

AGENDA
SPECIAL PLANNING, BUILDING AND ZONING COMMITTEE
Village of Hoffman Estates
February 22, 2016

Immediately Following the Public Health & Safety Committee

Members:	Karen Mills, Chairperson	Anna Newell, Trustee
	Gayle Vandenberg, Vice Chairperson	Gary Pilafas, Trustee
	Gary Stanton, Trustee	Michael Gaeta, Trustee
		William McLeod, Mayor

I. Roll Call

NEW BUSINESS

1. Present a request by Dasbier Garden, LLC for a new two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC for the Village Green beer garden (2016-2017).

II. Adjournment

**COMMITTEE AGENDA ITEM
VILLAGE OF HOFFMAN ESTATES**

SUBJECT: Present a request by Dasbier Garden, LLC for a new two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC for the Village Green beer garden (2016-2017)

MEETING DATE: February 22, 2016

COMMITTEE: Special Planning, Building and Zoning

FROM: James Norris/Mark Koplín/Kevin Kramer

PURPOSE: Present a request by Dasbier Garden, LLC for a new two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC for the Village Green beer garden (2016-2017).

BACKGROUND: In March 2015, the Village Board approved a one year agreement with Dasbier Garden, LLC/Hoffman Estates Beer Garden to allow use of the Village Green from May through October for a traditional German beer garden. The agreement allowed the use of the Village Green concession building to serve beer and outfit the storage area for a cooler. Dasbier paid the Village a "commission" on sales (20% on beer and wine sales and 10% of all food sales and nonalcoholic beverages). The 2015 agreement stipulated two "blackout" provisions: 1) the FourthFest, and 2) the September Platzkonzert. The Village allowed Dasbier to be open and sell beer only during the Thursday night concerts, so long as they matched the percentages that Levy provided to the Village during the concerts. Dasbier opened in June and continued until the first weekend in October.

Dasbier generated over \$90,000 of sales in 2015, resulting in a commission to the Village of \$14,500, not including food and beverage tax. At the Thursday night concerts between 7:00 p.m. and 9:00 p.m., Dasbier generated \$8,794 of sales, generating \$3,078 of commission to the Village (included in the total above).

Recently, both the Arts Commission and Platzkonzert Commission recommended that their events be "blacked out" if the Village Board decides to extend the agreement with Dasbier.

DISCUSSION:***Dasbier Proposal for 2016:***

Dasbier Garden requests consideration by the Village to approve a new agreement for use of the Village Green for a beer garden in 2016 and 2017. Mr. Hartman requests a multi-year agreement so Dasbier can make an additional investment and amortize the costs. Mr. Hartman also asks that the blackout dates be lifted, and Dasbier would: 1) again match the Levy percentage during the Thursday night concerts, 2) agree to serve only Hofbrau beer and pretzels at the FourthFest, while paying a vendor's fee but not the standard license fee, and 3) provide the beer for the Platzkonzert at cost, with all profits from the beer trailer sales going to the Village plus a \$200/keg fee tapped at the concession stand in lieu of the standard license fee on beer.

A new two year agreement with Dasbier Garden, LLC dba/Hoffman Estates Beer Garden is attached for review, including provisions for the three Village events, along with making other changes based on a review of the first year of operation. A summary of the key points follows:

- ◆ WHEREAS clauses and Paragraph 2. To provide clarity, the Leased Premises (the actual concession building) is distinguished from the Village Green (the entire 12.4 acres).
- ◆ Paragraph 3. Dasbier may open in April and run into October.
- ◆ Paragraph 4. Added language to clarify who manages the sale and distribution of the alcohol.
- ◆ Paragraph 5. The term is two years.
- ◆ Paragraph 7. The specific terms and conditions for the Summer Concert Series, the FourthFest, and the Platzkonzert are spelled out here. The terms for the Platzkonzert will be evaluated after the 2016 Platzkonzert and the Board will decide if or how to proceed with Dasbier in 2017.
- ◆ Paragraph 9. It is a material obligation for Dasbier to obtain all governmental licenses and permits for their business.
- ◆ Paragraph 10. The Village previously approved the menu.
- ◆ Paragraph 11. The previous language did not conform to standard practices with regard to Village Green Amphitheater events. The proposed language distinguishes between ambient music (piped in music) and unamplified musicians in the beer garden seating area (which would be allowed under the agreement), and larger events with performers at the Amphitheater that may or may not have amplified music. Standard Village practice is for anybody wanting to reserve the Village Green and/or Amphitheater to contact Development Services. With a description of the event (company picnic for example), it is reviewed according to the Village Green Policies and Procedures, and the date is reserved. If the event is larger and more complicated (includes a 5K run and/or the event spreads out beyond just the Village Green for example), the event then needs to go through the more extensive Village Special Events approval process coordinated by General Government.

DISCUSSION: (Continued)

- ◆ Paragraph 12. Dasbier would like to put up the same signs as last year (Exhibit D-1) but would also like to discuss the possibility of temporary signage on the blue wayfinding signs within the business park (Exhibit D-2).
- ◆ Paragraph 16. Patrons may also use the Sears Centre west parking lot if the Park Center Commons parking lot is not available for any reason.
- ◆ Paragraph 20. Dasbier requests the ability to expand the gravel seating area from the existing 4,000 square feet to up to 6,000 square feet if they do well this year. To address the concerns raised in 2015, Dasbier needs to provide a cash deposit, and adding to the gravel area will occur incrementally (rather than giving approval for 10,000-12,000 square feet at this time).
- ◆ Paragraph 22. Dasbier seeks the ability to add umbrellas, entrance arches, portable fire pits, or propane warmers in the colder months or at night. These would be reviewed by Village staff and subject to approval by the Village Manager. If Dasbier wants to add a grill, it will be subject to the Code Enforcement Division and Fire Department review and approval. All temporary structures must be removed at the end of each season.
- ◆ Paragraph 25. The clarification allows the Village to enter the concession building with prior notice to Dasbier.
- ◆ Paragraph 27. Any late payment of sales or food and beverage tax will be subject to the interested fee stated in the Village Municipal Code.
- ◆ Paragraph 28. Dasbier's insurance will be liable for any of their patrons who may get hurt or damage property.
- ◆ Paragraph 30. Standard language regarding the delivery of any written correspondence has been added to the agreement.
- ◆ Paragraph 31. The Village is designating certain staff members as the contacts for Dasbier. For day-to-day matters, Kevin Kramer and Mark Koplin will be the contacts. The staff liaisons to the Commissions would be the contacts for the Thursday night concerts (Arts Commission), 4th of July, and the Platzkonzert.
- ◆ Paragraph 32. The Village is adding language regarding proper conduct relating to service and performance of this agreement.
- ◆ Paragraph 33. Standard language regarding defaults and remedies has been added to the agreement.
- ◆ Paragraphs 39-43. Standard language regarding waivers, construction of the agreement, exhibits, headings, and governing law have been added to the agreement.

