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## **CONCESSION AGREEMENT**

*State of Alabama*

### **BACKGROUND**

A. This Concession Agreement (hereinafter referred to as the "Agreement") is entered into and made effective as of \_\_\_\_\_ (hereinafter referred to as the "Effective Date") by and between the following property owner (hereinafter referred to as the "Owner"), of the following address:

\_\_\_\_\_  
of  
\_\_\_\_\_

and the following provider of concessions (hereinafter referred to as the "Concessionaire"), of the following address:

\_\_\_\_\_  
of  
\_\_\_\_\_

B. *WHEREAS*, \_\_\_\_\_ seeks the temporary professional services of a skilled independent contractor capable of working without direct supervision to provide concessions to the public at the following location:

\_\_\_\_\_

C. *WHEREAS*, the Concessionaire has the requisite skill and experience necessary to

provide such services.

*NOW THEREFORE*, in consideration of the obligations and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties do contract and agree as follows:

## **I. GOODS AND SERVICES PROVIDED.**

1. Concessionaire shall render the following services and/or provide the following goods at the concession stand (the "Concession Stand") provided by the Owner:

\_\_\_\_\_

2. The Concessionaire shall provide their services in a manner consistent with the accepted practices for other similar services, performed to the Owner's satisfaction, within the time period described herein, and pursuant to the direction of the responsible officer of the Owner or their designee.

3. The Concessionaire and all of its employees, agents, or representatives shall provide the highest quality of customer service and shall treat all customers with courtesy and respect. The Concessionaire shall honor all reasonable requests for refunds, including requests from dissatisfied customers.

4. The Concession Stand shall remain open during the following hours of operation unless the Owner notifies the Concessionaire of other hours of operation, and such hours shall be posted in a conspicuous place on the Concession Stand:

\_\_\_\_\_

5. All pricing of any services or goods is set forth in an Exhibit attached hereto and incorporated by this reference, to be approved in writing by the Owner. The Concessionaire may not change any pricing without the Owner's prior written consent, which consent may not be unreasonably withheld.

6. All services or products offered for sale by the Concessionaire to the public shall be approved in writing by the Owner prior to distribution or sale of any such products. The Concessionaire shall comply with any reasonable requests made by the Owner to either add or eliminate certain types of food, beverages, or other products.

## **II. CONCESSIONAIRE RESPONSIBILITIES.**

7. The Concession Stand shall be properly staffed in order to satisfactorily provide services and prevent undue delay to customers. The Concessionaire shall plan its staffing in advance and anticipate to the best of its ability any events, such as holidays or special events, which may require additional or altered staffing. In the event that the Owner determines in their sole discretion that the Concessionaire is not adequately staffing the Concession Stand, they may notify the Concessionaire of that fact and the Concessionaire shall endeavor to immediately increase their staffing to meet the Owner's recommendation.

8. The Concessionaire shall provide sufficient training to its employees, agents, and/or representatives for the development of the skills and techniques necessary to perform their obligations under this Agreement including, but not limited to, promoting customer service, presentation, cleanliness, positive attitude, and promoting the Owner's policies.

9. All of the Concessionaire's employees, agents, representatives, or licensees shall have a neat, clean, and sanitary personal appearance. Those who come in direct contact with the public shall wear clothing or identification which distinguishes them as employees of the Concessionaire. The Concessionaire's employees shall adhere to the following dress code:

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10. The Concessionaire shall comply with and perform the Services in accordance with all applicable federal, state, and city laws including, without limitation, all city codes, ordinances, resolutions, standards, and policies, as now existing or hereafter adopted or amended, including but not limited to the following:

- a. Federal, state, and local health, safety, and licensing laws relating to the sale of concession goods; and
- b. City code provisions requiring any person or entity doing business in the city to obtain a business registration.

### **III. CONCESSION EQUIPMENT.**

11. The Owner will provide at their sole cost and expense all concession facilities, machines, and equipment (hereinafter referred to as the "Concession Equipment") necessary for the Concessionaire to provide their services.

12. The Owner warrants that all equipment is in good working order and fit for its purpose.

13. The Owner agrees that all necessary equipment will be delivered and/or installed and ready for use within \_\_\_\_\_ from the execution of this Agreement.

