

EXHIBIT A

LICENSE AGREEMENT

SECTION I - PARTIES

THIS LICENSE AGREEMENT is made and entered into this _____ day of _____, 2020, by and between the HANOVER PARK PARK DISTRICT, an Illinois park district, with its principal place of business located at 1919 Walnut Avenue, Hanover Park, Illinois, 60103 (the "Park District"), which owns and operates the Seafari Springs Aquatic Facility (the "Aquatic Facility"); and _____, a _____ corporation, with its principal place of business located at _____, Illinois ("Licensee").

WHEREAS, the Park District issued a Request for Proposals for Pool Concession Services (the "Pool Concession RFP") which is expressly incorporated herein; and

WHEREAS, _____ [insert name of selected vendor] (the "Licensee") submitted a Proposal in response to the Pool Concession RFP and desires to obtain an agreement from the Park District to vend its own food and beverage products from and on the premises owned and operated by the Park District known as the Aquatic Facility; and

WHEREAS, the Park District deems it is in its best interest to enter a license agreement with the Licensee for that purpose under the following terms and conditions;

NOW, THEREFORE, in view of the foregoing and in consideration of mutual covenants hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree, covenant and promise as follows:

SECTION II - TERMS

A. Subject to the terms and conditions of the Pool Concession RFP and the terms and conditions set forth in this Agreement, Licensee is hereby granted a license for the sole purpose of vending food, non-alcoholic beverages and related products (collectively known as "Food & Beverage Items") in the 800 S.F. +/- portion of the Aquatic Facility designated as the "Concession Area" on the floor plan which is attached hereto as Exhibit A and is expressly incorporated herein (the "Premises").

B. This grant is for operating on the Premises only, and for ingress and egress over and across the Aquatic Facility property and for Licensee's employee parking during hours of operation. Licensee shall have no rights as an owner, tenant or grantee under an easement by law, equity or otherwise.

C. The term of this Agreement shall commence on May 29, 2020 (the "Commencement Date") through August 16, 2020 and from May 28, 2021 through August 15, 2021 (the "Initial Term"). This Agreement may be renewed for a third year commencing Memorial Day weekend 2022 and ending the second week of August in 2022, upon the same terms and conditions by mutual written agreement of the Parties (the "Extended Term").

SECTION III - LICENSE FEE

A. For and in consideration of the use of the Premises during the term hereof, Licensee shall pay to the Park District a license fee equal to _____ per cent (___%) of its daily gross sales, or alternatively a monthly license fee of \$_____.

B. Gross sales shall be defined as total receipts collected for sales of food items and services rendered made from operating the Premises, whether by cash or credit, less applicable sales tax, customer returns and meals to employees.

C. The _____ per cent (___%) fee of daily gross sales shall be paid weekly. If instead the Licensee opts to pay a monthly license fee, it shall be due on July 1, 2020 and on the 1st day of each succeeding month during the Initial Term and the Extended Term in the event this Agreement is renewed and extended

SECTION IV - HOURS OF OPERATION

A. Licensee shall operate and shall vend food items at and from the Premises daily during the Initial Term (and the Extended Term if this Agreement is renewed and extended) between the hours of 11:30 a.m. to 7:00 p.m. and only during the Aquatic Facility operating season as defined by the Park District (the "Hours of Operation"). Licensee may, at its discretion, operate any additional hours the Facility is open to the public, upon providing advance notice to the Park District.

B. In the event that the Park District, in its sole discretion, finds it necessary or desirable to close the Aquatic Facility, it shall not be liable to Licensee for lost profits or any other losses arising hereunder or otherwise.

C. Should the Aquatic Facility be closed due to inclement weather or low attendance, the Park District shall give one-half (1/2) hour notice of closing and reopening, whenever possible. Licensee will use its best efforts to reinstate operations as soon as possible after receiving said notice of reopening.

D. Licensee shall have access to the Premises only at such times as the Aquatic Facility is staffed by Park District employees.

SECTION V - RECORDS OF SALES

A. In the event the Licensee has proposed a percentage of daily sales and the Park District accepts its proposal, the Licensee shall keep complete and accurate records of its daily gross sales hereunder. The Park District shall have the right to audit the sales records, including, but not limited to, sales tax returns, sales tax reports, amendments, proof of payment, or any other sales tax information filed by the Licensee with the State of Illinois in a manner which does not unreasonably interfere with the conduct of Licensee's business. Any deficiency in payment of operating fees disclosed by an audit shall be paid within five (5) days of notice of the deficiency to the Park District. If an audit discloses a discrepancy of more than five per cent (5%) of the amount paid, the Licensee shall pay to the Park District all reasonable costs connected with the audit, including, but not limited to, wages for its staff and accountants' fees.