DISCUSSION: (Continued)

Conclusion:

Dasbier would like to build upon their success in 2015 and requests a two year agreement, but also requests removal of the blackout dates in consideration of their proposal. Dasbier did attract new customers/patrons to the 59/90 Entertainment District and provided a social gathering place for these new patrons, as well as Village residents and employees in Prairie Stone.

RECOMMENDATION:

A two year Agreement with Dasbier Garden, LLC is presented to the Committee for consideration.

Attachment

cc: Andrew Hartman

**AGREEMENT
BETWEEN
VILLAGE OF HOFFMAN ESTATES
AND
DASBIER GARDEN, LLC**

This Agreement ("Agreement") is made and entered into effective _____, 2016, by and between THE VILLAGE OF HOFFMAN ESTATES ("Village") and DASBIER GARDEN, LLC ("Vendor"). Referenced together, the Village and the Vendor are the "Parties" to this Agreement.

PREAMBLE

WHEREAS, the Village is the owner of the Virginia Mary Hayter Village Green located in the Prairie Stone Business Park (the "Village Green") and legally described in Exhibit A; and

WHEREAS, Vendor is in the business of selling food and beverages, including alcoholic beverages, and desires to sell those foods and beverages within the Village Green; and

WHEREAS, the Village is willing to grant Vendor a non-exclusive license to sell food and beverages within the Village Green, including alcoholic beverages, and to lease to Vendor for those purposes the concession stand (5510 Prairie Stone Parkway) (the "Leased Premises") located within the Village Green and subject to the limitations as hereinafter provided.

NOW, THEREFORE, for and in consideration of the mutual covenants and promises herein set forth, and for such other good and valuable consideration, the receipt and sufficiency of which are herewith acknowledged, the Parties agree as follows:

AGREEMENT

1. **Permitted Use:** Vendor shall have a non-exclusive license to sell food and beverages, including alcoholic beverages, served under a Class I license, within the 12.6 acre Village Green. For these purposes, Vendor may bring a beer trailer on to the Village Green only on the weekends and for special events and with advance notice to the Village. Vendor's use of the Village Green is depicted in Exhibit B. Food and beverages shall be consumed within the gravel and concrete areas adjacent to the Leased Premises, and wholly within the Village Green. It is also expressly understood that because this license is non-exclusive, the Village Green may be used by the public during the operation of the Vendor and the public shall have access to the Village's restrooms maintained by Vendor and located therein.
2. **Leased Premises:** For and in consideration of Vendor's payment to the Village, as provided in Paragraph 6 herein, the Village shall lease to Vendor and Vendor shall conduct its sales of food and beverages from the Leased Premises, as depicted on Exhibit C to this Agreement, and/or a beer trailer as provided in Paragraph 1 of this Agreement. It is expressly understood that Vendor's use of the Leased Premises shall be exclusive, except as provided in Paragraphs 1 and 25 of this Agreement, permitting the Village, as owner, access rights to enter into and upon the Leased Premises to examine and inspect the condition thereof upon prior notice to Vendor.
3. **Hours of Operation:** Vendor is a fair-weather operation, open daily from April through October, weather permitting, and its hours restricted from 11:00 a.m.-10:00 p.m. These times of operation,

however, may be modified upon the prior written approval of the Village Manager. Except as otherwise provided hereinafter in Paragraph 7, in no event shall Vendor dispense, distribute, or sell alcoholic beverages after 9:00 p.m. on any day.

4. Alcoholic Beverages: It is the responsibility of Vendor to manage the sale and distribution of its alcohol to be sold from the Leased Premises or from the beer trailer, if any, and to be consumed on the concrete area immediately surrounding that concession stand and the gravel seating area adjacent to the Leased Premises, and wholly within the Village Green. Vendor is fully responsible for any incidents involving alcoholic beverages sold by Vendor from the Leased Premises. Vendor shall monitor the service of all alcoholic beverages, shall insure that no one under twenty-one (21) years of age is consuming alcohol, and shall refuse service to people who appear to be intoxicated or using poor judgment in their consumption. The Vendor shall comply at all times with all local and State laws, rules, and regulations, including but not limited to Sections 8-3-14 of the Village's Municipal Code requiring employees to be BASSET trained and 8-3-24 prohibiting Vendor from employing persons under age twenty-one (21) to prepare any alcoholic beverage.

5. Term: The Term of this Agreement shall be for the 2016 and 2017 calendar years, subject to early termination as provided hereinafter in Paragraph 33.

6. Payment:

A. Vendor shall pay to Village at the end of each sales period ("Sales Period") a license fee of twenty percent (20%) of gross revenue ("Gross Revenue") on all alcoholic beverage sales ("Standard Alcoholic Beverage Fees") and a license fee of ten percent (10%) of Gross Revenue on all food and nonalcoholic beverage sales ("Standard Food and Nonalcoholic Beverage Fees"). For purposes of this Agreement, Sales Period shall mean each calendar month during the Term of this Agreement, with payment of license fees due fourteen (14) days thereafter. "Gross Revenue" shall mean all revenue collected, excluding sales taxes or food and beverage taxes.

