

AGENDA
SPECIAL PLANNING, BUILDING AND ZONING COMMITTEE
Village of Hoffman Estates
April 2, 2018

7:00 P.M. - Helen Wozniak Council Chambers

Members: Gary Stanton, Chairman
Karen Arnet, Vice-Chairman
Karen Mills, Trustee

Anna Newell, Trustee
Gary Pilafas, Trustee
Michael Gaeta, Trustee
William McLeod, Mayor

I. Roll Call

NEW BUSINESS

1. Request approval of a two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC.

II. Adjournment

**COMMITTEE AGENDA ITEM
VILLAGE OF HOFFMAN ESTATES**

SUBJECT: Request approval of a two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC

MEETING DATE: April 2, 2018

COMMITTEE: Special Planning, Building and Zoning

FROM: Mark Koplin/Kevin ^{KK}Kramer/Doug LaSota/Patti Cross

PURPOSE: Request approval of a two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC.

BACKGROUND: Four years ago, Andrew Hartman approached the Village about starting a German Beer Garden on the Village Green. He saw the concept successfully implemented in Milwaukee in the county parks and thought it would translate to a business park here in the suburbs of Chicago. It took Mr. Hartman a year or so to fully develop his proposal and obtain a one year "trial" agreement from the Village. Mr. Hartman saw enough success and potential in that first year to request a longer agreement. In 2016, the Village approved a two year agreement that included his ability to serve beer and pretzels at the Thursday night concerts, the FourthFest, and the Platzkonzert.

DISCUSSION: Mr. Hartman is now requesting a two year agreement, with two additional one year mutual options, should both parties decide to extend. The proposed agreement has modified terms, including moving from a commission based rent to a flat fee, typical of a restaurant. The two years and fixed monthly rent would give Mr. Hartman stability and allow him to enjoy the profits, now that his startup costs have been mostly paid off. Mr. Hartman has done a good job at building a clientele from the surrounding businesses, local residents, and from farther away, and added value to the Entertainment District by utilizing the Village Green on a daily basis.

Besides legal text added in for the protection of both parties, outlined below are some of the significant changes in this agreement from previous agreements with Dasbier Garden, LLC:

- ◆ **5. (Premises).** The Premises has been clearly redefined as only the concession building, but still grants him the rights to use part of the Village Green for his seating area.
- ◆ **6. (Operating Season).** This agreement now makes the distinction between the Operating Season (when the beer garden can operate) and the Term (the calendar year he has rights use the building).

DISCUSSION: (Continued)

- ◆ **8. (Term).** The term shall be for two years effectively whereby the Vendor can elect to come back for the second year or not. Should Dasbier Garden choose to come back after the 2019 season, there is a mutual option clause whereby the Village and Dasbier Garden could agree to extend the lease one more year under the same terms of the agreement. This could be done two times through the 2021 season. Dasbier Garden must give written notice to the Village by December 1, of each year should he desire to come back for the next season.
- ◆ **9. (Fees).** This is one of the primary changes from the past agreement to the new one. Instead of a commission based fee, the fee to be paid by Dasbier to the Village will be a flat fee model, similar to a standard retailer or restaurant. The base fee will be \$22,750 per year, or \$3,250 per month for the Operating Season, yet the \$250 monthly utility fee will remain. This base fee, along with special event fees, sales tax, food and beverage tax, and other license fees, should generate a similar revenue to the Village that was generated last year if daily sales remained the same. This gives Mr. Hartman extra incentive to make more sales now that he will see more of those profits.
- ◆ **12. (Village Special Events).** All terms of the Special Events remain the same as last year.
- ◆ **31. (Insurance).** To ensure all parties (the Village, Sears Centre Arena, Global Spectrum LLC, Prairie Stone POA, and the POA which covers the parking lot used by Dasbier Garden patrons) are covered should anything happen, the property insurance required of Dasbier continues, and again extends to each of these parties as additional insureds.
- ◆ **40. (Deposits).** Several deposits by Dasbier Garden are currently on file with the Village and have been since the first agreement in 2015 for restoration of the building and the turf. Should these deposits need to be drawn down upon, this section was added to ensure they be replenished in a timely manner.
- ◆ **41. (Transfer of Rights Under Agreement Prohibited).** This section was added to ensure Mr. Hartman cannot transfer this agreement nor Dasbier Garden, LLC to anyone else and still have this agreement in effect.
- ◆ **46-47. (Termination).** The Termination clauses are clearly stated in one section here rather than in various sections as in the last agreements.

Financial Analysis:

It should be noted that currently, Mr. Hartman owes the Village \$10,638.30 from unpaid fees last year. Due to not having any revenue coming in over the winter, he is asking the Village use the \$6,611.00 in deposits on file as his agreements have permitted, and has signed a security agreement for his equipment as collateral for the rest. Then, once open, he will pay the remaining balance of \$4,027.30 before May 1, 2018, and replenish his deposits by June 15, 2018, or risk his agreement termination.

DISCUSSION: (Continued)

Conclusion:

Dasbier would like to build upon its success during the first three years, but feels a steady, predictable rent would help him to do that so as to increase sales and revenues to reinvest back into the local business and the Village Green. The Village continues to have no monies invested in the operation and no risk. Dasbier does attract new customers/patrons to the 59/90 Entertainment District and provides a social gathering place for these new patrons, as well as Village residents and employees in Prairie Stone.

RECOMMENDATION:

Approval of a two year agreement between the Village of Hoffman Estates and Dasbier Garden, LLC.

Attachment

cc: Andrew Hartman

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

This Lease And Concession License Agreement ("Agreement") is made this ____ day of _____, 2018 (the "Effective Date") between the VILLAGE OF HOFFMAN ESTATES, a municipal corporation organized under the laws of the State of Illinois with its principal place of business at 1900 Hassell Road, Hoffman Estates, Illinois 60169 ("Village") and DASBIER GARDEN LLC, a domestic limited liability company with its principal place of business at 5510 Prairie Stone Parkway, Hoffman Estates, Illinois 60169 ("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 Vendor desires that the Village grant certain rights and privileges subject to the terms and conditions of this Agreement; and

WHEREAS, the Village is willing to grant such rights and privileges subject to the terms and conditions of this Agreement; and

WHEREAS, the Village encourages the Vendor to apply to participate in the Next Level Northwest business accelerator program;

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 Premises (hereinafter defined), 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, at all times during Vendor's operation, have access to the gravel and concrete areas as well as the Village's restrooms located within the Premises. It is further expressly understood that this Agreement shall in no way prohibit the Village, or other vendors the Village may authorize in its sole discretion, from selling food and/or beverages, including alcoholic beverages, within the Village Green at any time.