14. The Owner, at their sole cost and expense, shall maintain the Concession Stand and Concession Equipment and the surrounding real property in good condition and repair, including, but not limited to, maintaining the Concession Stand in a neat, clean, and sanitary condition and removing all garbage, trash, or other debris on a regular basis.

15. If the Concession Stand or any part thereof are damaged by any cause other than the sole negligence of the Owner, its employees, or agents, the Concessionaire shall, at its sole cost and expense, restore the Concession Stand to a condition equivalent to or better than their current condition immediately prior to such damage.

16. The Concessionaire shall not make any alterations, additions, or improvements to the Concession Stand or to equipment provided by the Owner without the Owner's prior written consent, which consent may not be unreasonably withheld. In the event the Owner consents to the making of any alterations, additions, or improvements to the Concession Stand or to equipment provided by the Owner, the same shall be made at the Concessionaire's sole cost and expense, and in the event such alterations, additions, or improvements are made to a structure, building, or other improvement attached to the real property, the same will become a part of the real property and surrendered to the Owner upon the termination of this Agreement. The Owner has no obligation to alter, remodel, improve, repair, decorate, or paint the Concession Stand.

#### **IV. TERM.**

17. The Term of this Agreement shall commence upon the Effective Date of this Agreement.

18. This Agreement will terminate automatically on \_\_\_\_\_.

19. This Agreement may be extended for additional periods of time upon the mutual written agreement of the Parties.

#### **V. SECURITY DEPOSIT.**

20. The Concessionaire shall pay to the Owner a deposit of **\$2 (two US dollars) (the "Deposit")**, against any or all possible damage related to or arising from the Concessionaire's activities at the Venue, by \_\_\_\_\_. If the Concessionaire fails to provide the Deposit promptly by \_\_\_\_\_, the Owner may cancel this Agreement

without further obligation.

## **VI. PAYMENT.**

21. In full consideration of Owner's permission to Concessionaire for Concessionaire to provide services at Owner's venue as described in this Agreement, the Concessionaire agrees to pay the Owner a fixed fee of **\$2 (two US dollars) (the "Fee")**.

22. The Concessionaire shall pay the Owner's fixed fee in the form of one lump sum payment, due upon completion of the services rendered and the termination of this Agreement.

23. For any payment that is not paid when due, the Concessionaire shall pay a late fee of **\$2 (two US dollars)**.

24. The Concessionaire shall be solely responsible for the payment of any taxes imposed by any lawful jurisdiction as a result of the performance and payment of this Agreement.

## **VII. WARRANTY.**

25. The Concessionaire warrants that it has the requisite training, skill, and experience necessary to provide the Services and is appropriately accredited and licensed by all applicable agencies and governmental entities, including but not limited to being registered to do the business.

## **VIII.**

## **IX. FORCE MAJEURE.**

26. Neither Party will be held liable for any failure to perform their obligations under this Agreement where such breach is due to any of the following: acts or regulations of public authorities, labor strikes, inclement weather, pandemic, interruption or delay of transportation services, acts of God, or any other legitimate cause beyond the reasonable control of the Owner and the Concessionaire.

## **X. INDEMNIFICATION.**

27. The Owner and the Concessionaire, at their own expense, shall indemnify, defend, and hold the other, its partners, directors, agents, and employees harmless from and against any and all third-party lawsuits, actions, or proceedings and any related costs and expenses, including attorney's fees, resulting directly and solely from the indemnifying party's negligence or willful misconduct.

28. Neither the Owner nor the Concessionaire shall be responsible for defending, indemnifying, or holding the other party, their partners, directors, agents, or employees harmless from and against any third-party lawsuits, actions, or proceedings that result from the negligence or wrongful acts of the party seeking indemnification or any third-party.

29. The Owner and the Concessionaire agree to give each other prompt written notice in the event of any claim arising to which they believe indemnification is relevant and necessary.

30. The indemnifying party shall have the right to defend against such claims with counsel that they have chosen and to settle such claims as they deem reasonable and appropriate.