B. Vendor shall also pay to the Village in accordance with Section 13 of its Municipal Code, all Food and Beverage Taxes, and all Sales Taxes owed by Vendor to the Village.

C. Payment of these license fees and taxes shall be made to: **Village of Hoffman Estates**, and delivered to: Finance Department, 1900 Hassell Road, Hoffman Estates, Illinois 60169.

7. Village Special Events:

A. Summer Concert Series: Vendor may remain open during the Thursday night summer concerts; provided, however, that for sales occurring from 7:00 p.m. to 9:00 p.m., Vendor shall instead pay to the Village a license fee of thirty-five percent (35%) of Gross Revenue.

B. FourthFest:

1) Vendor may remain open during the 2016 FourthFest provided it pays in advance vendor fees totaling three thousand two hundred fifty dollars (\$3,250), of which two thousand five hundred dollars (\$2,500) is the Vendor fee for the sale of beer and seven hundred fifty dollars (\$750) is the Vendor fee for the sale of food.

2) During the 2016 FourthFest, Friday through Sunday hours of operation may be 11:00 a.m. to 11:00 p.m. Normal operations permitted under Paragraph 3 of this Agreement may occur on the Thursday prior to and the Monday following the FourthFest.

Dates and hours for the 2017 FourthFest shall be determined by the Village prior to the 2017 season opening.

3) Vendor shall be limited to the sale of giant pretzels, cheese, and Hofbrau® beer; no domestic beer or wine shall be sold by Vendor during this event.

4) License fees owed by Vendor to the Village for the period Friday through Sunday only during the FourthFest shall increase to thirty-five percent (35%) of Gross Revenue. Standard Alcoholic Beverage Fees and Standard Food and Nonalcoholic Beverage Fees, as defined herein, shall be paid by Vendor for sales occurring on Thursday and Monday of the FourthFest. The Village may sell other types of alcoholic beverages during this event.

C. Platzkonzert: Vendor shall be open during the 2016 Platzkonzert for such hours as may be determined by the Village Manager, and as follows:

1) Vendor will pay to the Village license fee of two hundred dollars (\$200) per keg of Hofbrau® beer tapped within the Leased Premises in lieu of the Standard Alcoholic Beverage Fee. Vendor shall be also be limited to the sale of giant pretzels and cheese, on which Vendor shall pay to the Village the Standard Food and Nonalcoholic Beverage Fees.

2) Vendor will also arrange for a beer trailer to be delivered to the Village Green offering Hofbrau® beer and one (1) domestic beer at a location on the Village Green to be determined by the Village, and which trailer will be staffed by event volunteers. For sales from the beer trailer during the 2016 Platzkonzert, Vendor shall pay to the Village a license fee of one hundred percent (100%) of Vendor's net beer sales, which is defined as Gross Sales less the keg, gas, and cup costs. All unsold beer remains property of Vendor.

3) After the 2016 Platzkonzert, Village shall determine if Vendor will be open during the 2017 Platzkonzert, and the terms and conditions of being open.

8. Sales Reports: Within fourteen (14) days of the end of each Sales Period, Vendor agrees to compile and to provide Village with a monthly, detailed summary report of all sales activities, a financial reconciliation of all moneys owed and paid, along with remittance of any amounts owed to the Village.

9. Permits, Licenses, and Other Costs: Vendor shall procure, maintain, and pay the fees for all appropriate federal, State, and local licenses and permits required for its activities including, but not limited to, its State and Village liquor licenses, a Village Business License, and a State of Illinois tax identification number. Vendor's obligation to renew such permits and licenses shall be a material obligation arising under this Agreement.

10. Village Approval of Items to be Sold: The Village maintains the right to prohibit the sale or rental of any item by Vendor within the Village Green that the Village deems to be inappropriate.

11. Amplified Music Restriction and Events: All amplified music, as well as ambient music, shall comply with the appropriate Village of Hoffman Estates noise ordinances. Unamplified performances within or immediately adjacent to the graveled seating area are permitted. Any performances or use of the amphitheater or elsewhere within the Village Green shall be subject to the approval of the Village as follows: (i) the Village Green and amphitheater remain a public space which can be reserved on a first come, first served basis for uses described in accordance with the Village Green Policies and Procedures; and (ii) Vendor shall provide a description of the event to the Village in accordance with Paragraph 31. The Development Services Department will then determine if the event is in compliance with the Village Green Policies and Procedures. If so,

the date/time will be reserved for Vendor. If the event requires a more extensive review, such event will need to obtain approval through the Village's special events process.