2. Payments. All tax returns, if any, and checks payable hereunder to the Village are payable to: "Village of Hoffman Estates" and delivered to:

Finance Department
Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, Illinois 60169

3. Vendor's Trade Name: Vendor shall operate its business as "Hoffman Estates Beer Garden", which name Vendor represents it is entitled to use pursuant to all applicable laws. Vendor shall not change its trade name without the prior written consent of the Village, which the Village may withhold in its sole discretion. The Village may use the name and logo of Vendor in advertising the Village Green.
4. Key Personnel. Andrew Hartman, Manager of Dasbier Garden LLC, is hereby designated as "Key Personnel" of Vendor. If any Key Personnel hereof cease for any reason to act in his/her/their identified capacity for the Vendor, the Village may at its option declare this Agreement terminated and exercise all rights given by this Agreement in the event of termination.
5. Premises: The Village, in reliance upon and in consideration of the representations, warranties, covenants and conditions herein contained on the part of the Vendor, hereby leases to Vendor, and Vendor hereby hires and takes from the Village for the term and upon the provisions, covenants and conditions herein set forth, that certain area (the "Premises") as depicted on Exhibit C-1 and further detailed on Exhibit C-2 both being attached hereto and incorporated herein by reference within the Village Green. Vendor shall be responsible for procuring any additional storage locations required beyond the Premises for any equipment utilized by Vendor. Changes of the Premises shall be made only upon the written approval of the Village Manager.

The Village, in consideration of the payment of the fees hereinafter set forth, hereby grants the privilege to the Vendor to operate a non-exclusive concession subject to the terms contained in this Agreement. Vendor accepts the Premises in its "AS IS" condition without any agreements, representations, understandings or obligations on the part of the Village to perform any alterations, repairs or improvements. The Premises shall be used only for the purposes set forth in Paragraph 1 hereof.

It is expressly understood that Vendor's use of the Premises, other than for storage, shall be limited to the Operating Season, as hereinafter defined, and shall be exclusive during such Operating Season, except as otherwise provided in Paragraph 18 and Paragraph 28 of this Agreement, permitting the Village, as owner, access rights to enter into and upon the Premises and permitting use of the restroom on the Premises by the public.

6. Operating Season; Hours of Operation: Vendor is a fair-weather operation, open daily from April 1st through October 31st (the "Operating Season"), 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 in this Agreement, or as modified upon the prior written approval of the Village Manager, in no event shall Vendor dispense, distribute, or sell alcoholic beverages after 9:30 p.m. on any day.
7. Alcoholic Beverages: It is the responsibility of Vendor to manage the sale and distribution of its alcohol to be sold from the Premises or from a beer trailer, if any, and to be consumed on the

concrete area immediately surrounding the Premises and the gravel seating area adjacent to the Premises, and wholly within the Village Green. Vendor is fully responsible for any incidents involving alcoholic beverages sold by Vendor from the Premises or a beer trailer, if any. 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.

8. Term: This Agreement shall commence on the Effective Date and expire December 31st, 2018 (the "Term") unless terminated earlier pursuant to this Agreement. Vendor shall have the option to extend (the "Vendor's Option") the Term for one (1) additional consecutive period of one (1) year (the "Vendor's Extension Period") upon all terms and conditions of this Agreement. The Vendor's Extension Period, if any, shall commence on January 1st of 2019. The Vendor's Option may be exercised only by Vendor giving the Village irrevocable and unconditional written notice thereof no later than December 1, 2018. Said exercise shall, at the Village's election, be null and void if Vendor has failed to faithfully, diligently and consistently comply with all obligations under this Agreement during the Term, as the case may be, or if Vendor is in default under this Agreement at the date of said notice or at any time thereafter prior to commencement of the Vendor's Extension Period.

If Vendor shall fail to exercise the Vendor's Option in accordance with the terms hereof, said Vendor's Option shall terminate and be null and void unless the Village, in its sole discretion, accepts, in writing, an otherwise untimely exercise of the Vendor's Option by the Vendor. Vendor's exercise of the Vendor's Option shall not operate to cure any default by Vendor of any of the terms or provisions in this Agreement, nor to extinguish or impair any rights or remedies of the Village arising by virtue of such default. If this Agreement or Vendor's right to possession of the Premises shall terminate in any manner whatsoever before Vendor shall exercise the Vendor's Option, or before the commencement of the Vendor's Extension Period, or if Vendor shall have assigned this Agreement (without the consent of the Village Manager), in whole or in part, or subleased or sublicensed all or any portion of the Premises (without the consent of the Village Manager) before Vendor shall have exercised the Vendor's Option, then immediately upon such termination, sublease, sublicense or assignment, both the Vendor's Option and the Mutual Option (as hereinafter defined) shall simultaneously terminate and become null and void.

The Parties shall have the mutual option to extend (each a "Mutual Option") the Term for two (2) additional consecutive periods of one (1) year each (each a "Mutual Extension Period") beyond the Vendor's Extension Period upon all the terms and conditions of this Agreement. The Mutual Extension Period shall commence on January 1st of any given year. The Mutual Option may be exercised only by the Parties mutually agreeing, in writing, to exercise the Mutual Option no later than thirty (30) days before the commencement of the applicable Mutual Extension Period. Neither the Village nor the Vendor shall be obligated to exercise the Mutual Option. Either party may decline to exercise the Mutual Option for any or no reason.

9. Fees: In addition to any other fees or charges provided by this Agreement, Vendor shall pay the fees, taxes, or other charges set forth herein. Failure of Vendor at any time to pay the amounts required under this Agreement shall entitle Village to cause Vendor to cease operations, either temporarily or permanently, without forfeiting the Village's rights to collect all past due and future fees owing and without such action constituting a termination of this Agreement. All payments

made under this Agreement shall be sent to the address for payments shown in Paragraph 2, by check or money order made payable to the Village of Hoffman Estates. If, during the Term the Village receives a check from Vendor that is returned by Vendor's bank for insufficient funds, all checks thereafter shall be bank certified or cashier's checks (without limiting Village's other remedies). All bank service charges resulting from any bad checks shall be borne by Vendor.

A. Minimum Fee: Vendor shall pay a minimum fee (the "Minimum Fee") in the amount of Twenty Two Thousand Seven Hundred Fifty Dollars (\$22,750.00) per Operating Season, payable in seven equal installments of Three Thousand Two Hundred Fifty Dollars (\$3,250.00). Payments shall be due on the last day of each calendar month during the Operating Season (April through October).

