

FOOD BEVERAGE MERCHANDISE CONCESSIONS AND CATERING AGREEMENT
ATLANTIC CITY CONVENTION CENTER AND BOARDWALK HALL

_____ (hereinafter referred to as the
“Concessionaire”)

This FOOD BEVERAGE MERCHANDISE CONCESSIONS AND CATERING AGREEMENT (this “Agreement”) is made as of the 1st day of January, 2019 (“Effective Date”), by and between CASINO REINVESTMENT DEVELOPMENT AUTHORITY, a public body established in, but not of, the Department of the Treasury of the State of New Jersey, and existing under and by virtue of the laws of the State of New Jersey, including P.L. 1984, c. 218, as amended and supplemented from time to time (the “Authority”), and the “Concessionaire” identified herein-above).

RECITALS

WHEREAS, the Authority is the owner of the Atlantic City Convention Center (“ACCC”) and the West Hall of Boardwalk Hall (“West Hall”), and retains operational control of the East Hall of Boardwalk Hall (“East Hall,” and together with ACCC and East Hall, collectively, the “Facilities”), all such Facilities located in Atlantic City, New Jersey; and

WHEREAS, in September of 2018, the Authority issued a Request for Proposal for the provision of first class food and beverage concessions and catering services at the Facilities; and

WHEREAS, Concessionaire is in the business of managing and operating food and beverage concessions and catering services at indoor and outdoor single and multi-purpose facilities, including convention centers; and

WHEREAS, the Authority desires to grant to Concessionaire the right and privilege to manage and operate the food and beverage and merchandise concessions and catering services at the Facilities and outside of the Facilities on the terms hereinafter set forth; and

WHEREAS, Concessionaire desires to accept such grant to manage and operate such concessions and catering services and, pursuant to Resolution __-__, adopted _____, the Authority awarded to Concessionaire the contract for the provision of such services subject to the terms and conditions contained herein;

NOW THEREFORE, for and in consideration of the foregoing, the mutual covenants and promises hereinafter set forth and other good and valuable consideration, the receipt and

sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, hereby agree as follows:

ARTICLE I

DEFINITIONS

Section 1.1 Definitions. Capitalized terms used in this Agreement and not defined elsewhere in this Agreement shall have the following meanings:

A. “Accounting Period” means the twelve calendar months in an Agreement Year that correspond to the Authority’s twelve (12) monthly Accounting Periods.

B. “Addenda” or “Addendum” means amendments, clarifications and/or modifications made to the RFP, either as a result of Respondent questions or otherwise, and posted to the Authority website.

C. “Affiliate” shall mean any Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with the specified Person.

D. “Agreement” means this contract executed between the Concessionaire and the Authority in accordance with the specifications of the RFP, Addenda, and the Concessionaire’s proposal submitted and accepted by the Authority, all of which are incorporated into the Agreement. In case of a conflict or inconsistency between the provisions of the RFP and the Response, on the one hand, and the Agreement, on the other hand, the provisions of the Agreement shall govern to the extent of such conflict or inconsistency.

E. “Agreement Year” means the period between January 1, 2019 and December 31, 2019, and, thereafter, every January 1st through December 31st for each year until the Agreement terminates.

F. “Alcoholic Beverages” means all alcoholic drinks, beers and wines, regardless of where they are provided, in what packaging or format, or to whom they are provided.

G. “ACIA” means the Atlantic County Improvement Authority, the Lessor of the East Hall of Boardwalk Hall.

H. “Authority” or “CRDA” means the Casino Reinvestment Development Authority, its members, officers, employees, agents and assigns, and its Designee.

I. “Branded Products” means those food and beverage items which are advertised, marketed and sold as part of a franchise or license agreement and with respect to which Concessionaire is required to pay royalty fees and/or shared advertising costs to the franchiser in consideration of the right to sell such items in the Facilities.

J. “Cafeteria Sales” means food and beverages, excluding alcoholic beverages, sold from permanent or portable cafeteria lines to individual customers.

K. "Catering Sales" means any pre-arranged food and beverage function of multiple customers, such as banquets, receptions, meeting room service, where payment for the entire function rests with one individual or company.

L. "Change in Control" shall mean (i) the acquisition of a Person by another Person, other than an Affiliate, by means of any transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation), unless (a) the stockholders of record holding a majority of the Person's voting power immediately prior to such transaction or series of related transactions in the event such Person is a corporation, or (b) the Person's partners, limited partners or members, holding a majority of the Person's voting power immediately prior to such transaction or series of transactions in the event the Person is a partnership, limited partnership or limited liability company, respectively, will immediately after such transaction or series of related transactions hold at least a majority of the voting power of the surviving or acquiring entity or (ii) a sale of all or substantially all of the assets of the Person.

M. "City" means the city of Atlantic City.

N. "Concession Sales" means all sales of food and beverages and merchandise sold from permanent or portable concession stands or to individual customers by roving vendors.

O. "Consultant" means Positive Impact Marketing Group, Inc, 70 South Main Street, Suite 2A, Cranbury, NJ 08512, or such other consultant as the Authority may designate.

P. "Designee" means the Facilities Manager.

Q. "Direct Operating Costs" are the actual out-of-pocket costs of the operation incurred at the Facilities and paid by the Concessionaire to unrelated parties as approved by the Authority. These costs include the actual expense of the product including corporate rebates, on-site payroll, payroll taxes, fringe benefits for on-site employees and other operating expenses; repairs, maintenance, cleaning, office supplies, liability and dram shop insurance, advertising expense, utilities, linen, license and permit fees, in an absence of a final, unappealable judicial determination of negligence by Concessionaire, the costs incurred by Concessionaire to settle or defend any claims asserted against Concessionaire and/or Authority arising out of its performance of this Agreement on behalf of Authority, and any other miscellaneous expenses required to facilitate the conduct of events at the Facilities. Direct Operating Costs do not include any corporate overhead, corporate administrative, payroll processing, corporate bonuses or incentives, travel expenses for regional/corporate management personnel overseeing the local account, travel for on-site management to corporate events, or other expenses or Late Fees.

R. "Equipment" means all Foodservice furniture and machinery, except Smallwares and Leasehold Improvements, used for the receiving, storing, transportation, preparation, merchandising, selling and accounting of product. Equipment shall not be affixed to the Facilities except by electrical or gas connections.

S. "Extension Term" shall have the meaning set forth in Article 6 of this Agreement.

T. “Facilities Manager” means the entity engaged by the Authority under separate contract to manage the daily operations of the Facilities.

U. “Foodservice” means all food and beverage sales and operations at the Facilities or in support of beach concerts or events, whether Alcoholic Beverages, Branded Products, Cafeteria, Catering, Concessions or Vending Machine Sales, except however, the Authority may exclude unique food requirements, such as Kosher or other ethnic foods not regularly prepared by the Concessionaire.

V. “Gourmet Nationally Branded Coffee” means coffee and related items sold at stores such as Dunkin Donuts, Coffee Bean & Tea Leaf, Caribou, Tim Hortons, Intelligentsia, Peets, or similar branded offering for sale at retail whole or freshly ground GNB coffee beans, GNB espresso-based coffee drinks or GNB coffee drinks, GNB gourmet coffee and GNB identified brewed coffee.

W. “Gross Receipts” means the total amount of money collected on behalf of the Authority, by the Authority, the Concessionaire, or any agent of either for all sales made as a result of Foodservice and Merchandise sales, less (i) any applicable sales and use taxes or similar tax; and (ii) gratuities or services charges actually paid out to the employee; and (iii) receipts directly off-set by expenditures without any mark up over cost (e.g. flowers, decorations, and other similar goods or materials) required to meet the needs of a specific event.