31. The Owner and the Concessionaire agree to co-operate with each other in the defense of any such claims.

32. The provisions of this section shall survive the expiration or termination of this Agreement with respect to any event occurring prior to such expiration or termination.

33. The Concessionaire warrants and represents that it has, or will obtain, sufficient personal injury and property damage liability insurance with respect to the activities of the Concessionaire, its employees, agents, or guests in relation to their activities operating the Concession Stand at the Owner's venue.

## **XI. CONFIDENTIALITY.**

34. The Parties agree and acknowledge that in the course of the Agreement, or additional services pursuant to this Agreement, that each may be given access to, or come into possession of, confidential information of the other party which information may contain trade secrets, proprietary data, or other confidential material of that party.

35. Unless expressly authorized by the other party, neither party shall disclose to any

third party any information or materials provided by the other party under this Agreement or use such information in any manner other than to perform its obligations under this Agreement.

36. The foregoing restrictions do not apply to any information that is in the public domain or in the receiving party's possession, in each case other than as a result of a breach of confidentiality obligations of the receiving party or of a third party.

## **XII. EXCLUSIVITY.**

37. This Agreement grants the Concessionaire an exclusive right to distribute its products. The Owner agrees not to grant any other persons or entities the right to sell goods or provide services that directly compete with the goods or services provided by the Concessionaire.

## **XIII. SIGNS.**

38. The Concessionaire shall be limited to placing a sign on the Concession Stand.

39. The Concessionaire shall not place any sign, notice, or advertising matter in or about the Owner's real property without their prior written consent, which consent may be withheld for any reason.

40. If required by city code, the Concessionaire shall obtain all necessary permits in connection with any such signs.

## **XIV. DEFAULT.**

41. The occurrence of any of the following shall constitute a material default under this Agreement:

- a. The failure to make a required payment when due.
- b. The insolvency or bankruptcy of either Party.
- c. The subjection of any of either Party's property to any levy, seizure, general assignment for the benefit of creditors, application, or sale for or by any creditor or governmental agency.

d. The failure to make available or deliver the services in the time and manner provided for in this Agreement.

## **XV. REMEDIES.**

42. In addition to any and all other rights a party may have available according to law, if a Party defaults by failing to substantially perform any provision, term, or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other Party may terminate the Agreement by providing written notice to the defaulting Party.

43. This notice shall describe with sufficient detail the nature of the default.

44. The Party receiving such notice shall have 7 days from the effective date of such notice to cure the default(s). Unless waived by a Party providing notice, the failure to cure the default(s) within such time period shall result in automatic termination of this Agreement.

## **XVI. ENTIRE AGREEMENT.**

45. This Agreement contains the entire agreement of the Parties, and there are no other promises or conditions in any other agreement, whether oral or written, concerning the subject matter of this Agreement.

46. This Agreement supersedes any prior written or oral agreements between the Parties.

## **XVII. ASSIGNMENT.**

47. Neither the Concessionaire nor the Owner shall have the right to transfer or assign, in whole or in part, any or all of its obligations and rights hereunder without the prior written consent of the other Party.

48. Subject to the above, the rights and obligations of the Parties shall inure to the benefit of and be binding upon their respective successors in interest, heirs, and assigns.

## **XVIII. SEVERABILITY.**



49. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable.

50. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

#### **XIX. AMENDMENT.**

51. This Agreement may be modified or amended in writing, if the writing is signed by the Party obligated under the amendment.

#### **XX. GOVERNING LAW.**

52. This Agreement shall be construed in accordance with the laws of the State of Alabama.

#### **XXI. NOTICE.**

53. Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph of this Agreement or to such other address as one Party may have furnished to the other in writing.

#### **XXII. WAIVER OF CONTRACTUAL RIGHTS.**

54. The failure of either Party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that Party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

#### **XXIII. PERFORMANCE.**

55. Time is of the essence of this Agreement and each and all of its provisions in which performance is a factor.

56. Adherence to completion dates set forth in the description of the Services is essential to the Concessionaire's performance of this Agreement.

***EXECUTION:***

\_\_\_\_\_, *Owner*

\_\_\_\_\_  
Date

\_\_\_\_\_, *Concessionaire*

\_\_\_\_\_  
Date