B. Utility Fee: Vendor shall also pay a utility fee (the "Utility Fee") of One Thousand Seven Hundred Fifty Dollars (\$1,750.00) per Operating Season, payable in seven equal installments of Two Hundred Fifty Dollars (\$250.00). Payments shall be due on the last day of each calendar month during the Operating Season (April through October).

C. Taxes: 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.

D. Real Estate Taxes: The Vendor shall be responsible for payment of any Real Property Taxes, as hereinafter defined, that may be imposed upon the Premises as a result of this Agreement. The term "Real Property Taxes" shall include, without limitation, any general or special assessment tax, or levy or similar imposition imposed by any authority or any agency or public body, as against any legal or equitable interest of Village in the Premises and/or the Village Green or arising out of Vendor's use, occupancy, or possession of the Premises or that are attributable to the Premises, together with the reasonable costs of professional consultants and/or counsel to analyze tax bills and prosecute any protests, refunds, and appeals for the period covered during the Term. Vendor's liability with respect to such taxes and assessments shall be for the entire amount of Real Property Taxes which may be due in any calendar year of the Term. Vendor shall not be entitled to any proration of Real Property Taxes.

10. Gross Sales: "Gross Sales" shall mean the total amount in dollars of the actual sales price, whether for cash or credit of all sales of food and beverages conducted in or from the Premises or anywhere within the Village Green by the Vendor as may be authorized by the Village Manager. Gross Sales shall not, however, include any sums collected on account of any sales or retail excise tax imposed by any duly constituted governmental authority, provided, however, that no deduction from Gross Sales shall be allowed on account of income taxes, gross receipts taxes, or other similar taxes.

11. Glassware: Except as otherwise provided by this Agreement, Vendor may use glassware for serving beverages provided the glassware remains in the adjacent concrete area or the gravel seating area. It is the responsibility of the Vendor to ensure that patrons do not bring glassware outside of these areas. Signage stating, "No Beer Garden Glassware beyond this Point", or a similar message, may be permitted, however the posting of such signage shall not relieve Vendor of the responsibilities stated herein. Vendor may allow glassware outside of the gravel seating area when the Vendor is providing entertainment at the Village Green amphitheater.

12. Village Special Events: The Village sponsors certain special events at Village Green throughout the Operating Season.

A. Summer Concert Series:

- 1) Vendor may operate during the Thursday night summer concerts (“Summer Concerts”).
- 2) For sales occurring from 7:00 p.m. to 9:30 p.m. during Summer Concerts, Vendor shall also pay to the Village a percentage fee of thirty-five percent (35%) of Gross Sales.
- 3) Glassware is permitted only within the adjacent concrete area or the gravel seating area during Summer Concerts.

B. Northwest FourthFest (“FourthFest”):

- 1) Vendor may operate during FourthFest provided it pays, in advance of FourthFest, additional fees totaling one thousand seven hundred fifty dollars (\$1,750.00), of which one thousand dollars (\$1,000.00) is designated as the fee for the sale of beer during FourthFest and seven hundred fifty dollars (\$750.00) is designated as the fee for the sale of food during FourthFest. Said fees shall be paid to the Village no later than five (5) days prior to the first day of FourthFest. Vendor’s authorization to operate is expressly conditioned upon timely receipt of payment of said fees.
- 2) Dates and hours for the annual FourthFest shall be determined by the Village Manager prior to each Operating Season.
- 3) Vendor shall be limited to the sale of giant pretzels, cheese, and Hofbrau® beer; no other food or beverages shall be sold by Vendor during this event. In the event Vendor is unable to sell Hofbrau® beer during FourthFest, the Parties may agree to a substantially similar substitute.
- 4) During FourthFest, Vendor shall also pay to the Village a percentage fee of twenty-five percent (25%) of Gross Sales for sales occurring on those days when musical performances at Village Green are scheduled to take place and only for the time period beginning one hour before the first scheduled performance and continuing until the close of business on such days.
- 5) Vendor shall not serve beverages in glassware at any time during the FourthFest.

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

- 1) Vendor shall be limited to selling giant pretzels with cheese and Hofbrau® beer during Platzkonzert. In the event Vendor is unable to sell Hofbrau® beer, the Parties may agree to a substantially similar substitute.
- 2) Vendor shall also pay to the Village a fee of two hundred dollars (\$200.00) per keg of Hofbrau® beer (or substitute) tapped by the Vendor during Platzkonzert.
- 3) Vendor shall also pay a percentage fee of ten percent (10%) of Gross Sales of food sold by Vendor during Platzkonzert.
- 4) Vendor shall not serve beverages in glassware at any time during the Platzkonzert.

D. Other Village Events: It is expressly understood by Vendor that the Village may, from time to time, sponsor other events at the Village Green. The Vendor shall be permitted to operate during any such events, unless notified by the Village otherwise. Such permission to operate may be conditioned upon the Vendor’s agreement to pay additional fees to the Village as may be determined by the Village Manager.

13. Sales Reports: Within thirty (30) days of the end of each event as described in Paragraph 12 above, Vendor agrees to compile and to provide Village with a detailed summary report of all sales activities during such events, a financial reconciliation of all moneys owed and paid, along with remittance of any amounts owed to the Village.
14. 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.
15. 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 Manager deems to be inappropriate.
16. 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 33 and Paragraph 34. 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.
17. Signage: All proposed banners, signage, and advertising on or within the Premises, the Village Green or within the Prairie Stone Business Park, must be in substantial conformance to the sign plan attached as Exhibit D-1 and Exhibit D-2. 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 each Operating Season, or the expiration or termination of this Agreement. The Village shall have the right without notifying the Vendor to remove, at the cost and expense of the Vendor, any sign that may be erected without approval of the Village.
18. Public Restrooms: Vendor shall lock and unlock, as well as permit public access to, the restrooms located on the Premises 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. Village, from time to time, may provide supplies for restrooms at any time such as during the events listed in Paragraph 12.
19. Garbage: Vendor is responsible for maintaining the Premises and the area adjacent to the 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. Vendor shall remove and dispose of trash from the Premises daily. 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 contracts with the Sears Centre Arena, then the Vendor shall be responsible for delivering the trash each day to the Sears Center Arena dumpster.
20. 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 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.
 21. Pest and Bug Control: The Village typically provides mosquito control at the Village Green two (2) to four (4) times during the summer. Nothing in this Agreement shall require Village to provide mosquito control at the Village Green. Vendor shall be responsible for any additional mosquito control at the Village Green. Vendor shall also be responsible for pest control on the Premises and adjacent to the Premises.
 22. Vendor's Obligations for Maintenance and Minor Repairs: Vendor shall maintain the 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 Premises are compliant with appropriate codes, laws, and regulations. At no cost to the Village, Vendor shall make minor repairs arising from Vendor's operation 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 Premises or to those installed by Vendor. Vendor shall provide and maintain 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.
 23. Outdoor Seating; Restoration: Vendor and Village shall together participate in a pre-Operating Season and post-Operating Season inspection of the 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 approximately five thousand six hundred (5,600) square feet currently existing 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 and maintained 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 Premises and the entire gravel seating area in accordance with this Paragraph 23, and replace gravel with six (6) inches of top soil and seeding with a grass mix to be specified by the Village, at Vendor's sole expense.
 24. Damage: Vendor shall be responsible for damage occurring as a result of its operations on the Premises and upon the adjacent gravel and concrete eating areas. Within fourteen (14) days of the discovery of any such damage, the Premises or any area licensed for use by Vendor shall be restored by Vendor to the satisfaction of the Village.
 25. Temporary Structures: Vendor shall be allowed to construct temporary structures in the areas immediately adjacent to the Premises and licensed for use by the Vendor, such as sun shades,