12. Signage: All proposed banners, signage, and advertising on or within the Leased Premises, the Village Green or within the Prairie Stone Business Park, must be in substantial conformance to the sign plan attached as Exhibit D. Signage depicted in Exhibit D-1 will be allowed. Additional off-site signage may be allowed in the locations displayed in Exhibit D-2, with prior approval by the Village Manager. Vendor shall pay for all signage. Signage must be removed by Vendor within fourteen (14) days following the end of the 2016 season and no later than November 14, 2016, or the expiration or termination of this Agreement.
13. Payments for Utilities: Vendor shall pay to the Village the monthly sum of two hundred fifty dollars (\$250) toward the cost of utilities. Payment is due fourteen (14) days after the end of each Sales Period.
14. Cleaning of Public Restrooms: Vendor shall lock and unlock, as well as permit public access to, the restrooms during all hours of operation and provide daily maintenance and cleaning of the public restrooms during days of Vendor's operations. Vendor shall provide and pay for all supplies for the restrooms. A key deposit of twenty dollars (\$20.00) will be required should the locks need to be replaced.
15. Garbage: Vendor is responsible for maintaining the Leased Premises and the area adjacent to the Leased Premises in a state of cleanliness and repair. Accordingly, Vendor is responsible for the collection and disposal of all trash, litter, and garbage associated with its activities. If Vendor contracts with a commercial waste service, Groot shall be the provider of the service. Vendor, at its cost, may contract with the Sears Centre Arena to utilize its refuse services. If Vendor uses the Sears Centre Arena, then the Vendor shall be responsible for delivering the trash each day to the Sears Center Arena dumpster.
16. Parking: The Village Green does not have any parking on-site. However, the Village has a shared parking agreement with the properties to the east of the Village Green at the Park Center Commons where the designated parking spaces may be used by Vendor and its patrons. Patrons and Vendor may also use the Sears Centre Arena west parking lot during days when no events occur at the Sears Centre Arena.
17. Pest and Bug Control: The Village typically provides mosquito control at the Village Green two (2) to four (4) times during the summer. Vendor shall be responsible for any additional mosquito control at the Village Green. Vendor shall also be responsible for pest control on the Leased Premises and adjacent to the Leased Premises.
18. Vendor's Obligations for Maintenance and Minor Repairs: Vendor shall maintain the Leased Premises and adjacent gravel and concrete areas being used by Vendor in good order and be responsible to ensure the Vendor's operations on the Leased Premises are compliant with appropriate codes, laws, and regulations. At no cost to the Village, Vendor shall make minor repairs to all plumbing, electrical, and lighting (including the replacement of light bulbs), door latches and locks, windows and plate glass/plastic, and signage, where such repairs or replacement are to the existing items in place within the Leased Premises or to those installed by Vendor. Vendor shall provide a refundable cash deposit or an Irrevocable Letter of Credit, in the amount of two thousand dollars (\$2,000), for any changes or damages which may be caused to the structure.

19. Access to Storage Room: Vendor shall be permitted to use the storage room on the north side of the Leased Premises for a refrigeration unit and any other such storage as may be necessary for Vendor's daily operations.
20. Outdoor Seating; Restoration: Vendor and Village shall together participate in a pre-season and post-season inspection of the Leased Premises and the Village Green, including the turf and concession building. The Village agrees that crushed stone may be used to increase the outdoor seating area from the current existing four thousand (4,000) square feet to up to six thousand (6,000) square feet, as depicted in Exhibit B. If additional stone is used, it shall be a three (3) inch gravel base with three (3) inches of limestone screenings as the top layer. The Vendor may make these changes at its expense. An additional cash deposit or an Irrevocable Letter of Credit in the amount of ten dollars (\$10.00) per square yard shall be provided by Vendor in advance to guarantee restoration of the grass when gravel is removed. Vendor may request an increase to the outdoor seating area greater than six thousand (6,000) square feet only with written permission from the Village Manager and upon Vendor providing in advance another cash deposit or Irrevocable Letter of Credit in the amount of ten dollars (\$10.00) per square yard for site restoration. Any damage resulting from the changes made by Vendor shall be replaced or restored at Vendor's sole expense. Upon the expiration or termination of this Agreement, Vendor shall restore the Leased Premises and gravel seating area in accordance with this Section 20, and replace gravel with six (6) inches of top soil and seeding with fescue mix, at Vendor's sole expense.
21. Damage: Vendor shall be responsible for damage occurring as a result of its operations on the Leased Premises and upon the adjacent gravel and concrete eating areas. Within fourteen (14) days of the discovery of any such damage, the Leased Premises or any area licensed for use by Vendor shall be restored by Vendor to the satisfaction of the Village.
22. Temporary Structures: Vendor shall be allowed to construct temporary structures in the areas immediately adjacent to the Leased Premises and licensed for use by the Vendor, such as sun shades, entrance arches, and umbrellas, in accordance with the Site Plan, attached as Exhibit B, at its expense. Any temporary or portable structure not on the attached Exhibit B, such as fire pits, tents, or outdoor propane heaters, may be allowed subject to prior written approval of the Village Manager. With the approval of the Village Manager, Vendor shall be permitted a gas grill within an enclosure for safety on a site adjacent to the Leased Premises. Charcoal grills are not allowed. All temporary structures shall be removed within fourteen (14) days after the end of each season, and upon the expiration or termination of this Agreement at Vendor's sole expense.
23. Removal of Equipment and Supplies: Upon expiration or termination of this Agreement for any reason, Vendor shall promptly remove, at its costs, all of its supplies, equipment, displays, and related items from the Leased Premises and shall restore the Leased Premises to a condition satisfactory to the Village. Any supplies, equipment, displays, or personal items not removed from the Leased Premises after thirty (30) days become the property of the Village.
24. Security: Vendor shall be responsible for the security of its patrons and customers.
25. Inspection by Village: Village shall retain at all times ownership and access rights to enter into and upon the Leased Premises to examine and inspect the condition thereof; provided, however, such entry shall be done in such a manner that it does not unreasonably interfere with Vendor's use of the Leased Premises. Should the Village need to enter the Leased Premises, the Village shall speak directly with Vendor at least twenty-four (24) hours prior to entering the Leased Premises. In the event of an emergency condition involving the condition of the Leased Premises and requiring the

Village to enter immediately into and upon the Leased Premises to effect a repair, the Village shall notify Vendor as soon as practicable.

26. Audit: Vendor shall allow Village when and as it demands, to audit, examine, and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Vendor, from any such records or other information directly relating to matters under this Agreement, all at no cost to Village. Any subcontracting by Vendor in performing the duties described under this Agreement shall subject the subcontractors and/or associates to the same audit terms and conditions as the Vendor. Vendor (or a subcontractor) shall maintain and make available to Village the aforementioned audit information for no less than three (3) years after the expiration or termination of this Agreement.

27. Late Payment Penalty; Penalty:

A. Late Payment Penalty: In the event Vendor fails or omits to pay to Village the license fees when due hereunder, a late payment penalty equal to one percent (1%) of the unpaid license fee or fees shall be added for each month, or any portion thereof, that such license or fees remain unpaid, and the total of such late payment penalty shall be paid along with the license fees imposed by this Paragraph 27. The obligation for payment and calculation of the late payment penalty shall commence upon the day following the due dates established hereinabove in Paragraphs 6 and 7.