B. The remedies to the Park District for underpayment by Licensee shall not be exclusive and shall not prevent the Park District from seeking further remedy through any court of competent jurisdiction, whether at law or in equity. The Park District may, but need not, utilize the procedures and remedies available under the Forcible Entry and Detainer Act in the event of a default by the Licensee, even though this Agreement grants the Licensee a mere license and not a leasehold interest in the Aquatic Facility.

SECTION VI - FOOD SERVICE

A. Licensee's services to be rendered shall initially include the items listed on Exhibit B, attached hereto and incorporated herein by reference. Other or additional food items may be added by mutual written consent, subject to product availability for Licensee's food item providers.

B. Prices for Licensee's regular food items shall be priced comparable to those charged at Licensee's restaurants or catering business in the area, and the quality and portions shall also be consistent.

C. Applicable sales taxes shall be included in the prices. Licensee shall promptly pay all sales taxes when due and provide evidence of payment upon request of the Park District. Licensee shall indemnify the Park District from and against any and all liability arising from Licensee's failure to satisfy any sales tax reports or payment obligations, including penalties and interest, and this paragraph shall survive termination of this Agreement.

D. The Park District shall not engage in the sale of other similar foods at the Aquatic Facility except that this provision shall not apply to private or individual functions catered by the Park District.

SECTION VII - PREMISES AND EQUIPMENT

A. Licensee shall have the use of the Premises along with any fixtures included therein. No other area of the venue shall be used except with the prior written permission of the Park District.

B. Licensee shall have the use of the equipment located inside the Premises as more accurately listed in Exhibit C, attached hereto and incorporated herein by this reference (the "Park District's Equipment"). The Park District makes no warranty of any type as to the condition or fitness of the Park District's Equipment. Licensee shall be responsible for the maintenance and repair of the Park District's Equipment during the term of this Agreement, and, upon termination, shall leave the Park District's Equipment in substantially the same condition as when received, with the exception of normal wear from use.

C. The Park District shall provide electricity, hot and cold running water, and access to rest rooms for the operation of the Premises. No alteration of existing plumbing or electrical systems, or other systems shall be made by the Licensee without prior written permission by the Park District, and in the event said permission is granted, said alterations shall be made at the sole responsibility and expense of the Licensee with prior written permission by the Park District.

D. Licensee shall use its best efforts to reasonably conserve gas, electric, water and sewer, and to use said utilities in a commercially reasonable manner. Each party shall pay their own telephone bills.

E. Any alteration or decoration of the Premises shall be at the expense of Licensee and only with express written consent of the Park District. Any additions or improvements made shall become the sole property of the Park District. The Park District shall have final authority to approve any alteration or decoration described herein prior to the addition or improvement being made.

F. Licensee may install signage on the Premises with the prior written approval of the Park District and provided it has procured all necessary sign permits and other approvals therefor from the Village of Hanover Park. All fees and costs related thereto are to be paid by the Licensee.

G. Trash receptacles and removal services shall be provided by the Park District for Licensee's operation.

H. The Licensee acknowledges the Aquatic Facility is a non-smoking facility and shall not allow smoking in the Premises.

SECTION VIII - OPERATIONS

A. At all times during the term of this Agreement, Licensee shall maintain the Premises and all personal property and fixtures located therein in a clean, neat, orderly and safe condition, including, without limitation, collection and proper disposition of

trash and receptacles and keeping outside tabletops and concession deck in a clean and sanitary condition.

B. The Licensee's provision of providing of food items shall be consistently high in quality and shall, at all times, be sanitary, orderly and sufficient to meet public demand.

C. The Licensee shall employ sufficient and qualified personnel for the Premises and agree that the services rendered by such personnel to the public shall be provided in a courteous, businesslike and efficient manner. Designated Park District employees may require individual Licensee personnel to modify their individual behavior, when such Park District employees deem necessary in keeping with Licensee's obligations under this subsection, including, without limitation, rudeness to the public and poor sanitation practices.

D. The Licensee agrees to comply and to cause its employees to comply fully with the Federal Equal Employment Opportunities Act, the Civil Rights Act of 1974, the State Human Rights Act, the Americans with Disabilities Act, and all applicable rules and regulations promulgated thereunder, and all amendments made thereto, and Licensee agrees not to deny services or employment opportunities on the basis of race, creed, color, religion, sex, national origin or ancestry, age, disability unrelated to ability, marital status, or unfavorable discharge from military service. Further, Licensee agrees to indemnify and hold the Park District harmless in regard to any violations of the above-stated acts, rules, regulations and amendments.