Gross receipts include:

1. Foodservices sold either for cash for credit, excluding Authority functions;
2. Equipment rentals and fees for use of the kitchen or equipment by a Licensee;
3. Payments from Licensees or exhibitors for the right to serve food;
4. Vending sales;
5. Subcontractor fees or commissions paid to the Concessionaire rather than the Subcontractor’s total Gross Receipts; and
6. Off-premises sales either to the Authority or to other clients if approved by the Authority.

X. “HBH” means Historic Boardwalk Hall (including East Hall and West Hall).

Y. “Late Fee” is the charge assessed to any payments due the Authority from the Concessionaire after the specified date in the Agreement. Late Fees shall be pro-rated daily based on an annual rate of twelve percent (12%). Late Fees payable by the Concessionaire are not allowed as a Direct Operating Cost.

Z. “Leasehold Improvements” means all equipment, fixtures, furnishings, finishes and construction affixed to the Facilities, by more than an electrical or gas connection.

AA. "Licensee" means any person or entity that may from time to time enter into any agreement for the use of the Facilities for a particular purpose.

BB. "Management Fee" shall be the annual amount paid to the Concessionaire by the Authority for managing the Foodservice as provided in Section 3.1 of this Agreement.

CC. "Merchandise" means all non-edible goods, souvenirs and novelties sold at the Facilities. Merchandise does not include any novelties sold during amateur tournaments and/or professional sporting events, or clothing, novelties, or similar items sold through any "team store" for a professional or amateur sports team.

DD. "Net Profit" shall mean for any Accounting Period, the excess, if any, of Gross Receipts over the sum of applicable and/or prorated Direct Operating Costs, Authority approved depreciation, and the prorated Management Fee.

EE. "Person" shall mean any individual, corporation, partnership, association, trust or other entity whatsoever

FF. "Proposal" means the response by the successful Respondent to the RFP awarded a contract by the Authority.

GG. "Respondent" means any person or entity submitting a proposal to provide the services as defined by and in accordance with terms and conditions of the RFP.

HH. "RFP" means all of the terms, conditions and specifications of that certain Request for Proposals for Food, Beverage and Merchandise Concession – Jim Whelan Boardwalk Hall and Atlantic City Convention Center issued by the Authority in September of 2018.

II. "Smallwares" means the service-ware, utensils, crockery, glassware, dishware and cutlery used in the Foodservice operation.

JJ. "State" means the State of New Jersey.

KK. "Term" shall mean the term of this Agreement as set forth in Article 6 hereof, as the same may be extended pursuant to the terms of this Agreement.

LL. "Vending Machine Sales" means all food and beverage sales derived from coin operated automatic merchandisers.

Section 1.2 Other Defined Terms. Other defined terms used in this Agreement shall have the meanings ascribed to such terms as set forth in this Agreement.

ARTICLE 2

EXCLUSIVE LICENSE AND CONCESSION SERVICES

Section 2.1 The Concession Services. Subject to the terms and conditions contained in this Agreement, the Authority hereby grants to Concessionaire the following:

A. The exclusive right in the Facilities and for beach concerts and events to use, occupy and operate the Foodservice areas, bars, fixed and mobile concession stands, banquet and catering areas, vending operations for purposes of providing Foodservice, except as otherwise provided herein.

B. Without limiting the foregoing, the Authority may have rights to produce concerts and events on the beach in the City, directly or through an independent promoter, and may require the Concessionaire, on an exclusive or non-exclusive basis, to provide catering or Foodservice for such concerts and events, even though such concerts or events do not occur within the Facilities.

C. The Concessionaire must obtain the Authority's prior written agreement to provide Foodservices for beach concerts or event outside of the Facilities, if requested to provide such services by a promoter thereof.

There is hereby reserved to the Authority and excluded from the rights of Concessionaire hereunder the right to allow Licensors or other users of the Facilities to (i) provide locker room and backstage catering for events at the Facilities (unless granted by the Authority on a case by case basis); (ii) prepare and serve, at no charge, novelty food items as part of a food show, exhibit or conference at the Facilities, (iii) sell or allow the sale (through third-party vendors) of cotton candy, popcorn, lemonade, and snow cones at all circus, ice show and similar multi-performance family shows when the sponsor of such events reserves those rights; (iv) sell or allow the sale (through third-party vendors) of Ethnic Foods that are not normally sold by Concessionaire as part of the Foodservice for specific Ethnic Food events. For purposes hereof, "Ethnic Foods" shall mean those food items associated with a particular culture or ethnicity, which foods are not normally provided by Concessionaire as part of the Catering Services and Concession Services, but shall in no event include alcoholic or non-alcoholic beverages. In addition, the Authority shall have the right to exclude other Foodservices for up to four (4) events per year chosen at the Authority's discretion.

In addition, the Concessionaire acknowledges and agrees that that the Authority has subleased a portion of East Hall to a "Starbucks" coffee franchisee and that such franchisee has exclusive rights to occupy and operate a "Starbucks" coffee shop located in East Hall. In addition, Concessionaire agrees that, until notified by the Authority in writing, it shall be prohibited from selling Gourmet Nationally Branded Coffee within East Hall. Nothing in this section shall prohibit or restrict Concessionaire from offering coffee for retail sale within East Hall provided that such coffee sales shall be incidental or supplemental to the Foodservice and shall be limited to non-Gourmet

Nationally Branded Coffee. Nothing contained herein shall limit Concessionaire's ability to sell Gourmet Nationally Branded Coffee at West Hall or ACCC.

Section 2.2 Reservations. The Authority reserves to itself, its successors, assignees, and Licensees, all rights, duties and benefits of the management, occupancy and operation of the Facilities not granted to the Concessionaire as part of the Foodservice, including, without limitation, all advertising rights, in and to the Facilities (other than Concessionaire's obligation to undertake a marketing and sales program as set forth in Section 4.3 D of this Agreement); all parking rights; the use of all space leased to third parties for all businesses that do not conflict with the exclusive rights granted herein; and all other rights of the Authority not expressly granted to Concessionaire herein. Anything to the contrary notwithstanding in this Agreement, the Authority further reserves the right to require Concessionaire to suspend or modify, in connection with a particular event or events, from time to time, the Foodservice if the Authority determines that such suspension or modification is in the best interests of the Facilities. In addition, in the event that the Authority or City has the opportunity to license the use of the Facilities for events of a national or international reputation, including, without limitation, a major political convention, NCAA tournament or other similar, national or international exhibitions, events, competitions and festivals, then, in such event, Concessionaire agrees to fully cooperate with the Authority in entering into any special modifications or amendments to this Agreement which may be required by the Authority as an inducement to obtain such event for the Facilities, Concessionaire recognizing that such inducements may be necessary and in the best interests of City and the Facilities in order to provide such events to the patrons of the Facilities.

Concessionaire acknowledges and agrees that its rights hereunder do not include the right to sell Merchandise; provided, however, that the Authority or the Facilities Manager may, in its sole and absolute discretion, provide for the assignment of Merchandise sales to Concessionaire on an event by event basis. In the event, the Authority or Facilities Manager requests that such Merchandise be sold through Concessionaire, the Parties shall attempt in good faith to agree upon mutually acceptable terms applicable to such sale, including without limitation a reasonable service fee for Concessionaire, to be negotiated on a case by case basis. In the event that the parties are unable to reach agreement on such terms, the Concessionaire shall have no obligation to sell Merchandise for the event in question.