B. Penalty: Any person failing or omitting to pay license fees when due or failing or omitting to collect, account for or pay over these license fees, together with any late payment penalty, or failing to maintain or allow the examination or audit of the Vendor's records required herein, shall, in addition to any other payment penalty or fee provided by law, be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense, and each day a violation continues shall be considered a separate and distinct violation.

C. Audit: If, as a result of the annual audit required herein, additional amounts are disclosed to be due and owing to the Village as and for license fees, then any late payment penalty and penalty shall be calculated thereon in accordance with this Paragraph 27. Vendor shall remit to the Village within thirty (30) days following receipt of the audit report by the Village, any such additional amounts identified in the audit, including any late payment penalty and penalty thereon.

D. Non-exclusivity: These provisions permitting collection of a late payment penalty and penalty by the Village on delinquent payments is not to be considered the Village's exclusive remedy for Vendor's default or breach with respect to delinquent payment. The exercise of this remedy is not a waiver by the Village of any other remedy permitted under this Agreement, including but not limited to termination of this Agreement.

E. This Paragraph 27, however, shall not apply to the late payment of municipal food and beverage taxes as provided in Article 13 of the Village's Municipal Code, and to any sales taxes otherwise required by law.

28. Insurance: Vendor shall maintain comprehensive liability, dram shop, workers compensation, and automobile liability insurance as required below. Vendor shall provide the Village with evidence of said coverages in the following minimum amounts for Vendor's property and operations anywhere within Village Green:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 Per Occurrence
Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$3,000,000 General Aggregate
Automobile Liability	
Bodily Injury & Personal Damage	\$1,000,000 Per Accident
All Autos-Owned, non-owned and or hired Uninsured Motorists	
Liquor Liability	\$1,000,000 Per Occurrence
Illinois Worker's Compensation	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000

Village of Hoffman Estates and Prairie Stone Property Owners Association shall be named insureds on all insurance policies, and Vendor's policies shall be primary and non-contributory. A waiver of subrogation for Workers Compensation by endorsement in favor of Village of Hoffman Estates shall be provided. Disclosure must be made of any non-standard or restrictive additional insured endorsement, and any use of non-standard or restrictive additional insured endorsement will not be acceptable. Copies of policies for the above coverages shall be submitted for prior review and approval by the Village before the Leased Premises can be used by the Vendor.

Additional information as to policy form, retroactive date, discovery provisions and applicable retentions shall be submitted to Village. Any deviations, including use of purchasing groups, risk retention groups, etc., or requests for waiver from the above requirements shall be submitted in writing to the Village for approval prior to the commencement of activities under the Agreement.

Compliance with the insurance requirements contained within this Agreement is subject to acceptance by the Village's Risk Manager, in his sole discretion.

Vendor's obligations under this Paragraph 28, including its obligation for the purchase and renewal of the required insurance coverages, shall be material obligations arising under this Agreement.

29. **Indemnification:** Village shall have no responsibility for any loss or damage to Vendor's personal property while in use or stored at or on the Leased Premises. To the fullest extent permitted by law, Vendor shall indemnify the Village for, and hold it harmless from all liability, claims, and demands of any kind, including attorneys' fees, on account of personal injuries, property damage, and loss of any kind whatsoever, including workers' compensation claims, which arise out of or are in any manner connected to Vendor's operations on the Leased Premises and/or Village Green, based on any injury, damage, or loss being caused by any wrongful, intentional, or negligent acts or omissions of the Vendor, its agents, or employees. Vendor shall, at its own expense, investigate all claims and demands, attend to their settlement or disposition, defend all actions based thereon, and pay all charges of attorneys and other costs and expenses arising from any such injury, damage or loss, claim, demand, or action.

30. Notice to Parties: Any notice or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (i) if hand delivered, effective upon receipt or refusal, or (ii) if delivered by overnight courier service, effective on the day following delivery to such courier service, or (iii) if mailed by United States certified mail, postage prepaid, return receipt requested, effective on the second (2nd) business day after deposit in the United States mails; addressed in each case as follows:

If to Vendor: Andrew Hartman
Managing Agent
9196 Falcon Greens Drive
Lakewood, IL 60014

If to the Village: Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, IL 60169
ATTN: Village Manager

With copy to: Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, IL 60169
ATTN: Village Clerk

31. Communications: Vendor's representatives will communicate directly with the Director of Economic Development or the Assistant Village Manager-Development Services regarding any general operational, lease/license, financial, or other ongoing matters related to Vendor's operations on the Village Green. Vendor will communicate directly with the designated staff liaisons for all issues regarding Thursday night concerts, the FourthFest, and the Platzkonzert.

32. Conduct: Vendor shall strive for quality customer service and a positive relationship with the Village. Vendor shall be prompt and responsive to requests from designated representatives and shall meet each requirement and timeframe included in this Agreement. Vendor's responsibilities contained in this Paragraph 32 are material obligations arising under this Agreement.

33. Events of Default; Remedies:

A. Except as otherwise provided in this Paragraph 33, an "Event of Default" shall occur if any party hereto shall fail to fulfill any material obligation arising under this Agreement and such failure shall continue for a period of fifteen (15) calendar days after written notice of such failure; provided, if such failure to fulfill a material obligation hereunder is other than failure to pay any amount due and owing under this Agreement, and is of a type that cannot reasonably be cured within fifteen (15) calendar days, such failure shall not constitute an Event of Default if substantial steps to cure are commenced within the fifteen (15) calendar day period and diligently pursued to completion. In the event of the occurrence of an Event of Default, each party shall have all remedies available at law. The successful party in any litigation arising by reason of a claimed Event of Default shall be entitled to recover from the unsuccessful party all of the successful party's reasonable attorneys' fees, costs, and expenses incurred in enforcing this Agreement and/or incurred in seeking to enforce or collect any judgment or order rendered.