E. Licensee agrees that all food items shall be purchased from reliable and reputable suppliers and, if required by law, all food items will be approved by authorized governmental agencies.

F. Licensee agrees to adhere to all Federal, State and local laws, rules and regulations that may pertain to the food service industry, including, but not exclusive to, having a food sanitation supervisor or individual on staff and paying for all necessary licenses, permits and inspections.

G. It is understood, acknowledged and agreed by the parties that the relationship of Licensee to the Park District arising out of this Agreement shall be that of an independent contractor. Neither Licensee nor any employee or agent of Licensee is or shall be an employee or agent of the Park District and, therefore, it and the Licensee's employees shall not be entitled to any benefits provided to employees of the Park District. Licensee has no authority to employ or retain any person as an employee or agent for or on behalf of the Park District for any purpose. Neither Licensee nor any person engaging in any work or services related to this Agreement at Licensee request or with the actual or implied consent of Licensee may represent himself to others as an employee of the Park District. Should any person indicate to Licensee or an employer or agent of Licensee, by written or oral communication, in the course of dealing or otherwise, that such person believes the Licensee or any of its employees to be an employee or agent of the Park District, Licensee shall use its best efforts to immediately

correct such belief. Further, when ordering or accepting delivery of or paying for any goods or services for use at the Aquatic Facility, Licensee shall do so in the Licensee's own business name and not in the name of the Park District. The Licensee shall indemnify and hold the Park District harmless from any claim alleging that Licensee's relationship is not as independent contractor of the Park District.

H. In the event a Freedom of Information Act (the "FOIA") request is received by the Park District for any records relating to this Agreement or Licensee's operations and/or sales, Licensee shall timely furnish all documents requested, except for those exempt under FOIA.

SECTION IX - INSURANCE

Licensee shall procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the Licensee's operation and use of the Premises. The cost of such insurance shall be borne by the Licensee.

A. MINIMUM SCOPE AND LIMIT OF INSURANCE

Coverage shall be at least as broad as:

1. **Commercial General Liability (CGL):** Insurance Services Office Form CG 00 01 covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than **\$1,000,000** per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. **Workers' Compensation** insurance as required by the State of Illinois with Statutory Limits, and Employer's Liability Insurance with limits of no less than **\$1,000,000** per accident for bodily injury or disease.
3. **Property Insurance** against all risks of loss to any Licensee improvements or betterments, at full replacement cost with no coinsurance penalty provision.

If the Licensee maintains broader coverage and/or higher limits than the minimums shown above, the Licensor requires and shall be entitled to the broader coverage and/or the higher limits maintained. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the Licensor.

B. Other Insurance Provisions:

The insurance policies are to contain, or be endorsed to contain, the following provisions;

1. *Additional Insured Status*

The Park District, its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Licensee including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Licensee's insurance (at least as broad as ISO Form CG 20 10).

2. *Primary Coverage*

For any claims related to this contract, the Licensee's insurance coverage shall be primary coverage at least as broad as ISO CG 20 01 04 13 as respects the Park District, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the Park District, its officers, officials, employees, or volunteers shall be excess of the Licensee's insurance and shall not contribute with it.

3. *Notice of Cancellation*

Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the Licensor.

4. *Waiver of Subrogation*

Licensee hereby grants to the Park District a waiver of any right to subrogation which any insurer of said Licensee may acquire against the Licensor by virtue of the payment of any loss under such insurance. Licensee agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Licensor has received a waiver of subrogation endorsement from the insurer.

C. *Acceptability of Insurers*

Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A: VII, unless otherwise acceptable to the Licensor.

D. *Self-Insured Retentions*

Self-Insured retentions must be declared to and approved by the Licensor. At the option of the Licensor, either: The Licensee shall obtain coverage to reduce or eliminate such self-insured retentions as respects the Licensor, its officers, officials, employees, and volunteers; or the Licensee shall provide a financial guarantee satisfactory to the Licensor guaranteeing payment of losses and related investigations, claim administration, and defense expenses. The policy language shall provide, or be endorsed to provide, that the self-insured retention may be satisfied by either the named insured or Licensor.

E. *Verification of Coverage*

Licensee shall furnish the Licensor with original certificates and amendatory endorsements or copies of the applicable policy language providing the insurance coverage required above. All certificates and endorsements are to be received and approved by the Licensor before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Licensee's obligation to provide them. The Licensor reserves the right to require complete, certified copies of any required insurance policies, including endorsements required by these specifications, at any time.