ARTICLE 3

MANAGEMENT FEE TERMS

Section 3.1 Management Fee. As base compensation to Concessionaire for providing the services herein specified at the Facilities during the Term and any Extension Term, the Authority shall pay Concessionaire during the Term and any Extension Term an annual Management Fee as set forth in Concessionaire's Proposal accepted by the Authority through the RFP. Commencing with the second Agreement Year of the Term and any Extension Term and each Agreement Year thereafter, each such annual Management Fee shall be adjusted upward on the first day of each such Agreement Year by the percentage change in the Consumer Price Index – All Urban Consumers (CPI-U) – U.S. City Average – All Items, during the one year period ending in August

immediately preceding such Agreement Year, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, or of any revised or successor index hereafter published by the Bureau of Labor Statistics or other agency of the United States Government succeeding to its functions, but in no event shall such increase exceed 3% per annum. The foregoing annual Management Fee shall be payable in equal monthly installments due in advance on or before the first day of each month during such Agreement Year.

ARTICLE 4

PERFORMANCE OF THE FOODSERVICE

Section 4.1 General Standard; Quality Assurance and Control.

A. Concessionaire shall conduct all of its operations in a first-class, professional, businesslike, and efficient manner consistent with a premier convention center and arena such as the Facilities.

B. The Authority shall have the final approval on what suppliers, portions, prices and brands are used by the Concessionaire, and at no time will Concessionaire offer an exclusive to any supplier without the prior written approval of the Authority.

C. The Authority (but not the Designee) shall decide any and all questions which may arise as to the acceptability of services rendered, number of service areas required, levels of staffing by area, prices, portions, products, manner of performance, questions which arise as to the interpretation of the terms and conditions of the scope of service outlined herein, and all questions as to the acceptable fulfillment of the Agreement.

D. All foods, drinks, beverages, confectionery, refreshments, and the like sold or kept for sale, shall be of first quality, wholesome, and pure and shall conform in all respects to the federal, state, and municipal food and other laws, ordinances, and regulations. No imitation, adulterated, or misbranded article shall be sold or kept for sale, and all product kept on hand shall be stored and handled with due regard for sanitation. Leftover perishable product shall not be sold at any time.

E. All products kept for sale shall be subject to inspection and approval by the Authority. Rejected products shall be immediately removed from the Facilities and shall not be returned for sale.

F. Concessionaire shall identify and utilize local products and services throughout the Facilities, whenever appropriate.

G. Subject to the provisions of this Agreement, it is the intent of the Authority to utilize Branded Products whenever it is in the best interest of the Authority.

H. Concessionaire shall generally utilize disposable plates, cutlery and cups in connection with Concession Sales.

I. Concessionaire shall utilize permanent Smallwares, dishes, glassware and place-settings in connection with Catering Sales.

Section 4.2 Personnel Standards.

A. Concessionaire shall employ the necessary personnel to conduct the operations at the Facilities in accordance with the terms and conditions of this Agreement.

B. All Foodservice employees are employees of the Concessionaire and not the Authority. The Concessionaire shall at all times be an independent contractor, and the Agreement shall not in any way create or form a partnership or joint venture with the Authority. No agent, servant, or employee of the Concessionaire shall under any circumstances be deemed an agent, servant, or employee of the Authority.

C. Concessionaire must keep accurate records of the names, addresses and other legal identification of those to whom badges are issued to assure proper identification and legal working status of employees at any time required by the Authority or any other proper agency. Upon request by the Authority, and subject to applicable law, the Concessionaire shall immediately remove from the Facilities, any employee deemed unsuitable for any reason by the Authority. Any employee so removed shall never again be employed at the Facilities by Concessionaire without the prior written consent of the Authority.

D. Concessionaire's proposed full time staffing, including the General Manager, and such other positions as it recommends for inclusion in its management team shall be as set forth in Exhibit B attached to this Agreement.

E. Concessionaire shall not change General Managers, unless requested by the Authority, for a minimum of two years, from the time the General Manager is approved by the Authority.

F. The Authority shall approve Concessionaire's proposed on-site management throughout the term of the Agreement. Concessionaire's on-site management shall have no job-related responsibilities at other venues and must have a full-time office at the Facilities. If the Authority requests a replacement for the on-site management or any of the staff, Concessionaire shall have five (5) days to provide a qualified temporary replacement approved by the Authority, and fifteen (15) days to provide the Authority with at least three (3) resumes of suitable candidates for the position(s).

G. Concessionaire shall have their appropriate management staff at the Facilities during normal business hours and during events. Concessionaire will inform the Authority of the identity of the on-duty manager for each event. At no time shall Concessionaire leave the Facilities without management staff suitable to the service required for any scheduled event.

H. Concessionaire must conduct regularly scheduled training sessions, as approved by the Authority, throughout the year, for all personnel. At a minimum, the training will consist of customer service, alcohol awareness, skills training for each position, including proper banquet service, buffet set up and merchandising and wine service for all Catering personnel.

I. Concessionaire's employees shall be at all times neatly and cleanly uniformed in Authority approved uniforms and must meet grooming guidelines and appearance standards prescribed for such employees.

J. In addition to the employee requirements set forth in this Section 4.2 above, Concessionaire shall employ (at Concessionaire's sole cost and expense) for the Term and, at the Authority's request, any Extension Term, a newly hired full time sales and marketing employee for the Facilities dedicated to enhancing and implementing Catering Sales at the Facilities, as required by, and more particularly set forth in, the management agreement for the Facilities dated the date hereof between the Authority and the Facilities Manager.

Section 4.3 Operational Requirements.

A. All purchases will be made for the benefit of the Authority, using competitive pricing of national pricing and local vendor preference. Concessionaire shall maintain records of quotation on an agreed upon basis confirming that Concessionaire is achieving the best available balance of price/quality of product to serve at the Facilities.

B. The Authority shall issue reasonable rules and regulations for the operation and delivery of the Foodservice, and the Concessionaire shall operate and deliver the Foodservice in accordance with such rules and regulations.

C. The Authority shall decide any and all questions concerning the acceptability of rendered services, levels of staffing, and manner of performance, questions which arise as to the interpretation of the conditions and specifications, and all questions as to acceptable fulfillment of the Agreement.

D. No off-site or subcontracted sales are permitted from the Facilities unless first approved in writing by the Authority. To the extent, however, that Concessionaire can book outside catering functions and produce additional net revenue for the Authority without adversely affecting service to clients of the Facilities, such activities may be approved by the Authority.

E. On an annual basis, beginning on the date of this Agreement and annually thereafter during the Term, the Concessionaire shall provide the Authority with a written marketing and catering sales program with specific financial and operational goals for the operation and delivery of the Foodservices and specific methods for attaining each goal. In addition, immediately upon execution of this Agreement, Concessionaire shall commence and execute a marketing program targeting the development of Catering Sales at the Facilities which shall include the hiring by Concessionaire of the Sales and Marketing Employee.

F. At the termination of this Agreement, Concessionaire will assign all Catering Sales contracts for events that are scheduled to occur after the effective date of termination, to the Authority or the succeeding concessionaire.

G. Concessionaire shall not interfere with the free distribution of food or drinks or any other items of any nature whatsoever, where such distribution has been authorized by the Authority. Free samples may be given away by, or on behalf of, or with permission of any person or organization which has properly licensed the Facilities at trade shows, cooking schools, exhibitions, and conventions.