entrance arches, fire pits, 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 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 Premises. Charcoal grills are not allowed. All temporary structures, other than those permitted to remain by the Village Manager, shall be removed upon the expiration or termination of this Agreement at Vendor's sole expense.

26. 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 Premises/Village Green and shall restore the Premises/Village Green to a condition satisfactory to the Village. Any supplies, equipment, displays, or personal items not removed from the Premises/Village Green after thirty (30) days become the property of the Village.
27. Security: Vendor shall be responsible for the security of its patrons and customers.
28. Inspection by Village: During the Operating Season, Village shall retain at all times ownership and access rights to enter into and upon the 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 Premises. Should the Village need to enter the Premises, the Village shall attempt to speak directly with Vendor at least twenty-four (24) hours prior to entering the Premises. If, despite a reasonable attempt, the Village is unable to speak with Vendor, the Village may enter the premises twenty-four (24) hours after first attempting to speak with the Vendor. A phone call and/or email to Vendor shall be considered a reasonable attempt. In the event of an emergency condition involving the condition of the Premises and requiring the Village to enter immediately into and upon the Premises to effect a repair, the Village shall notify Vendor as soon as practicable. It is expressly agreed that outside of the Operating Season, the Village has unrestricted access to and control of the Premises and the Vendor's use of the Premises is limited to storage of those items permitted to remain in the Premises by the Village.
29. 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.
30. Late Payment Penalty: Penalty:
 - A. Late Payment Penalty: In the event Vendor fails or omits to pay to Village the 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 then due. The obligation for payment and calculation of the late payment penalty shall commence upon the day following the due dates established hereinabove in Paragraphs 9 and 12.

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 30. 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 30, 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.

31. Insurance: Vendor shall maintain insurance as required below. Vendor shall provide the Village with evidence of said coverages in the following minimum amounts for Vendor's property, the Premises and operations anywhere within Village Green, and the parking lots identified in Paragraph 20:

<u>Type of Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability Bodily Injury and Property Damage (incl. Personal Injury, Fire Legal, Contractual & Products/Completed Operations)	\$1,000,000 Per Occurrence \$3,000,000 General Aggregate
Automobile Liability Bodily Injury & Personal Damage All Autos-Owned, non-owned and or hired Uninsured Motorists	\$1,000,000 Per Accident
Liquor Liability	\$1,000,000 Per Occurrence
Illinois Worker's Compensation	Statutory
Employers' Liability	\$100,000/\$500,000/\$100,000
Vendor's Commercial Property Insurance	\$250,000

The following shall be named insureds on all insurance policies, and Vendor's policies shall be primary and non-contributory: Village of Hoffman Estates; Prairie Stone Property Owners Association; Prairie Stone Commons Property Owners Association; Pratum Partners, LLC, its affiliates, subsidiaries, agents and mortgagees; Sears Holdings Management Corporation, on behalf of itself, its affiliates, and subsidiaries; ConopCo Realty & Development, Inc.; JF McKinney & Associates Ltd.; WIM Core Portfolio Owner, LLC, its affiliates, subsidiaries, agents and mortgagees; Global Spectrum, L.P., its partners, affiliates, and subsidiaries; YP Trillium, LLC; Younan Properties; and Wells Fargo Bank, N.A. as Trustee for the registered holders of Bank of America Commercial Mortgage, Inc., Commercial Pass-Through Certificates Series 2005-4 by its special servicer KeyCorp Real Estate Capital Markets, Inc., and any other additional insured the Village may designate from time to time. 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 annually, prior to April 1st, for prior review and approval by the Village before the 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 31, including its obligation for the purchase and renewal of the required insurance coverages, shall be material obligations arising under this Agreement.

32. 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 Premises or the Village Green. To the fullest extent permitted by law, the Vendor will defend, indemnify and hold harmless the Village and its respective village president, trustees, partners, officials, officers, managers, members, agents and employees, and Global Spectrum, L.P. and its respective president, trustees, partners, directors, officials, officers, managers, members, agents, employees, subsidiaries, parent companies and affiliates (individually, an "Indemnitee" and collectively, the "Indemnitees") from all liability, liens, losses, judgments, costs, damages and expenses of whatsoever kind including reasonable attorneys' fees and costs, which may in any way be suffered by an Indemnitee or which may accrue against or be charged to or recovered from an Indemnitee by reason of or in consequence of the concession granted, as aforesaid, or which arise out of or are in any manner connected to Vendor's operations on the Premises and/or Village Green, and/or any of the parking lots described in Paragraph 20 of this Agreement, or for or on account of any act or thing done or suffered or omitted to be done by Vendor under the authority or supposed authority of such grant.

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.

To the extent not prohibited by Law, Vendor waives all claims against the Indemnitees for injury to persons, damage to property or to any other interests of Vendor sustained by Vendor or any person claiming through Vendor resulting from any occurrence in or upon the Premises, the Village

Green, and/or any of the parking lots described in Paragraph 20 of this Agreement, including, without limitation, any interruption in any utility services or any alleged failure to provide adequate security services.

Vendor expressly agrees that no member, official, employee or agent of the Village will be individually or personally liable to it, or to Vendor's successors or assigns, under any term or provision of this Agreement or because of his or her execution or attempted execution of this Agreement or in the event of any default or breach by the Vendor under this Agreement.

The duties to indemnify and limitations on liability in this Paragraph 32 shall survive the expiration or termination of this Agreement and the expiration or termination of any obligation owing to either party under this Agreement.