SECTION X - INDEMNIFICATION

To the extent permitted by law, Licensee hereby releases, relinquishes, discharges and agrees to defend, indemnify and hold the Park District, its Board of Park Commissioners, officials, officers, agents, employees and volunteers, harmless against all claims, damages, losses, judgments, fees, expenses, including reasonable attorney's fees, and liability for any loss, damage, injury or other casualty, including bodily injury, death, sickness, disease and damage or destruction of property, injury to the employees of either of the parties hereto or to third persons, caused by, growing out of, or happening in connection with Licensee use of the Aquatic Facility, the Premises, the Park District's Equipment or any other equipment or appliances located on or to be located thereon in connection with Licensee's operations under this Agreement; any leakage, fire or explosion of or from any such equipment or any part thereof; or any oils or other products in or about or contained in same; or by reason of the use or operation of such equipment or by reason of the placing, erection, falling or dislocation of such equipment or any part thereof; or any intentional, willful, wanton and/or negligent act or omission of Licensee or its officers, employees, agents, suppliers; the failure to observe and comply with any Federal, State and local laws, ordinances, rules and regulations or any other reasons. Nothing herein contained shall be construed as prohibiting the Park District or its officers or employees from defending any such actions or suits brought against them or from employing their own counsel in defense of any and all such actions and suits, but the reasonable costs and reasonable attorney's fees thereof shall be the obligation of Licensee. It is understood and agreed that Licensee shall reimburse the Park District for such costs and reasonable attorney's fees. Notwithstanding the foregoing, however, nothing contained in this Section shall require Licensee to indemnify the Park District for losses caused by the sole negligence or willful misconduct of the Park District.

SECTION XI – CRIMINAL BACKGROUND CHECKS

Prior to the Commencement Date beginning in May 2020, and in each May thereafter if this Agreement is renewed and extended, the Licensee shall provide to the Licensor a list of its employees who will be working in the Premises during the upcoming pool season, together with proof that criminal background checks were performed for all such employees, and a certification from the Licensee that no employee on said list has been convicted of a crime which would make any employee appearing on the list of Licensee's employees is ineligible under applicable state statutes if that person were employed by the Park District. The Licensee shall update

the list and provide proof of criminal background checks and certification for each employee it hires to work on the Premises adds during the Initial Term or the Extended Term. The Licensee shall pay all costs for and associated with the criminal background checks without any reimbursement by the Park District or set off against License fees or percentage of sales.

SECTION XII - TERMINATION

A. In the event Licensee shall breach or be in default under any of the provisions of this Agreement, the Park District may terminate this Agreement if Licensee shall not have cured such default within five (5) days after Park District shall have notified Licensee thereof, in writing; provided, however, that if Licensee shall have repeatedly breached or been in default hereunder on previous occasions, the Park District may terminate this Agreement immediately without affording Licensee an opportunity to cure the breach or default upon written notice to Licensee.

B. In the event Licensee shall have (1) filed a voluntary petition in bankruptcy or made an assignment for benefit of creditors; (2) consented to the appointment of a receiver or trustee of all or part of its property; or (3) an involuntary petition in bankruptcy shall have been filed in regard to Licensee and the same shall not have been dismissed within ten (10) days of such filing, this Agreement shall automatically terminate.

C. Upon thirty (30) days prior written notice by either party to the other at the conclusion of the Term, as defined in Section II, paragraph C.

D. Upon termination of this Agreement, Licensee shall yield up the Premises and the Park District's Equipment in at least as good of condition as existed prior to the Commencement Date, reasonable wear and tear excepted. Notwithstanding the provisions of this paragraph, all fixtures shall remain on the Premises as provided in Section VII, paragraph B herein.

E. In addition to performing all of Licensee's other obligations set forth in this Agreement, Licensee shall pay to the Park District an amount equal to 200% of the flat monthly License fee, or 200% of the percentage of sales License fee paid by Licensee for the month of the highest gross revenues of the Term, including, without limitation, its share of the utility and maintenance expenses, for each month or portion thereof during which Licensee shall retain possession of the Premises, or any part thereof, after the expiration or termination of Licensee right of possession, whether by lapse of time or otherwise, and also shall pay all damages sustained by the Park District on account of Licensee so retaining possession. The provisions of this paragraph shall not be deemed to limit or constitute a waiver of any other rights or remedies of the Park District provided herein or at law or equity.