H. Concessionaire shall be required to provide or modify operations upon the request of any Licensee, when such request has been approved by the Authority as in the best interest of the Facilities or is necessary to comply with the terms of the contract between the Facilities and Licensee.

I. The Authority may sell advertising and sponsorship packages for the Facilities. Therefore, the Authority reserves the final right of approval of Concessionaire's sources of product supply; provided, however, that Concessionaire shall not be required to purchase from suppliers whose level of quality, service, and/or prices is not competitive with the marketplace. Concessionaire acknowledges and agrees that nothing in this Agreement shall confer any advertising rights on Concessionaire. Concessionaire further acknowledges that the Authority has entered into a five year exclusive beverage agreement with Coca-Cola for the years 2016 through 2021 to provide Coca-Cola brand products at national pricing levels.

J. Concessionaire shall keep in full force and effect for the entire period of this Agreement all permits and licenses required by all laws and regulations of the State, the County of Atlantic and the City in order for Concessionaire to provide the Food Services and carry out its obligations under this Agreement.

K. Concessionaire shall collect and promptly disburse all taxes required by federal, state and local authorities, and shall pay as a Direct Operating Cost any applicable taxes relating to Foodservice, operations, Equipment, or inventory.

L. Concessionaire shall use computerized cash or point-of-sale registers at all sales locations, portable and permanent, and to the maximum extent possible, computerize all sales, inventory, purchasing, payroll, billing and ancillary functions.

M. Concessionaire shall at all times comply with all applicable laws, rules, regulations and orders of the federal, Staten and local governments, and also shall abide by all rules, regulations and directives prescribed by the Authority.

N. Vending machines may only be used at times and locations prescribed by the Authority.

O. Nothing contained in this Agreement shall be deemed to limit or qualify the right of the Authority to a free and unobstructed use, occupation and control of the Facilities and ingress and egress for itself, its Licensees and the public.

P. Representatives of the Authority shall have the right to enter upon and have access to all spaces within the Facilities occupied by Concessionaire during the time events are in operation and all times when Concessionaire employees are present.

Q. Concessionaire shall provide electronic and printed menus approved by the Authority, utilizing the Facilities' logos, used exclusively for the Facilities, in sufficient quantities for use by Authority's and the Concessionaire's marketing staffs.

R. With respect to Catering Sales events, the Authority will set rooms with sufficient tables and chairs for each catered function. Concessionaire must provide and set linen, skirting and place settings on a timely basis, as well as removing the linen, skirting and place settings promptly following each Catering Sales event.

S. Concessionaire shall set up Equipment and Smallwares for all Foodservice events. Concessionaire shall be responsible for setting up and tearing down all portable Equipment, including any work tables, if any, supplied by the Authority.

T. The use of table coverings other than cloth must be approved in advance by the Authority.

U. The location of all Foodservice and Merchandise areas, whether temporary, portable or permanent shall be designated by the Authority. Concessionaire shall not acquire any right to any locations once assigned and the Authority reserves the right to require Concessionaire to move such operations and Equipment to facilitate the needs of events.

V. Concessionaire shall be responsible for providing water service and water stations for all meeting rooms at no cost to the customer.

W. Concessionaire shall be responsible for all inventory theft or shrinkage for food and Merchandise assigned to Concessionaire. Any shrinkage in excess of one-half percent (1/2 %) on a monthly inventory will be reimbursed by Concessionaire, and such reimbursement cost shall be a corporate expense of Concessionaire and not included as a Direct Operating Cost.

X. Title to all Equipment, Leasehold Improvements, and Smallwares will immediately be placed in the name of the Authority when delivered and/or installed at the Facilities.

Section 4.4 Sale of Alcoholic Beverages. Concessionaire shall be permitted to offer Alcoholic Beverages for sale at the Facilities or for beach concerts pursuant to the provisions of set forth below in this Section 4.4:

A. Alcoholic Beverages are permitted to be offered for sale by the Concessionaire to the extent permitted by applicable state and local laws, and subject to rules and regulations as may be established from time to time by the Authority. The final decision, as to whether or not Alcoholic Beverages may be sold at an event, or in any designated area of the Facilities, shall be the sole responsibility of the Authority. The decision to serve or refuse service of Alcoholic Beverages to any individual shall be the sole responsibility of the Concessionaire.

B. All licenses and permits required for the sale of Alcoholic Beverages at the Facilities shall be held by the Concessionaire. Neither party shall take any action which would impair the Concessionaire's ability to hold the permits. The Concessionaire shall file all applications for permits and licenses and prepare and process all applications for renewals of the permits.

Section 4.5 Concessionaire's Sanitization and Equipment Maintenance Responsibilities.

A. Concessionaire shall, in accordance with all applicable laws, ordinances, rules, and regulations, maintain, as a Direct Operating Cost, all assigned areas of the Facilities, including the space within a 25 foot radius of each area, including, but not limited to, kitchens, cafeterias, concession stands, bars, buffets, pantries, vending areas, condiment stands, dining areas, storage and prep areas in a clean, sanitary, and orderly fashion. If specialty food service areas are set up for trade shows, conventions, or public events, Concessionaire's maintenance responsibility shall be expanded to take in all service and seating within the specialty food service area. Multiple citations for violations occurring in more than one year, as issued by the appropriate State or local health inspectors may be cause for termination.

B. Concessionaire must provide adequate pest control licensed by the State and approved by the Authority for each assigned area. Multiple citations for violations occurring in more than one year, as issued by the appropriate State or local inspectors may be cause for termination.

C. Concessionaire shall maintain Authority approved par levels of all Equipment, Leasehold Improvements, uniforms and Smallwares. The Concessionaire or the Authority shall provide and the Concessionaire shall maintain and replace a minimum par stock of 4,000 high quality Authority approved place-settings and 1,000 premium quality Authority approved place-settings.

D. Concessionaire shall maintain, as a Direct Operating Cost, all Equipment, Leasehold Improvements, uniforms and Smallwares used in performance of its duties, including rolling stock, in a good state of repair, including maintenance, replacement or repair necessitated by ordinary wear and tear.

E. The Authority may require the use of its in-house maintenance staff for the repairs and maintenance, at the Authority's sole discretion to the extent it is in the Authority's best interest.

Section 4.6. Use of Utilities.

A. The Authority shall pay for the usage of HVAC, electricity, gas, and water service for the Concessionaire's operation as part of the Facilities' operating budget. Concessionaire will utilize prudent energy management.

B. The cost of telephone service shall be a Direct Operating Cost of Concessionaire.

C. Concessionaire shall be responsible for bringing their trash and garbage from all Foodservice areas to the designated dumpster or recycling areas located within the Facilities. The removal of the dumpster and recyclables from the Facilities will be paid for by the Authority.

D. The cost to repair or replace any utility service or lines due to Concessionaire's negligence shall be at Concessionaire's sole cost and expense and may not be included as a Direct Operating Cost. Concessionaire's sewer lines shall be self-maintained by Concessionaire and shall be maintained to the satisfaction of the Authority. Concessionaire shall take all precautionary measures necessary to assure that grease is not discharged into the sewers.

E. Concessionaire shall be responsible for complying with all recycling rules, regulations and laws of the Authority and/or appropriate governmental bodies.

