the Sales Base shall be reduced proportionately.

(e) Except as provided below, the term "gross receipts" as used in this License Agreement shall mean the total gross amount received by, derived from or accruing to the CONCESSIONAIRE by reason of the privileges granted under this License Agreement, including but not limited to amounts from any sales or rentals, rebates, the provision of any food or beverage services, including catering services, and the provision of any other services authorized by this License Agreement.

The following shall be excluded or deducted from the gross receipts:

(i) Excise, sales, or other taxes that are imposed upon the sale or rental of goods or services that are collected by the CONCESSIONAIRE for the appropriate government or taxing authority, including any taxes or other levies of a different character imposed on the CONCESSIONAIRE subsequent to the date of this License Agreement that are intended as substitutes for or to complement any such taxes. This exclusion from the gross receipts is not intended to apply to any franchise, capital stock, income, or similar taxes that are based upon profits of the CONCESSIONAIRE.

(ii) Tips, gratuities, or other charges for merchandise or services that are included in the account or bill of a patron and for which the CONCESSIONAIRE makes actual payment to employees or others, provided, however, that any portions of such charges retained by the CONCESSIONAIRE shall be included in the gross receipts.

No deductions from the gross receipts shall be made for consideration paid by the CONCESSIONAIRE to travel agencies, group tour operators or organizers, outside salesmen, or promotional or booking organizations or services; nor shall any exclusion from the gross receipts be made for uncollectible patron accounts. No deduction or exclusion from the gross receipts shall be made for fees paid to credit card companies, to collection agencies, or to other outside parties engaged to assist in the collection of accounts receivable.

Immediately upon the sale of goods or services subject to license fees, those license fees shall immediately vest in and become the property of the VILLAGE, for which the CONCESSIONAIRE shall be responsible until delivered to the VILLAGE as provided in this License Agreement.

The VILLAGE shall have the right to audit or cause to be audited the sales reports and financial statements that CONCESSIONAIRE is required to submit pursuant to this

Agreement. If any such audit shall disclose an understatement of the gross receipts of the FACILITIES for any period or periods, CONCESSIONAIRE shall pay to the VILLAGE, within fifteen (15) days after receipt of the audit report, the understated fee relating thereto together with interest thereon at the rate of twelve percent (12%) per year (or, if lower, the maximum rate of interest allowed by law), calculated from the date when such fee should have been paid to the date of actual payment. Further, if such understatement for any period or periods shall be five percent (5%) or more of the originally reported gross receipts for such period or periods, CONCESSIONAIRE shall reimburse the VILLAGE for the cost of such audit including, without limitation, the charges of any independent accountant, and the travel expenses, room and board, and compensation of such accountant and of the employees of the VILLAGE.

#### FUTURE CAPITAL IMPROVEMENTS

44. The CONCESSIONAIRE may make additional capital improvements to the FACILITIES, at its own cost and expense, with no setoff from the Concession Fee or other payments to the VILLAGE, provided that all such capital improvements must be approved by the BOARD. Notwithstanding the foregoing, CONCESSIONAIRE shall make the capital improvements set forth in the RFP and at the VILLAGE Board Presentation.

(a) Designs for all capital improvements shall be developed by CONCESSIONAIRE, at its sole cost and expense, in accordance with the New York State Building and Fire Code and in compliance with the requirements of the Americans with Disabilities Act and other applicable codes, law, regulation, or ordinance. The CONCESSIONAIRE shall be responsible for obtaining any necessary building permits or site plan approvals the sole expense of the CONCESSIONAIRE. Designs shall be prepared and signed by architects and engineers licensed to practice in New York State. The CONCESSIONAIRE shall select all architectural and engineering consultants, including consultants selected for the

development of the draft and final environmental impact statements, each of whom shall be licensed to practice in New York State as needed, subject to the approval of the BOARD. Designs for all capital improvements shall be subject to the prior written approval of the BOARD before any advertising for or acceptance of bids or the award of contracts for construction. Bidders shall be required to pay wages at the prevailing rates set by the New York State Department of Labor. It shall be the CONCESSIONAIRE's responsibility to enforce these requirements.

(b) The BOARD's approval and acceptance of any capital improvement shall be conditioned upon the DEPARTMENT'S receipt of a report from an independent construction consulting firm selected and retained by the VILLAGE at the expense of the CONCESSIONAIRE confirming that the construction of such capital improvement has been completed and setting forth: (i) the actual cost of construction of the completed capital improvement; and (ii) the date on which the construction was completed. No at-will termination payment shall be made for any capital improvement until it is accepted and approved by the DEPARTMENT.

(c) The CONCESSIONAIRE shall be solely responsible for any expenses in excess of originally-estimated costs of the project proposed by the CONCESSIONAIRE and approved by the BOARD. The VILLAGE shall have no liability whatsoever either to the CONCESSIONAIRE or the CONCESSIONAIRE's contractors, subcontractors, or suppliers for any additional expenses, except as provided by law.

(d) Title to all improvements shall vest in the VILLAGE brick-by-brick during and following the performance of any work.

(e) The CONCESSIONAIRE agrees to obtain, prior to the commencement of any construction projected to cost in excess of \$100,000, a performance bond

and a payment bond in the full amount of the cost of construction for any and all capital improvements.

(f) Without limiting any of the foregoing, the design, construction and occupancy of any capital improvements shall be subject to the ordinary requirements for review and approval of new construction by the VILLAGE Department of Planning and Development; however, the VILLAGE shall waive all application and permit fees for said review and approval.