SECTION XIII - REPRESENTATIONS

A. Licensee represents and covenants that no official, employee or agent of the Park District (1) has been employed or retained to solicit or aid in the procuring of this Agreement, or (2) will be employed or otherwise benefit from this Agreement without the immediate divulgence of such fact to the Park District.

B. In compliance with Section 10.1 of the Illinois Purchasing Act, Licensee certifies that it has not been convicted of bribery or attempting to bribe an officer or employee of the State of Illinois, nor has Licensee made an admission of guilt of such conduct, which is a matter of record, nor has an official, agent or employee of Licensee been convicted nor made such an admission.

SECTION XIV - NOTICES

All notices required or permitted to be given under this Agreement shall be deemed given when such notice is either hand delivered or sent by certified mail, return receipt requested, and deposited in the United States mail, with postage thereon prepaid, addressed to the other party at the following addresses:

If to the Park District:
Hanover Park Park District
Attention: Bob O'Brien
1919 Walnut Avenue
Hanover Park, Illinois, 60103

With a copy to:
Bryan E. Mraz
Bryan E. Mraz & Associates, P.C.
111 East Irving Park Road
Roselle, Illinois, 60172

If to Licensee:

SECTION XV - ASSIGNMENT

Licensee shall have no authority or power to sell, transfer or assign this Agreement or any interest herein, nor any power or authority to permit any other person or party to have any interest or use any part of the Park District property covered by this Agreement for any purpose whatsoever without the prior written consent of the Park District, it being the intention of this Agreement to grant the privilege solely to Licensee and neither directly or indirectly to any other party.

SECTION XVI - REAL ESTATE TAXES

Licensee acknowledges that the Premises are currently exempt from all taxes, including, but not limited to, real estate taxes. In the event (a) this License Agreement or the rights granted under this Agreement results in the full or partial loss of such exemption, or (b) the Premises and/or the non-licensed portion of the Aquatic Facility become subject to the assessment of leasehold taxes or other real estate taxes as a result of this Agreement, then Licensee agrees to pay the Park District the amount of any such tax, but reserves the right to appeal such assessment, prior to the due date therefor for each tax year this Agreement remains in effect, including any and all extensions. In the event other users install equipment or are otherwise granted a license or lease interest for use of the Aquatic Facility resulting in any such tax assessment, the amount of any such tax shall be prorated between such users. The duties, liabilities and obligations provided for under this section shall survive the termination of this Agreement.

SECTION XVII - MISCELLANEOUS

A. The waiver by the Park District of any breach or default under any provision of this Agreement shall not be deemed to constitute a waiver of such provision for any subsequent breach or default of the same or any other provision. The acceptance of any payment by the Park District shall not be deemed to constitute a waiver of any prior occurring breach or default by Licensee of any provision of this Agreement regardless of the knowledge of the Park District of such breach or default at the time of its acceptance of such payment.

B. This Agreement contains all of the terms and conditions agreed to by the parties with respect to the subject hereof, and no other alleged communications or agreements between the parties, written or otherwise, shall vary the terms hereof. Any modifications of this Agreement must be in writing, signed by the parties and dated on or subsequent to the date hereof.

C. Neither party shall be liable for damages for its failure to perform due to contingencies beyond its reasonable control, including, but not limited to, fire, storm, flood, earthquake, explosion, accidents, public disorders, sabotage, lockouts, labor disputes, labor shortages, strikes, riots, acts of war or acts of God.

D. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois and venue of any lawsuits shall be in DuPage County, Illinois.

E. The persons signing this Agreement shall have all the legal authority and power in their respective capacities to bind the parties, and the Agreement shall not be effective until fully executed and delivered to the parties.

F. If any clause, phrase, provision or portion of this Agreement or the application thereof, to any person or circumstance, shall be invalid or unenforceable under applicable law, such event shall not affect, impair or render invalid or

unenforceable the remainder of this Agreement, nor shall it affect the application of any other clause, phrase, provision or portion hereof to other persons or circumstances.

[SIGNATURE PAGE FOLLOWS}

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

LICENSEE:

By: _____
Its President

Attest:

Secretary

LICENSOR:

Hanover Park Park District

By: _____
President

Attest:

Secretary

EXHIBIT B

LIST OF LICENSEE'S MENU ITEMS

EXHIBIT C
THE PARK DISTRICT'S EQUIPMENT

- 1 Ice-maker with bin
- 1 Two-door, reach-in refrigerator
- 1 Two-door, reach-in freezer
- 1 Lot of undercounter shelving
- 1 Nacho cheese pump
- 1 Microwave Oven
- 1 Popcorn Machine
- 1 Lot of dry storage shelving