33. 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
Manager
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
Jim.Norris@HoffmanEstates.org

With copy to: Village of Hoffman Estates
1900 Hassell Road
Hoffman Estates, IL 60169
ATTN: Village Clerk
Bev.Romanoff@HoffmanEstates.org

34. 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.
35. 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 35 are material obligations arising under this Agreement.

36. Decision of Village: The Vendor agrees that the decision of the Village Manager relative to the proper performance of the terms of this Agreement shall be final and conclusive on the parties hereto, and shall be final and conclusive as to each matter not covered in this Agreement that may arise in connection with the privileges granted, as to each matter which is not clearly spelled out herein.

37. Law or Laws: "Law" or "Laws" shall mean all federal, state, county and local governmental and municipal laws, statutes, ordinances, rules, regulations, codes, decrees, orders and other such requirements, applicable equitable remedies and decisions by courts in cases where such decisions are binding precedents in Illinois and decisions of federal courts applying the laws of Illinois, at the time in question.

38. Vendor Covenants: The Vendor hereby warrants, represents and covenants to the Village, as follows:

- a. Vendor shall fully carry out all activities and provide all services as required by and limited by this Agreement and shall comply in all respects with this Agreement, including without limitation, all Exhibits attached hereto.
- b. Vendor shall be governed by, adhere to and obey in all respects all Laws including, without limitation, the Village Municipal Code and shall be responsible for obtaining any licenses or permits necessary to operate the concession.
- c. Vendor shall maintain itself in good standing to do business under the Illinois Business Corporations Act, Not For Profit Corporations Act, Illinois Limited Partnership Act or the applicable Law under which it conducts business.
- d. Vendor shall store all inventory within the Premises and trash out of sight of the public.

39. Events of Default; Remedies:

A. Except as otherwise provided in this Paragraph 39, 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.

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. Setoff: Village may, regardless of whether a demand for payment has been made and without notice to Vendor or anyone, apply or set off any balance, credits, deposits, accounts, moneys, or other indebtedness at any time credited by or due from Village to Vendor against the amounts due hereunder.
- F. Limitations: Neither party shall be liable under any circumstances for any consequential, indirect, or punitive damages.
- G. Acceleration of Minimum Fee: If this Agreement is terminated early for any fault or breach by the Vendor, then the equivalent amount of the Minimum Fee that would be payable under this Agreement by Vendor if this Agreement were still in effect will become immediately due and owing upon termination.
40. Deposits: Vendor acknowledges that the Village is holding deposits from the Vendor given to Village pursuant prior agreements between the Parties. Vendor expressly agrees that any deposits presently held by the Village or hereinafter given to the Village may be applied by the Village, at Village's sole discretion, against any fees due from Vendor, under this Agreement or any other agreement between the Parties, which remain outstanding thirty (30) days after the end of any Operating Season. Such action by Village may be made without notice to Vendor and regardless of whether a demand for payment has been made. In the event Village elects to apply said deposits to any outstanding fees, Vendor shall be required to replenish any deposits with the Village prior to the commencement date of any Extension Period or Mutual Extension Period. The exercise of this remedy is not a waiver by the Village of any other remedy permitted under this Agreement or by law, including but not limited to termination of this Agreement.
41. Transfer of Rights Under Agreement Prohibited: Vendor agrees that it will not give, sell, license, assign, sublet, permit, subcontract, sub-concession or otherwise transfer this Agreement or rights or obligations under this Agreement. A change in control of Vendor shall be deemed a prohibited transfer hereunder. Any such purported transfer shall be null and void and of no effect and, at the sole option of the Village, shall be grounds for termination of this Agreement.
42. 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.
43. Beneficiary: There are no third party beneficiaries.
44. 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.
45. 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.

46. Termination: The Village shall have the right to terminate this Agreement immediately upon written notice to Vendor upon the occurrence of any one of the following conditions or violations:
- a. Any action or failure to act or comply with any terms contained herein which, in the sole determination of the Village, creates a material breach of this Agreement.
 - b. The failure of the Vendor to obtain and maintain in force the insurance required by the Village pursuant to this Agreement.
 - c. A transfer in violation of Paragraph 41 hereof.
 - d. Failure of the Vendor to pay, when due, any fees owed the Village pursuant to the terms of this Agreement and said fees shall continue to be due and payable up to and following the termination of this Agreement.
 - e. The destruction of the Vendor's Premises, or any part thereof.
 - f. Any false or misleading statement or misrepresentation made to the Village by or on behalf of the Vendor as a part of this Agreement.
 - g. Vendor is charged in any court with an offense involving his/her fitness to hold a necessary licenses or permits to enable the operation of the business.
 - h. Failure of any Key Personnel to act in his/her/their identified capacity for the Vendor.
 - i. A violation by Vendor or any affiliate of Vendor under this or any other agreement with the Village.
 - j. If the Village determines that the Vendor's conduct (i) is grossly negligent, (ii) creates a safety hazard or (iii) destructs public property.
47. Early Termination: In addition to termination by the Village pursuant to Paragraph 46, in the event the Village pursues the renovation or rehabilitation of the Village Green, the Village may terminate this Agreement by providing written notice to the Vendor ninety (90) days prior to the first day of any Operating Season. The effective date of termination will be the date the notice is received by the Vendor or the date stated in the notice, whichever is later.
48. Return of Possession and Removal of Property: Upon termination of the Agreement by lapse of time or termination by written notification from the Village or written notification stating the need to winterize the Premises at the end of the Operating Season, or otherwise, the Vendor shall surrender all keys and possession of the Premises in broom-clean condition and good repair, free of debris, and shall promptly remove, at its own expense, its movable trade fixtures and personal property from the Premises, and repair any damage to the Premises, and place the area surrounding the Premises in a safe, sanitary and broom-clean condition and in as good of a condition as existed prior to the commencement of the Term. Vendor's failure to remove such property shall create no right to operate in the Premises. All such property not removed or abandoned after this agreement has been terminated, shall thereupon become the sole and exclusive property of the Village. All property removed from the Premises or the Village Green by the Village hereunder may be handled, discarded or stored by the Village. The Village shall in no event be responsible for the value, preservation or safekeeping thereof. If Vendor fails to repair damaged property or clean debris or garbage, or otherwise leave the Premises in the condition required herein, the Vendor shall pay the Village the reasonable costs and expenses incurred by the Village in doing so.
49. Security Agreement: The Vendor shall grant the Village a security interest in various collateral of the Vendor by executing a Security Agreement simultaneously with this Agreement.