F. The Authority shall not be liable or responsible for any failure to furnish services, such as electricity, gas, water, or drainage service, which failure is caused or brought about in any manner by strike, act of God, or other work stoppage, federal, state, or local government action, the breakdown or failure of apparatus, equipment, or machinery employed in its supply of said services, any temporary stoppage for the repair, improvement, or enlargement thereof, or any act or condition beyond its reasonable control. Further, the Authority shall not be liable or responsible for any consequential economic or property loss or damage caused or brought about by any such occurrence. Also, the Authority shall not be responsible for any goods, merchandise or Equipment stored at the Facilities nor will it be responsible for damage resulting from a power failure, flood, fire, explosion and/or other causes.

Section 4.7. Accounting and Recordkeeping Obligations

A. Concessionaire shall maintain all Foodservice accounting records for the Facilities in a format approved by the Authority at Concessionaire's on-site office. The accounting records shall be available for audit by the Authority at any time throughout the term of the Agreement at the on-site office, and for three years following the Term of the Agreement at the Concessionaire's main office.

B. Concessionaire shall use compatible hardware, software and Authority-approved accounting software, for all Catering proposals, contracts, invoices, and all accounting functions.

C. Concessionaire shall submit for Authority approval, in a format approved by the Authority, a budget for its operation, by each 1st day of October prior to the beginning of each Agreement Year, for every year during the term of the Agreement. Concessionaire must notify Authority in writing in advance, of any income or expenditure of \$1,000 or more that exceeds the

approved budget. Concessionaire may not expend any such excess moneys above the approved amounts without Authority approval.

D. Concessionaire shall provide the Authority with a written preliminary profit and loss report by close of business on the day following each event. Concessionaire shall provide to the Authority, in a format directed by the Authority, a written final profit and loss report for each event within 72 hours of that event, indicating where appropriate, customer pricing, guarantees, sales by location, total inventory sales, total register sales, and cash overages and shortages. Concessionaire shall attach the corresponding deposit ticket and credit card transmission reports to all daily sales reports.

E. Concessionaire shall provide to the Authority, on a monthly basis within 5 days following the last day of each month, a written full inventory report. Concessionaire shall reimburse the Authority for shrinkage in inventory as provide in Section 4.3(W) of this Agreement.

F. Concessionaire shall maintain a separate commercial account for all Foodservice sales deposits. Cash shortages in excess of one half percent (1/2%) of inventory sales will be deducted from the Management Fee.

G. Concessionaire must use computerized cash registers or point of sale equipment as approved by the Authority. The Authority shall have access to all sales and management reports. The Authority requires Concessionaire maintain the ability for customers to use credit and debit cards for sales in the Facilities.

H. The Authority may require an independent certified audit of Concessionaire's operating expenses related to the Agreement, by an accounting firm approved by the Authority, no later than ninety (90) days after the end of each Agreement Year. Such expense, if incurred by Concessionaire, will be treated as a Direct Operating Cost.

I. In the event the Authority is not satisfied with the statements submitted by the Concessionaire, as provided for in this Section 4.7, the Authority shall have the right to conduct a special audit by auditors selected by the Authority, of the books and records required to be made and preserved, including all sales and expenses, by the Concessionaire. If such audit shows a deficiency in payments by the Concessionaire for any Accounting Period covered, in excess of one percent (1.0%) of the amount thereof, the amount owed and the Late Fees from the date the error took place and the cost of the audit, shall be paid promptly by Concessionaire to the Authority and not absorbed as a Direct Operating Cost.

J. Concessionaire will prepare a profit and loss statement, with content and format as directed by the Authority, for each Accounting Period and submit the statement with Net Profits no later than 15 days following the close of the preceding Accounting Period. In any Accounting Period in which there are not any Net Profits, the Concessionaire shall accrue such loss until the next Accounting Period to cover those losses. There will be an annual reconciliation of all losses or profits and payments for the last Accounting Period of each Agreement Year. In an Agreement

Year that does not have Net Profit, the Authority shall pay the Concessionaire the amount of money necessary to bring Concessionaire's direct operating expenses back to zero (\$0.00).

Section 4.8 Amendment of Foodservices. The list of responsibilities and services set forth in this Agreement are not exclusive and the Authority and the Concessionaire(s) may agree in writing to amend or augment the responsibilities and services set forth herein. Any agreement shall not be effective until and unless executed and delivered by Concessionaire and the Authority.

ARTICLE 5

AUTHORITY PROVISIONS

Section 5.1 Foodservice Areas; Equipment. Concessionaire shall take the Foodservice Areas and the Equipment on an "as-is, where-is" and "with any and all faults" basis, provided, however, that when delivered to Concessionaire by the Authority, the Foodservice Areas and Equipment are in good working order and of a quality consistent with equipment normally used in the operation of similar facilities. Concessionaire agrees that the Foodservice Areas and the Equipment are sufficient for the effective operation of the Foodservices by Concessionaire.

CONCESSIONAIRE ACKNOWLEDGES THAT THE EQUIPMENT PROVIDED TO CONCESSIONAIRE BY THE AUTHORITY IS FURNISHED AS AN ACCOMMODATION TO CONCESSIONAIRE AND CONCESSIONAIRE HEREBY WAIVES AND RELINQUISHES ALL RIGHTS AND PRIVILEGES ARISING OUT OF, OR WITH RESPECT, OR IN RELATION, TO ANY REPRESENTATIONS, WARRANTIES OR COVENANTS, WHETHER EXPRESS OR IMPLIED, WHICH MAY HAVE BEEN MADE OR GIVEN, OR WHICH MAY HAVE BEEN DEEMED TO HAVE BEEN MADE OR GIVEN BY THE AUTHORITY WITH RESPECT TO THE EQUIPMENT, EXCEPT AS PROVIDED IN THE IMMEDIATELY PRECEDING PARAGRAPH. SUBJECT TO THE IMMEDIATELY PRECEDING PARAGRAPH, CONCESSIONAIRE HEREBY ASSUMES ALL RISK AND LIABILITY (AND AGREES THAT THE AUTHORITY SHALL NOT BE LIABLE FOR ANY SPECIAL, DIRECT, INDIRECT, CONSEQUENTIAL OR OTHER DAMAGES) RESULTING FROM, ARISING FROM OR RELATING TO THE CONDITION OR LOCATION OF THE EQUIPMENT, OR THE MAINTENANCE, REPAIR OR OPERATION OF THE EQUIPMENT BY CONCESSIONAIRE OR ITS EMPLOYEES, SUBCONTRACTORS OR INVITEES.

The preceding paragraph is not intended to affect any warranty that may be available from the equipment manufacturer, and the Authority agrees to provide reasonable cooperation in attempting to assist Concessionaire in obtaining the benefit of any manufacturer's warranties which may apply, provided the Authority shall not be obligated to incur any expense in providing such cooperation.

Section 5.2 Cancellation of Events. The Authority shall have the sole right in its discretion, to cancel or reschedule any event during the Term or any Extension Term or to dismiss the audience for any event. Concessionaire shall have no action or claim against the Authority in such circumstance.

ARTICLE 6

TERM

Section 6.1 Term. The term of this Agreement (the “Term”) shall commence on the Effective Date and shall expire on December 31, 2023, unless sooner terminated in accordance with the terms and conditions of this Agreement, or extended by the Authority for one (1) additional two (2) year term (the “Extension Term”), upon such terms and conditions as shall be mutually agreeable. Neither party shall have the obligation to renew or extend the Term.

Section 6.2 Authority Right to Cancel Without Cause. The Authority shall have the right to terminate this Agreement without cause at any time after the second (2nd) anniversary date of the Effective Date upon 180 days prior written notice to Concessionaire.