B. In the event of Vendor's default in the performance of any material obligation hereunder, this Agreement shall terminate immediately. Such an event of default shall also include either party

ceasing to do business as a going concern, or ceasing to pay its debts as they become due, or admitting in writing that it is unable to pay its debts as they become due, or becomes subject to any proceeding under any federal or state bankruptcy law, or a custodian or trustee is appointed to take possession of, or an attachment, execution, or other judicial seizure is made with respect to, substantially all of that party's interest in this Agreement.

- C. Village Remedies: The Village's Remedies in the event of Vendor's default shall include (but not be limited to) the right to terminate this Agreement or any of Vendor's rights hereunder, seek monetary damages, the right to remove, or cover or replace all signage, written, and other references to the Vendor.
- D. Vendor's Remedies: Vendor's Remedies in the event of Village's default shall include the right to terminate this Agreement and to recover monies then owed, if any, by Village to Vendor.
- E. Limitations: Neither party shall be liable under any circumstances for any consequential, indirect, or punitive damages.
34. Assignment and Subletting: Vendor may not assign this Agreement in whole or in part.
35. Partnership: Nothing contained in this Agreement shall constitute or be construed to create a partnership or joint venture between Village or its successors or assigns and Vendor. This Agreement does not create the relationship of principal and agent, nor shall any employee of Vendor be deemed to be an employee of the Village.
36. Beneficiary: There are no third party beneficiaries.
37. Authority: Vendor is a limited liability company, and each individual executing this Agreement on behalf of Vendor represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said limited liability company, and that this Agreement is binding upon said limited liability company in accordance with its terms, without the joinder or approval of any other person.
38. Severability: In the event any phrase, paragraph, article, or portion of this Agreement is found to be invalid or illegal by any court of competent jurisdiction, such finding of invalidity as to that portion shall not affect the validity, legality, or enforceability of the remaining portions of this Agreement.
39. Waiver: No waiver shall be effective unless in writing and executed by the party to be charged with such waiver, and no waiver shall be deemed to be a continuing waiver in respect of any subsequent breach or default, whether similar or dissimilar in nature, unless expressly so stated in writing.
40. Construction: In the event of a dispute between the Parties regarding this Agreement, this Agreement will be deemed to have been drafted by the Parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against either party.
41. Exhibits: Each one of the lettered exhibits attached to this Agreement and identified herein is expressly made a part hereof as though fully stated herein.

- 42. Headings: The headings set forth herein are for convenience of reference only and shall not be deemed to impair, enlarge, or otherwise affect the substantive meaning of any provision to which such heading may relate.
- 43. Governing Law/Venue: This Agreement, and all of the obligations of the Parties arising hereunder, shall be governed, construed, and interpreted in accordance with the laws of the State of Illinois (without giving effect to any Illinois "choice of laws" principles which would require construction under the laws of a different jurisdiction), and Cook County, Illinois, shall be deemed the proper venue for any action arising hereunder or in connection herewith.

IN WITNESS WHEREOF, the Parties hereto have set their hands as follows:

DASBIER GARDEN, LLC

By _____ Date _____
Andrew Hartman
Managing Agent
9196 Falcon Greens Drive
Lakewood, IL 60014

Village of Hoffman Estates

By _____ Date _____
William D. McLeod
Village President

Attest:

Bev Romanoff
Village Clerk

Date

Exhibit A: Village Green Legal Description

P.I.N. #s: 01-32-302-027 and 01-32-302-028

VILLAGE GREEN

THAT PART OF LOT 4G IN RESUBDIVISION OF LOT 4 IN SEARS BUSINESS PARK, BEING A RESUBDIVISION IN SECTIONS 31 AND 32, TOWNSHIP 42 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN AND IN SECTION 4, TOWNSHIP 41 NORTH, RANGE 9, EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT OF SAID RESUBDIVISION RECORDED AUGUST 6, 1991 AS DOCUMENT NUMBER 91396712, DESCRIBED AS FOLLOWS: COMMENCING AT THE SOUTHEAST CORNER OF SAID LOT 4G; THENCE SOUTH 58 DEGREES 11 MINUTES 40 SECONDS WEST ALONG THE SOUTHEASTERLY LINE OF SAID LOT 4G, 358.36 FEET TO A POINT FOR A PLACE OF BEGINNING; THENCE CONTINUING SOUTH 58 DEGREES 11 MINUTES 40 SECONDS WEST ALONG THE SOUTHEASTERLY LINE OF SAID LOT 4G, 135.90 FEET TO A POINT OF CURVATURE IN SAID LINE; THENCE SOUTHWESTERLY ALONG THE SOUTHERLY LINE OF SAID LOT 4G, BEING A CURVED LINE CONVEX SOUTHERLY, HAVING A RADIUS OF 2340.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 1609.39 FEET TO A POINT ON SAID SOUTHERLY LINE, SAID POINT BEING AN ARC DISTANCE OF 437.69 FEET, AS MEASURED ALONG THE SOUTHERLY LINE OF SAID LOT 4G, EASTERLY OF THE SOUTHWEST CORNER OF SAID LOT 4G (THE CHORD OF SAID ARC OF 1609.39 FEET IN LENGTH BEARS SOUTH 77 DEGREES 53 MINUTES 53 SECONDS WEST, 1577.86 FEET); THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHEASTERLY AND HAVING A RADIUS OF 266.00 FEET, AN ARC DISTANCE OF 109.42 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS NORTH 67 DEGREES 13 MINUTES 48 SECONDS EAST, 108.65 FEET); THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX NORTHWESTERLY, HAVING A RADIUS OF 272.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 82.61 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS NORTH 64 DEGREES 08 MINUTES 48 SECONDS EAST, 82.30 FEET); THENCE NORTHERLY ALONG A CURVED LINE CONVEX EASTERLY, HAVING A RADIUS OF 93.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 189.22 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS NORTH 14 DEGREES 33 MINUTES 33 SECONDS EAST, 158.23 FEET); THENCE NORTHERLY ALONG A CURVED LINE CONVEX WESTERLY, HAVING A RADIUS OF 66.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 119.98 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS NORTH 08 DEGREES 21 MINUTES 03 SECONDS EAST, 104.13 FEET); THENCE NORTHERLY ALONG A CURVED LINE CONVEX EASTERLY, HAVING A RADIUS OF 134.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 217.43 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS NORTH 13 DEGREES 56 MINUTES 52 SECONDS EAST, 194.35 FEET); THENCE NORTHWESTERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 150.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 49.33 FEET (THE CHORD OF SAID ARC BEARS NORTH 23 DEGREES 06 MINUTES 52 SECONDS WEST, 49.11 FEET); THENCE NORTH 66 DEGREES 01 MINUTES 36 SECONDS EAST, 25.02 FEET; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY AND HAVING A RADIUS OF 70.00 FEET, AN ARC DISTANCE OF 65.34 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS SOUTH 54 DEGREES 50 MINUTES 22 SECONDS EAST, 62.99 FEET); THENCE SOUTH 81 DEGREES 34 MINUTES 44 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 62.28 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX NORTHEASTERLY, HAVING A RADIUS OF 100.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 67.63 FEET TO A POINT OF REVERSE CURVATURE (THE CHORD OF SAID ARC BEARS SOUTH 62 DEGREES 12 MINUTES 16 SECONDS EAST, 66.35 FEET); THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 100.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST

DESCRIBED POINT, AN ARC DISTANCE OF 29.12 FEET TO A POINT OF COMPOUND CURVATURE (THE CHORD OF SAID ARC BEARS SOUTH 51 DEGREES 10 MINUTES 19 SECONDS EAST, 29.02 FEET); THENCE EASTERLY ALONG A CURVED LINE CONVEX SOUTHERLY, HAVING A RADIUS OF 10.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 10.48 FEET TO A POINT OF COMPOUND CURVATURE (THE CHORD OF SAID ARC BEARS SOUTH 89 DEGREES 33 MINUTES 04 SECONDS EAST, 10.01 FEET); THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHEASTERLY, HAVING A RADIUS OF 100.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 38.67 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 49 DEGREES 19 MINUTES 59 SECONDS EAST, 38.43 FEET); THENCE NORTH 38 DEGREES 15 MINUTES 14 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 32.27 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX NORTHERLY, HAVING A RADIUS OF 170.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 148.20 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 63 DEGREES 13 MINUTES 40 SECONDS EAST, 143.55 FEET); THENCE NORTH 88 DEGREES 12 MINUTES 07 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 46.06 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHEASTERLY, HAVING A RADIUS OF 70.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 111.96 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 42 DEGREES 22 MINUTES 58 SECONDS EAST, 100.40 FEET); THENCE NORTH 03 DEGREES 26 MINUTES 10 SECONDS WEST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 68.02 FEET TO A POINT OF CURVATURE; THENCE NORTHEASTERLY ALONG A CURVED LINE CONVEX NORTHWESTERLY, HAVING A RADIUS OF 85.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 24.50 FEET (THE CHORD OF SAID ARC BEARS NORTH 04 DEGREES 49 MINUTES 21 SECONDS EAST, 24.42 FEET); THENCE SOUTH 32 DEGREES 22 MINUTES 22 SECONDS EAST, 398.74 FEET TO A POINT OF CURVATURE; THENCE SOUTHEASTERLY ALONG A CURVED LINE CONVEX SOUTHWESTERLY, HAVING A RADIUS OF 100.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 110.28 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS SOUTH 63 DEGREES 58 MINUTES 02 SECONDS EAST, 104.78 FEET); THENCE NORTH 84 DEGREES 26 MINUTES 18 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 159.71 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG A CURVED LINE CONVEX NORTHERLY, HAVING A RADIUS OF 250.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 52.33 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS SOUTH 89 DEGREES 33 MINUTES 56 SECONDS EAST, 52.23 FEET); THENCE SOUTH 83 DEGREES 34 MINUTES 10 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 61.97 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG A CURVED LINE CONVEX SOUTHERLY, HAVING A RADIUS OF 250.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 69.48 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS NORTH 88 DEGREES 28 MINUTES 09 SECONDS EAST, 69.25 FEET); THENCE NORTH 80 DEGREES 30 MINUTES 28 SECONDS EAST ALONG A LINE TANGENT TO SAID LAST DESCRIBED CURVED LINE AT SAID LAST DESCRIBED POINT, 70.54 FEET TO A POINT OF CURVATURE; THENCE EASTERLY ALONG A CURVED LINE CONVEX NORTHERLY, HAVING A RADIUS OF 200.00 FEET AND BEING TANGENT TO SAID LAST DESCRIBED LINE AT SAID LAST DESCRIBED POINT, AN ARC DISTANCE OF 41.72 FEET TO A POINT OF TANGENCY (THE CHORD OF SAID ARC BEARS SOUTH 86 DEGREES 29 MINUTES 02 SECONDS EAST, 41.65 FEET); THENCE SOUTH 87 DEGREES 32 MINUTES 24 SECONDS EAST, 124.64 FEET TO THE PLACE OF BEGINNING, IN COOK COUNTY, ILLINOIS.

CONTAINING 547,777 SQUARE FEET OR 12.575 ACRES

Exhibit B: Site Plan



(A) Planter Boxes
(8-12 portable planter boxes throughout the beer garden to beautify and define borders)

(B) Garden Benches / Tables /Umbrellas
(45 - 65 tables / seating 360-520)



SCALE: 1" = 30'

4,000 SF

(C) Gravel Area
(Approx. 80 x 50 4,000 SF)

2,500 SF

(E) Welcome Sign
(7' 0" x 56 inches)

(D) Grilling Station
(2) 3' 0" Outdoor propane grills

(F) Beer Trailer Area

(1) Beer trailer will be used for additional keg storage as well as a serving station during high volume times i.e weekends, special events.