- 50. 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.
- 51. Time for Performance. Time is of the essence of this Agreement.
- 52. 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.
- 53. 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.
- 54. 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.
- 55. Prior Agreements: This Agreement supersedes and replaces all previous agreements between the Parties. Any debts remaining due under any previous agreements shall continue to remain due until paid in full. Any deposits given under previous agreements shall be required to be maintained.
- 56. 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, Manager

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. #: 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

HOFFMAN ESTATES BEER GARDEN 2018

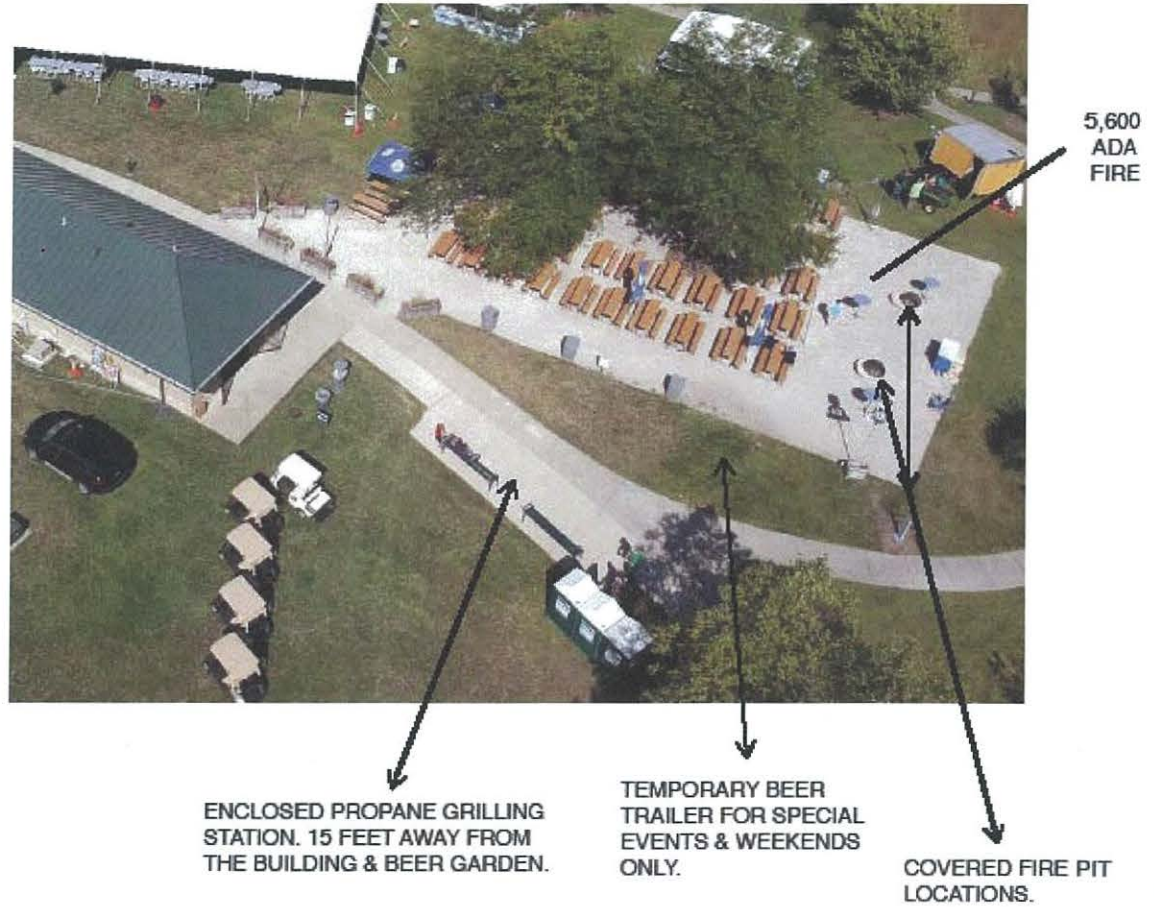


Exhibit C-1: Map of Premises

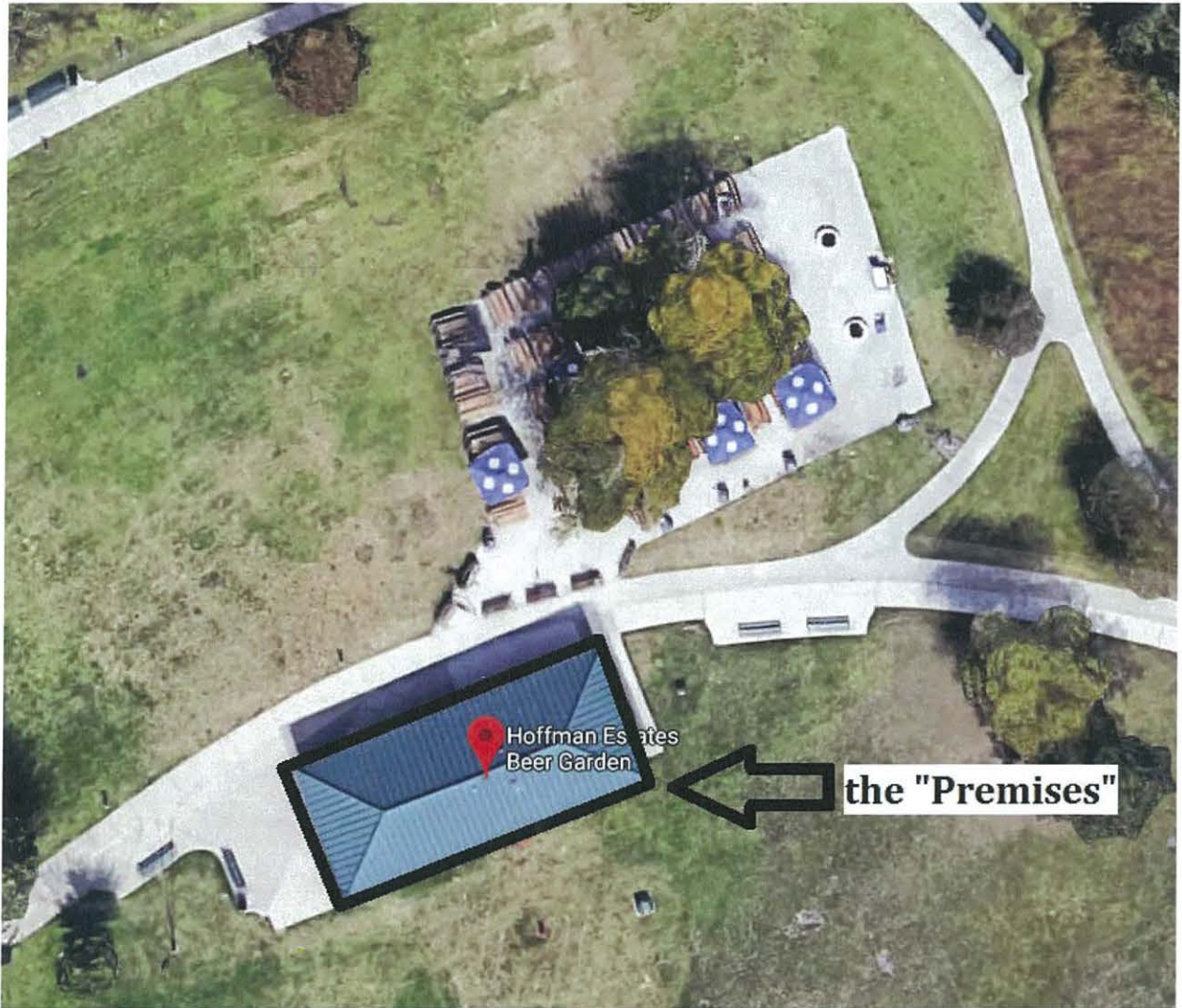