#### REIMBURSEMENT OF KEY MONEY

45. Upon execution of this Agreement, the CONCESSIONAIRE agrees to reimburse to the current operator, Crest Caterers, LLC, as capital key money in the amount of \$947,866.78, for the equipment and capital improvement investment by the Crest Group. This payment shall be subject to an executed Agreement between Crest and the Village.

#### WAIVER OF CLAIMS

46. The CONCESSIONAIRE waives any and all claims for compensation from the VILLAGE for any and all loss or damage sustained by reason of any defect, deficiency, or impairment of the structures, equipment, water supply systems, drainage systems, gas mains, electrical apparatuses, or wires furnished for the premises, or by reason of any loss of any gas supplies, water supplies, heat, or current, which may occur from time to time from any cause, or for any loss or damage resulting from fire, water, tornado, wind, or storm of any kind, civil commotion, or riot, and the CONCESSIONAIRE releases and discharges the VILLAGE and its agents from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, unless caused by the negligence of the VILLAGE, its agents, or employees or by virtue of the VILLAGE's failure to comply with the terms and conditions set forth in this Agreement.

## NOTICES

47. Any notices hereunder shall be in writing and shall be given upon delivery by: (i) hand delivery, (ii) delivery by a reputable, recognized national overnight courier service, or (iii) the United States Postal Service when sent by Priority Mail Express, in each instance, addressed to each party at its address set forth above. Any such notice, request or other communication shall be considered given or delivered, as the case may be, on the date of delivery or the date that delivery is refused as evidenced by the records of the courier or delivery service or the United States Postal Service, as applicable. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice, request or other communication. By giving at least five (5) business days prior notice thereof, any party may from time to time at any time change its mailing address hereunder.

## USE OF GOLF COURSE

48. In furtherance of its food and beverage service and catering service at the FACILITIES, the CONCESSIONAIRE shall be entitled to schedule up to two (2) foursomes per week on the Golf Course, at Existing Guest rates, subject to availability of playing times and course conditions. Arrangements for such foursomes shall be made with the Pro Shop. The CONCESSIONAIRE shall be entitled to arrange for corporate outings, to be paid for at the prevailing rate, subject to the prevailing golf course rules and regulations relating to such outings.

## MARKETING AND PUBLICITY

49. In connection with any marketing and publicity, the CONCESSIONAIRE shall agree with the following:

- a. Any signage, promotional materials, and advertising materials, whether in print, on-line, or on television, must be co-branded to include the VILLAGE's seal and/or wordmark(s);
- b. Any signage, promotional materials, and advertising, whether in print, on-line, or on radio or television, must make mention of the VILLAGE of Port Jefferson;
- c. The concessionaire must agree to offer for sale VILLAGE merchandise if and when the VILLAGE decides to offer such merchandise for sale (i.e. shirts, hats, sweatshirts, etc.).

50. At all times, the CONCESSIONAIRE must secure the approval of the Board of Trustees prior to the publication, transmission, dissemination, or posting of any signage, promotional materials, and advertising materials, whether in print, on-line, or on radio or television.

#### MISCELLANEOUS

51. CONCESSIONAIRE shall comply with all applicable laws and regulations in operating the concession services under this License Agreement at the FACILITIES. The VILLAGE shall comply with all applicable laws and regulations relating to ownership of the Country Club Golf Course and the FACILITIES.

52. This License Agreement is subject to the reasonable rules and regulation set by Board of Trustees and the VILLAGE.

53. If any term or provision of this License Agreement or the application thereof to any party or circumstances shall to any extent be invalid or unenforceable, the remainder of this

License Agreement or the application of such term or provision to parties or circumstances other than those to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

54. One or more waivers by either party of the obligation of the other to perform any covenant or condition shall not be construed as a waiver of a subsequent breach of the same or any other covenant or condition. The failure of either party to seek redress for a violation of or to insist upon the strict performance of any term, covenant or condition in this License Agreement shall not prevent a similar act from constituting a default under this License Agreement.

55. Wherever herein the singular number is used, the same shall include the plural and the masculine gender shall include the feminine and neuter genders.

56. The terms, covenants and conditions herein contained shall be binding upon and inure to the benefit of the respective parties and their successors and permitted assigns.

57. The article, section and marginal headings herein are intended for convenience in finding the subject matters, and are not to be used in determining the intent of the parties to this License Agreement.

58. This License Agreement contains the entire understanding and agreement by and between the parties, and all prior and contemporaneous understandings, agreements and negotiations are herein merged. This License Agreement shall not be modified, terminated (except for a termination in accordance with the express provisions of this License Agreement), nor any provision waived except in writing signed by the CONCESSIONAIRE and the VILLAGE.

59. The interpretation and validity of this License Agreement shall be governed by the laws of the State of New York.

60. This License Agreement shall be executed on behalf of the VILLAGE by the VILLAGE of Port Jefferson Mayor after receiving approval from the VILLAGE Board of Trustees.

61. Each and every provision of law required to be inserted in this License Agreement shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License Agreement shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

62. This License Agreement may be signed utilizing counterpart signature pages which when taken together shall constitute a complete and fully executed agreement. Facsimile or PDF copies of signatures shall be deemed to be the same or original signatures.

IN WITNESS WHEREOF, CONCESSIONAIRE and VILLAGE have respectively executed and delivered this License Agreement as of the date first above written.

INCORPORATED VILLAGE OF PORT JEFFERSON

\_\_\_\_\_  
By: Margot J. Garant, Mayor  
Date: \_\_\_\_\_

\_\_\_\_\_  
By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