Section 6.3 Equipment Upon Termination. Upon termination of this Agreement, without regard to how such termination may be brought about (including default of any party), Concessionaire shall yield and deliver peacefully the Foodservice Areas and Equipment to the Authority in the same condition (other than the public areas) as same were delivered to Concessionaire, reasonable wear and tear, alterations and improvements approved by the Authority. All Equipment, Leasehold Improvements and Smallwares shall be the property of the Authority.

ARTICLE 7

INSURANCE, INDEMNITY AND LIABILITY MATTERS

Section 7.1 Insurance Obligations. Concessionaire shall not commence any work under this Agreement or provide any of the Foodservice until the insurance and bonds set forth below have been obtained by Concessionaire and approved by the Authority.

A. Performance Bond: In lieu of a Performance Bond, Concessionaire shall provide authority with an irrevocable letter of credit from a bank or banks organized pursuant to laws of the United States of America and domiciled in the State of New Jersey which shall be for an amount not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) available by draft of the Authority at sight to be accompanied by the signed statement of the Authority in duplicate certifying that the Concessionaire has failed to faithfully perform any obligation assumed by, or imposed upon Concessionaire by this Agreement, which letter of credit shall be delivered to the Authority prior to the commencement date of this Agreement. Concessionaire agrees that in the event of cancellation or termination of said letter or letter of credit a new letter of credit or bond effecting the same guarantees to the Authority shall be furnished by Concessionaire to the Authority prior to the effective date of such cancellations or terminations. Concessionaire herein agrees that under no circumstances shall the Authority be liable for damages to Concessionaire in the event that the Authority should issue a draft or drafts against said letter or letters of credit in

an amount or amounts over and above those which may ultimately be declared to be the actual liability of Contractor to the Authority.

B. Insurance: During the term of this Agreement, the insurance coverage identified below shall be kept in full force and effect continually and may be increased to meet the then current needs of the Facilities. These expenses and costs shall be a Direct Operating Cost. The insurance must protect Concessionaire and Authority from claims for personal injury (including bodily injury and death) and property damage which may arise from or in connection with the performance of Concessionaire's services hereunder or from or out of any negligent act or omission of Concessionaire, its officers, directors, agents or employees. Limit requirements may be met by combining primary and excess/umbrella policies if necessary.

- i. Commercial General Liability ("CGL") Insurance
 1. General Aggregate of \$2,000,000
 2. Products Completed Operations Aggregate of \$2,000,000
 3. Personal & Advertising Injury of \$1,000,000
 4. Each Occurrence limit of \$1,000,000
 5. Fire Damage (any one fire) limit of \$ 250,000
 6. Liquor Liability limit of \$1,000,000
 7. Automobile Liability (including owned, non-owned and hired coverage) of \$1,000,000 CSL
- ii. Blanket Employee Dishonesty with minimum limits of \$100,000 per occurrence. This coverage shall be extended to provide coverage to funds and/or property held by Concessionaire on behalf of the Authority.
- iii. Workers' Compensation Insurance as required by applicable law.
- iv. Employer's Liability ("EL") Insurance with minimum limits of \$1,000,000 per occurrence.
- v. Personal Property Insurance providing All Risk Coverage on a replacement basis for the appropriate limit to cover all Concessionaire's personal property to include furniture, fixtures, equipment, inventory and any other personal property of the Concessionaire.
- vi. Umbrella or Excess Liability: additional \$10,000,000, with coverage is to apply to excess of and following the form of the, CGL, EL, Alcoholic Beverage and Automobile Liability policies.

C. Terms of Insurance. All insurance shall be with companies and on forms acceptable to the Authority and shall provide that the coverage may not be reduced or canceled unless thirty (30) days unrestricted prior written notice thereof is furnished to the Authority. All insurance shall be primary and not contributory. All insurance shall be written by companies with a BEST Guide of rating of A or better. Certificates of insurance (or copies of policies, if required by the Authority) shall be furnished to the Authority, naming the Authority, the City, and the ACIA as additional insured by specific endorsement (using the following language: "*The City of Atlantic City, the Atlantic County Improvement Authority, and the Casino Reinvestment Development Authority, its Members, Officer, Employees, Agents and Assigns*") and contain a waiver of subrogation. The additional insured requirement does not apply to Workers' Compensation or Blanket Employee Dishonesty.

D. Certificates of Insurance. Not later than thirty (30) days prior to the date on which coverage is to be provided hereunder, Concessionaire shall furnish to the Authority a certificate evidencing the required coverage.

Section 7.2 Indemnification: Concessionaire shall defend, indemnify and hold the Authority harmless from and against any and all claims, demands, expenses, or losses, of any nature whatsoever, including attorneys' fees, arising directly or indirectly from or out of any negligent act, error, or omission of Concessionaire, its officers, directors, agents, subcontractors, invitees or employees; and/or any occupational injury or illness sustained by an employee or agent of Concessionaire in furtherance of Concessionaire's services under this Agreement, and/or any failure of Concessionaire to perform its services in accordance with the highest generally accepted professional standards, and/or any breach of Concessionaire's representations made herein, and/or any other failure of Concessionaire to comply with the obligation on its part to be performed under the Agreement. To the extent that goods are not manufactured in accordance with Authority's designs or sold by Concessionaire at the direction of the Authority, Concessionaire shall defend, indemnify, and hold harmless the Authority and other users of the goods from and against any third party claim of infringement of any intellectual property right(s) by reason of sale or use of any articles purchased under the Agreement. Authority shall promptly notify Concessionaire of any such claim.

Section 7.3 Mutual Waiver of Subrogation: Neither the Authority nor the Concessionaire shall be liable to each other or to any insurance company (by way of subrogation or otherwise) insuring the other party for any loss or damage to any building, structure, or other tangible property, or any resulting loss of income, or losses under workers' compensation laws and benefits, even though such loss or damage might have been occasioned by the negligence of such party, its agents or employees; provided, however, that this limitation of liability shall only be applicable to the extent of insurance proceeds paid where such loss or damage is covered by insurance benefiting the party suffering such loss or damage. This mutual limitation shall be in addition to, and not in limitation or derogation of, any other waiver or release contained in any other related agreement with respect to any claim of the Authority or the Concessionaire. Inasmuch as this limitation of liability will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other person), the Authority and the Concessionaire agree to give to each of its issuing insurance companies, written notice of the terms of such mutual limitation of liability, and to have such insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage by reason of such limitation of liability.

Section 7.4 Waiver of Concessionaire. Neither the Authority nor its officers, directors, agents, subcontractors, invitees or employees shall be responsible to Concessionaire for any loss or damage to any property owned by Concessionaire resulting from fire, theft or any other cause unless due to the negligence or willful misconduct of the Authority or its officers, directors, agents, subcontractors, invitees or employees, to the extent same is adjudicated by a court of competent jurisdiction not subject to further review or appeal; and except as above provided, Concessionaire

agrees to assume all risk of loss, damage or destruction of any of its property, stock and supplies resulting from fire, theft or any other cause.

ARTICLE 8

DEFAULT AND REMEDIES

Section 8.1 Concessionaire Events of Default. Each of the following acts or omissions of Concessionaire or occurrences shall constitute an “Event of Default.”