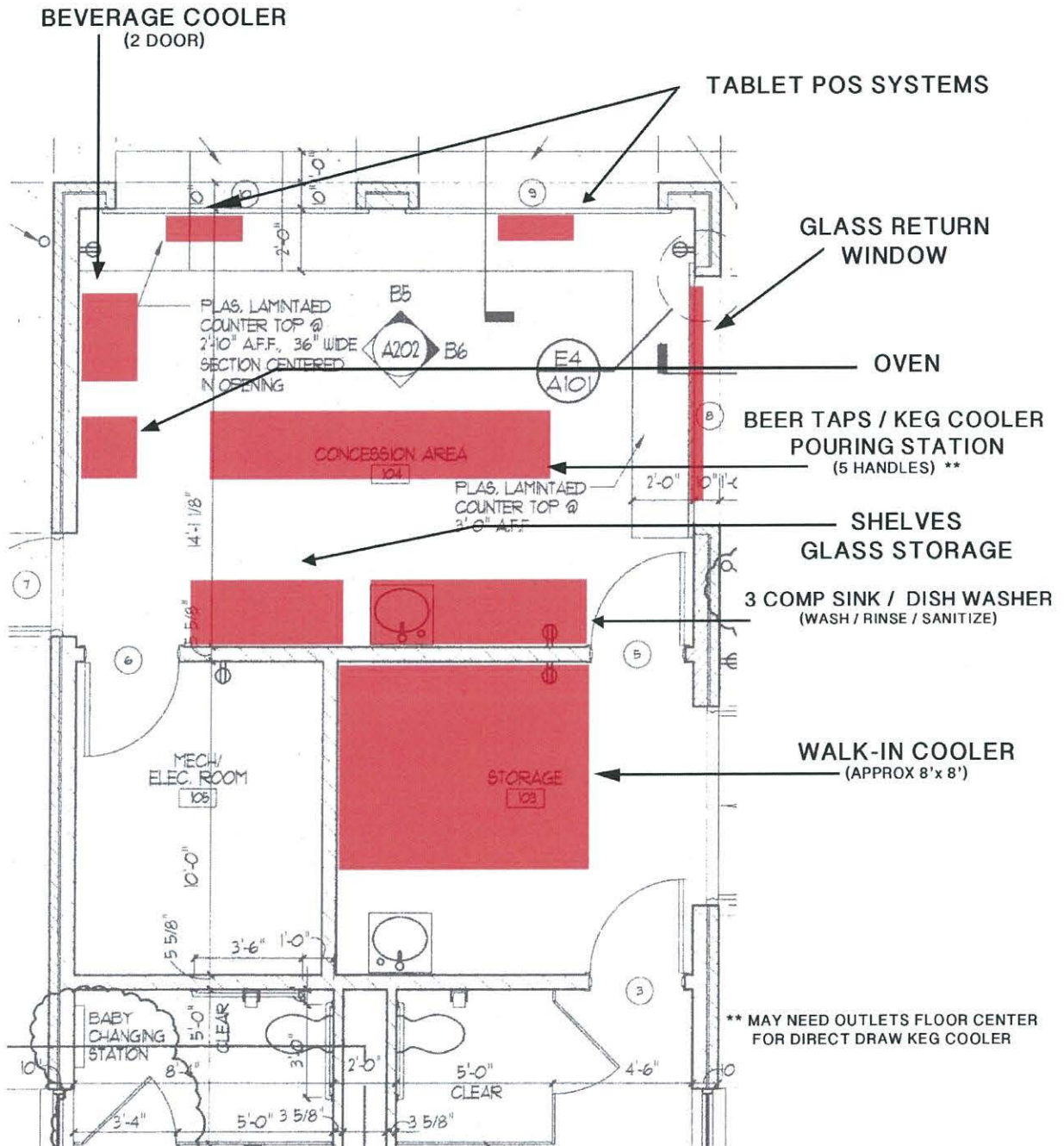


Exhibit C-2: Concession Building Plan (Premises)

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



Concession Building Plan

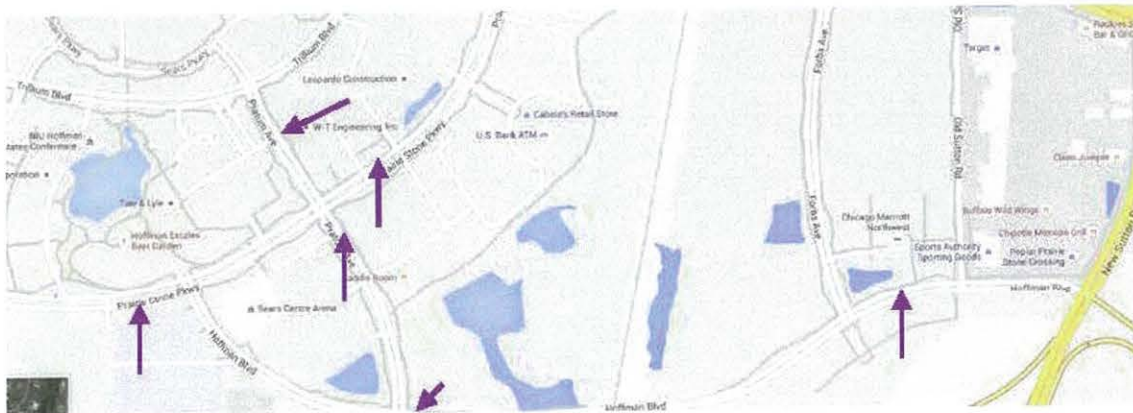
Exhibit D-1



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



Exhibit D-2



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SECURITY AGREEMENT

This Security Agreement ("Agreement") is made this ____ day of _____, 2018 between the VILLAGE OF HOFFMAN ESTATES, a municipal corporation organized under the laws of the State of Illinois with its principal place of business at 1900 Hassell Road, Hoffman Estates, Illinois 60169 ("Village") and DASBIER GARDEN LLC, a domestic limited liability company with its principal place of business at 5510 Prairie Stone Parkway, Hoffman Estates, Illinois 60169 ("Vendor"). Referenced together, the Village and the Vendor are the "Parties" to this Agreement.