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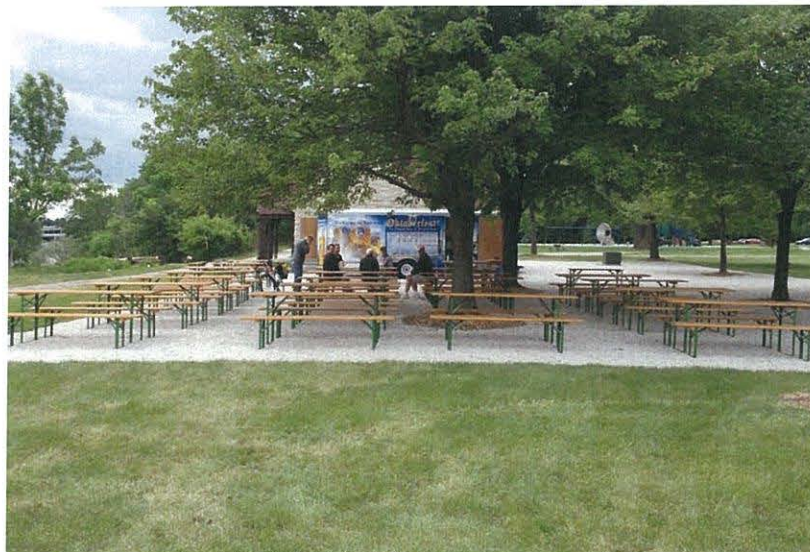
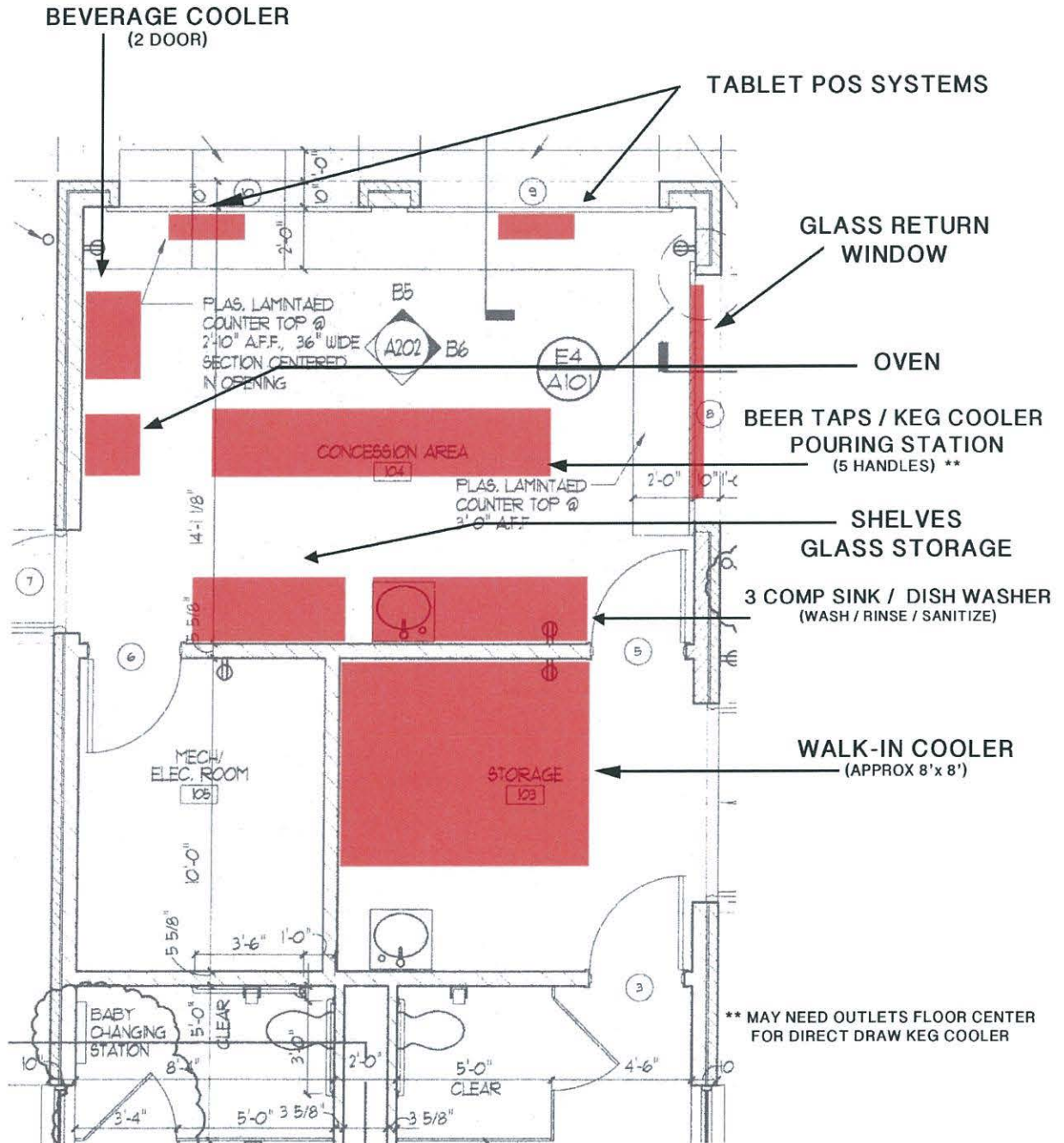


Exhibit C: Concession Building Plan (Leased Area)

**BLUEPRINT PROPOSAL FOR HOFFMAN ESTATES
VILLAGE GREEN BEER GARDEN**



Concession Building Plan

Exhibit D-1



Existing signage in the Beer Garden & road sign off of Prairie Stone Parkway & Beverly Rd.



unattended.

Exhibit D-2



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