A. Failure or refusal by Concessionaire to timely pay any sum due hereunder upon the expiration of a period of ten (10) days following receipt of written notice to Concessionaire of such failure; provided, however, it is expressly agreed that Concessionaire shall only be entitled to two (2) such notices in any calendar year and that the third (3rd) or successive such failure or refusal in any calendar year shall constitute an Event of Default immediately upon its occurrence without the necessity of any notice or opportunity to cure being given to Concessionaire by the Authority whatsoever;

B. Failure of Concessionaire to perform or observe any of its other obligations or covenants of this Agreement upon the expiration of a period of thirty (30) days following receipt of written notice to Concessionaire of such failure or if such default cannot be cured within such thirty (30) day period, then within such additional reasonable period of time (but in no event more than sixty (60) days) as Concessionaire may require in the exercise of diligent good faith efforts; provided, however, that as to repeated breaches of the same material obligation or covenant, it is expressly agreed that Concessionaire shall only be entitled to two (2) such notices in any calendar year and that the third (3rd) or successive such failure in any calendar year shall constitute an Event of Default immediately upon its occurrence without the necessity of any notice or opportunity to cure being given to Concessionaire by the Authority whatsoever;

C. Failure of Concessionaire to provide Foodservice to any event which Concessionaire is obligated to provide such services hereunder;

D. (i) Concessionaire shall make a general assignment for the benefit of its creditors; (ii) Concessionaire shall file a voluntary petition in bankruptcy or seek relief under any bankruptcy or insolvency law; (iii) Concessionaire shall be finally adjudicated as bankrupt or insolvent, or a receiver of all or any portion of Concessionaire’s property shall be appointed in any judicial proceedings and such appointment shall not have been discharged, dismissed or set-aside within ninety (90) days; (iv) there shall be filed against Concessionaire an involuntary petition under any bankruptcy or insolvency law and such petition shall not be discharged or dismissed within ninety (90) days;

E. Except as otherwise provided herein, Concessionaire shall assign this Agreement or any rights or interests of Concessionaire hereunder or permit any other Person, firm or corporation to exercise any part of the Foodservices in any material respect without the prior written consent of the Authority;

F. Concessionaire shall (i) have any license, permit or franchise applicable to the performance of the Foodservices revoked or limited in any manner which prevents Concessionaire from operating the Foodservices substantially as contemplated hereunder, or (ii) fail to obtain all such licenses, permits or franchises by the date which is ten (10) days prior to the scheduled date of the first public event.

G. Concessionaire fails to deliver to the Authority either the performance bond required by and in conformity with Section 7.1(A) hereof or the certificate of insurance required by and in conformity with Section 7.1(D) hereof.

H. Notwithstanding any other notice requirement set forth herein, the Authority shall have the right to terminate this Agreement in the event the Authority provides Concessionaire written notice of the existence of a potentially hazardous condition posing risk of imminent harm or injury, and Concessionaire fails to remedy such condition to the reasonable satisfaction of the Authority within 24 hours, or such shorter time frame if reasonably possible, provided such condition is caused by the Concessionaire, its employees, subcontractors or agents, or involves equipment or property which is the responsibility of Concessionaire.

Section 8.2 Remedies for Event of Default. Whenever any Event of Default shall occur, the Authority may, at its option, if such is still continuing after the expiration of all applicable periods provided herein to the Concessionaire to cure, terminate this Agreement by giving written notice thereof to Concessionaire, and immediately, or at any time thereafter, take full possession of all Foodservice areas, Leasehold Improvements, Equipment and Smallwares, and all persons and property occupying or using any part of the Facility under this Agreement, either by summary proceedings or by any suitable action or proceedings at law or otherwise. No such removal or other exercise of dominion by the Authority shall be deemed to be or to constitute a conversion, Concessionaire hereby consenting after any Event of Default to the aforesaid exercise of dominion over the Authority's property in and at the Facilities. All claims for damages by reason of such re-entry and/or repossession are hereby waived. Concessionaire agrees that any re-entry by the Authority may be without the necessity for any legal proceedings, and the Authority shall not be liable in trespass or otherwise.

Notwithstanding anything to the contrary contained in this Agreement, and without waiving any of the Authority's other rights under this Agreement on account of an Event of Default, the Authority shall have the right of access to and use of the Foodservice areas, Leasehold Improvements, Equipment and Smallwares to provide to patrons of the Facilities the services to be provided by Concessionaire under this Agreement under circumstances in which immediately prior to an event (previously scheduled and actually held) in the Facilities either (i) Concessionaire acting through its authorized representative has informed or informs the Authority that it is unable or unwilling to provide the services required by this Agreement for such event or (ii) without the Authority being informed of such inability or unwillingness in accordance with (i) above, the Authority reasonably believes, immediately prior to such event, that Concessionaire will not or cannot provide any such services to the Facilities for such event, provided the Authority so notifies Concessionaire of the Authority's intentions.

The duties, covenants and agreements of Concessionaire set forth herein may be enforced by injunctive relief or other equitable or legal remedy without the necessity of proving the inadequacy of legal remedies, without the posting of bond and without proving that the Authority would suffer irreparable harm as a result of a violation of such duties, covenants and agreements. All remedies granted to the Authority herein are cumulative and non-exclusive.

Furthermore, the Authority shall, without waiving any of the Authority's other rights under this Agreement on account of an Event of Default, upon the occurrence of an Event of Default and after notice to Concessionaire, have the right, but shall not be obligated, and without waiving such Event of Default, to take such reasonable action as may be necessary to remedy such Event of Default on behalf of, and for the account of, Concessionaire, and upon the Authority taking such remedial action Concessionaire shall be obligated to and hereby agrees to pay the Authority, upon demand, all commercially reasonable costs, expenses, and disbursements incurred by the Authority in taking such remedial action.

ARTICLE 9

MISCELLANEOUS

Section 9.1 Assignment. Concessionaire shall not, voluntarily, involuntarily, by operation of law or otherwise (including by way of merger or consolidation) sell, assign, transfer, sublicense, pledge, mortgage or encumber this Agreement or any right or privilege contained herein without the prior written consent of the Authority which consent may be withheld in its sole discretion and any such grant of any of the foregoing shall be void and of no effect. For the purposes of this Section 9.1 the term "transfer" shall also include a Change of Control.

Section 9.2 Relationship of Parties. The relationship created by this Agreement is that of principal and independent contractor. Neither the provisions for the payment of fees nor any other provision of this instrument shall be construed in such a way as to constitute Concessionaire and the Authority joint venturers or partners or to make Concessionaire the agent of the Authority or to make the Authority liable for the debts of Concessionaire. No officer, employee, agent, servant or independent contractor of Concessionaire shall at any time be deemed to be an employee, servant or agent of the Authority for any purpose whatsoever. Concessionaire shall require all such persons to refrain from making any representation by word or act whereby it might be understood or believed that they are employees, servants or agents of the Authority.

Section 9.3 Limitation on Damages. In no event shall the Authority ever be liable to Concessionaire or to any other person claiming by, through or under Concessionaire on account of any act or omission, taken or admitted to be taken, by the Authority for any amount of special, consequential or punitive damages or for any claim of lost profits.