RECITALS

WHEREAS, pursuant to a Lease and Concession License Agreement dated as of _____, 2018, by and between the Village and Vendor ("Lease Agreement"), the Village has agreed to lease use of a certain Premises to Vendor; and

WHEREAS, it is a condition precedent to the obligation of the Village to lease the Premises under the Lease Agreement that this Security Agreement be executed.

AGREEMENTS

THEREFORE, in order to induce the Village to make extensions of credit under the Lease Agreement and for other good and valuable consideration, the parties hereby agree as follows:

1. **DEFINED TERMS.** Unless otherwise defined herein, the terms defined in the Lease Agreement (whether or not such Lease Agreement remains in effect) are hereby incorporated by reference into this Security Agreement and shall have the meanings given to them in the Lease Agreement.

1.1. "Collateral." The Collateral shall consist of all of the personal property of Vendor, wherever located, and now owned or hereafter acquired, including equipment, including property used in Vendor's business, machinery and fixtures and proceeds and products of the foregoing.

1.2. "Obligations." This Security Agreement secures the following: (a) Vendor's obligations under the Lease Agreement and any fees made thereunder, and this Security Agreement; and (b) all of Vendor's other present and future obligations to the Village; and (c) all amounts owed under any modifications, renewals, or extensions of any of the foregoing obligations; and (d) all other amounts now or in the future owed by Vendor to the Village.

1.3. "UCC." Any term used herein but not defined in this Security Agreement has the meaning given to such term in the Uniform Commercial Code (UCC) as enacted in the State of Illinois.

2. **GRANT OF SECURITY INTEREST.** Vendor hereby grants a security interest in the Collateral to the Village to secure the prompt payment and performance of the Obligations.

3. **PERFECTION OF SECURITY INTERESTS**

3.1. **Filing of Financing Statement (Financing Statement).**

(a) Vendor authorizes the Village to file a Financing Statement describing Collateral;

(b) Vendor authorizes the Village to file a Financing Statement describing any statutory liens held by the Village.

3.2. Documents and Instruments. Vendor shall immediately deliver all documents and instruments to the Village endorsed as requested by the Village.

4. VENDOR'S REPRESENTATIONS AND WARRANTIES. Vendor warrants and represents that except for the security interest granted pursuant to this Agreement and the security interest in favor of U.S Bank National Association, Vendor owns each item of Collateral free and clear of any and all liens, security interests, encumbrances, or claims of any kind. Other than those filed by U.S. Bank National Association (#021350222), no financing statements or other public notice with respect to all or any part of the Collateral is on file or of record in any public office, except such as have been filed in favor of the Village.

5. POST-CLOSING COVENANTS AND RIGHTS CONCERNING THE COLLATERAL.

5.1. Maintenance of Security Interest.

(a) Other than the priority of U.S. Bank National Association, Vendor shall maintain the security interest herein as a first priority security interest and shall defend such security interest against the claims and demands of all persons or entities.

(b) At any time, upon written request of the Village, Vendor will promptly execute and deliver such further instruments and documents and take such further actions as the Village may reasonably request for the purpose of obtaining or preserving the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the UCC in effect in any jurisdiction.

7. EVENTS OF DEFAULT. The occurrence of any of the following shall be, at the option of the Village (except for Section 7.3, which shall be automatic), an Event of Default:

7.1. Any default in payment or performance by Vendor under the Lease Agreement, any notes, or any of the other Obligations;

7.2. Vendor's failure to comply with any of the provisions of, or the incorrectness of any representation or warranty contained in, this Security Agreement, any note, or any of the other Obligations;

7.3. Vendor's voluntarily or involuntarily becoming subject to any proceeding under (a) the Bankruptcy Code, or (b) any similar remedy under state statutory or common law.

8. REMEDIES UPON DEFAULT

8.1. General. Upon any Event of Default, the Village may pursue any remedy available at law (including those available under the provisions of the UCC) or in equity to collect, enforce, or satisfy any Obligations then owing, whether by acceleration or otherwise.

8.2. Cumulative Remedies. Upon any Event of Default, the Village shall have the right to pursue any of its remedies separately, successively, or simultaneously, including, without limitation, the following:

9.7. Purchases by the Village. In the event the Village purchases any of the Collateral being sold, the Village may pay for the Collateral by crediting some or all of the Obligations of Vendor.

9.8. No Marshaling. The Village has no obligation to marshal any assets in favor of Vendor, or against or in payment of any note, any of the other Obligations, or any other obligation owed to the Village or any other person.

10. MISCELLANEOUS

10.1. Assignment.

(a) Binds Assignees. This Security Agreement shall bind and shall inure to the benefit of the heirs, legatees, executors, administrators, successors, and assigns of the Village and shall bind all persons who become bound as a Vendor to this Security Agreement.

(b) No Assignments by Vendor. The Village does not consent to any assignment by Vendor except as expressly provided in this Security Agreement.

10.2. Counterpart. This Security Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

10.3. Further Assurances. Vendor agrees to execute any further documents, and to take any further actions, reasonably required by the Village to evidence or perfect the security interest granted herein, to maintain the first priority of the security interests, or to effect the rights granted to the Village herein.

10.4. Governing Law. This Security Agreement is being executed and delivered and is intended to be performed in the State of Illinois and shall be construed and enforced in accordance with the laws of the State of Illinois.

10.5. Headings. Section headings used in this Security Agreement are for convenience only.

10.6. Modifications. Any modification to this Security Agreement must be made in writing and signed by both Parties.

10.7. Severability. Should any provisions of this Security Agreement be found to be void, invalid, or unenforceable by a court or panel of arbitrators of competent jurisdiction, that finding shall only affect the provisions found to be void, invalid, or unenforceable and shall not affect the remaining provisions of this Security Agreement.

10.8. Notices. Any notices required by this Security Agreement shall be made in accordance with the provisions of the Lease Agreement.

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

DASBIER GARDEN LLC

By _____ Date _____
Andrew Hartman, Manager

Village of Hoffman Estates

By _____ Date _____
William D. McLeod
Village President

Attest:

Bev Romanoff
Village Clerk

Date