Section 9.4 Confidentiality of Information. During the term of this Agreement, the Authority and Concessionaire (and their respective Affiliates, officers, directors, shareholders,

employees, agents and representatives) may gain access to or be exposed to certain information and trade secrets of the other party and/or its Affiliates, whether relating to such party's operations at the Facilities or otherwise (other than information which is already in the public domain or generally known in the industry, the "Confidential Information"). Accordingly, each party agrees, for itself (and on behalf of each of its Affiliates, officers, directors, shareholders, employees, agents and representatives) that the Confidential Information shall remain strictly confidential and shall not be disclosed to any individual, corporation, partnership, association, trust or other entity without the prior written consent of the other party, provided however that the Authority may disclose such information if required pursuant to any open records or public information laws, provided that the Authority shall give Concessionaire reasonable advance written notice of the Confidential Information intended to be disclosed and the reasons and circumstances surrounding such disclosure, in order to permit Concessionaire to seek a protective order or other appropriate request for confidential treatment of the applicable Confidential Information, and shall provide reasonable cooperation as necessary to allow Concessionaire to avail itself of applicable exemptions from disclosure. The Authority shall have no obligation to raise any exemption claims, nor incur any expense in providing such reasonable cooperation to Concessionaire. The obligation set forth herein to maintain the confidentiality of the Confidential Information shall survive the term of this Agreement hereof and may be enforced by injunctive relief or other equitable or legal remedy without the necessity of proving the inadequacy of legal remedies and without proving that a party or any of its Affiliates would suffer irreparable harm as a result of a violation of such obligation.

Section 9.5 Advertising of Names. Except as otherwise permitted by this Agreement, Concessionaire shall not itself and shall not permit any subsidiary or affiliate of Concessionaire to advertise or promote in any way its own name or business or the name or business of any of its subsidiaries or affiliates in the Facilities or on the streets and sidewalks adjacent to the Facilities or use the name of the Facilities once identified or any variations thereof in any advertising, promotional or informational material, literature or publicity or on any letterhead or in any way advertise or publicize this Agreement, the transactions provided for herein and the relationships created thereby without the Authority's prior written approval; provided, however, that no such approval shall be required to include the name of the Facilities or the Authority among a list of Concessionaire's clients in any company resume, promotional or information materials.. No public announcement, to the press, or otherwise, of the transactions provided for herein shall be made by Concessionaire or the Authority unless the same shall have been previously approved in writing by both Concessionaire and the Authority.

Section 9.6 Notices. Notices, approvals or other communications provided for herein shall be validly given or made if in writing and delivered by hand, by reputable overnight/express carrier, such as Federal Express, or mailed registered or certified return receipt requested (postage prepaid, and with a copy mailed simultaneously by first class mail). As follows:

To Concessionaire:

With Copy to:

To the Authority:

Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, New Jersey 08401
Attention: Marshall Spevak, Deputy Executive Director
Telephone: 609-347-0500

With Copy to:

Casino Reinvestment Development Authority
15 South Pennsylvania Avenue
Atlantic City, New Jersey 08401
Attention: Paul Weiss, General Counsel
Telephone: 609-347-0500

or at such other address or addresses as may be specified by either party hereto by written notice delivered to the other as provided herein. Any such notice if sent in accordance with the provisions of this Section 9.6 shall be deemed given on the date delivered, in the case of personal delivery or overnight carrier, or in all events within five (5) days following the deposit thereof in the U.S. mails as above provided.

Section 9.7 Non-Waiver. No waiver by either party of any default in the terms, covenants, or conditions hereof to be performed, kept or observed by the other shall be construed to be or act as a waiver of any subsequent default of any of such terms. Acceptance of any fees or amounts due hereunder by the Authority for any period or periods after a default of any of the terms, conditions and covenants herein contained shall not be deemed a waiver of any right or remedy of the Authority.

Section 9.8 Entire Agreement; Binding Effect. This Agreement contains the entire understanding between the parties, and shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. This Agreement may not be modified except by written instrument executed by both parties hereto. No prior or contemporaneous oral or written agreements, bid solicitation, bid responses or other materials shall be binding on the parties unless expressly incorporated herein by reference.

Section 9.9 Nature of Agreement. IN NO EVENT SHALL THIS AGREEMENT EVER BE CONSTRUED TO HAVE CREATED ANY EXPRESS OR IMPLIED WARRANTY OR REPRESENTATION FROM THE AUTHORITY TO CONCESSIONAIRE AS TO THE ACTUAL RECEIPTS OR PROFITS WHICH CONCESSIONAIRE MAY DERIVE OR EXPECT TO DERIVE WITH RESPECT TO THE OPERATION OF THE FOODSERVICES, AND CONCESSIONAIRE ACKNOWLEDGES THAT NO SUCH WARRANTY OR REPRESENTATION HAS IN FACT BEEN MADE BY THE AUTHORITY OR ANY OTHER PARTY OR PERSON.

Section 9.10 Force Majeure. In the event that either party hereto is prevented from fully and timely performing any of its obligations hereunder due to acts of the public enemy, restraining by government, unavailability of materials, civil unrest, floods, hurricanes, tornadoes, earthquakes or other severe weather conditions or acts of God (collectively called “Force Majeure,” financial inability to perform hereby expressly excluded) such party shall be relieved of the duty to perform such obligation until such time as the Force Majeure has been alleviated; provided, that upon the removal of the Force Majeure, the obligation prevented from being fulfilled will be automatically reinstated without the necessity of any notice whatsoever.

Section 9.11 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of New Jersey, without regard to the conflicts of laws principles thereof, calls for performance in Atlantic City, Atlantic County, New Jersey and venue for any dispute arising hereunder shall lie exclusively in the state and federal courts having jurisdiction for Atlantic City, Atlantic County, New Jersey.

Section 9.12 Partial Invalidity. If any term or provision of this Agreement shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, the remaining terms and provisions of this Agreement shall not be affected thereby, and each remaining term and provision of this Agreement shall remain valid and be enforceable to the fullest extent permitted by law, provided that no party is as a result thereof deprived of the enjoyment of its substantial benefits under this Agreement.

Section 9.13 Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of Articles and Sections in this Agreement are for convenience only, and neither limit nor amplify the provisions of this Agreement, and all references in this Agreement to Articles, Sections and Subsections thereof shall refer to the corresponding Article, Section or Subsection of this Agreement unless specific reference is made to the articles, sections or subsections of another document or instrument.

Section 9.14 Survivability. All clauses of this Agreement that require performance beyond the expiration or termination of the Agreement shall survive such termination or expiration.

Section 9.15 Representations and Warranties of Concessionaire. Concessionaire hereby represents and warrants to the Authority that as of the Effective Date:

A. Concessionaire has been duly authorized to, and may validly enter into this Agreement with the Authority.

B. Each individual executing this Agreement on behalf of Concessionaire is duly authorized to do so.

C. The execution of this Agreement shall not cause Concessionaire to breach or be in default under any other agreement.

D. No consents or approvals are necessary under any agreement to which Concessionaire may be a party in order for this Agreement to be effective in accordance with the terms set forth herein.

Section 9.16 Representations and Warranties of the Authority. The Authority hereby represents and warrants to Concessionaire that as of the Effective Date:

A. The Authority has been duly authorized to, and may validly enter into this Agreement with Concessionaire.

B. Each individual executing this Agreement on behalf of the Authority is duly authorized to do so.

C. The execution of this Agreement shall not cause the Authority to breach or be in default under any other agreement.

D. No consents or approvals are necessary under any agreement to which the Authority may be a party in order for this agreement to be effective in accordance with the terms set forth herein.

Section 9.17 Time is of the Essence. Time is of the essence with respect to the performance of each of the covenants and obligations contained in this Agreement.

Section 9.18 Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument, and any party hereto may execute this Agreement by signing such counterpart.

IN WITNESS WHEREOF, the Authority and Concessionaire have each duly executed this Agreement on the day and year first above written.

**CASINO REINVESTMENT
DEVELOPMENT AUTHORITY:**

By: _____

Name: Matthew J. Doherty

Title: Executive Director

CONCESSIONAIRE:

By: _____

Name: _____

Title: _____

|

EXHIBIT A

CONCESSIONAIRE PROPOSED STAFFING