



A SPECIAL MEETING OF THE BOARD OF COMMISSIONERS OF THE PARK DISTRICT OF THE CITY OF FARGO WILL BE HELD ON MONDAY, JANUARY 30, 2023 AT 11:00 A.M. IN THE BOARD ROOM OF THE PARK DISTRICT OFFICES AT 701 MAIN AVENUE, FARGO, WITH PRESIDENT DAWN MORGAN, PRESIDING. Please note: This is an in person and MS Teams Live Event. Members of the public and media can view the live meeting at www.fargoparks.com/news/special-park-board-meeting-january-30-agenda-2023

A G E N D A

1. Call to Order
2. Approval of the Agenda
3. Board to consider for approval a draft lease proposal for the restaurant at Rose Creek Public Golf Course; Carolyn Boutain, presenter.
4. Adjournment

Individuals who wish to attend Park Board meetings but need special arrangements or would like to address the Board, please contact the Fargo Park District office at 499-6060 by noon on the Monday before the Board Meeting.



MEMORANDUM

DATE: January 27, 2023

TO: Fargo Park Board Commissioners

FROM: Carolyn Boutain, Community Relations Director, 701-866-4505

RE: Agenda Item #3: Board to consider for approval a draft lease proposal for the restaurant at Rose Creek Public Golf Course

At the December Facilities Committee meeting the staff was asked to negotiate a lease with Andy Skatvold and Kjerbeersten, LLC based on the proposal that they provided for operation of the Rose Creek Clubhouse restaurant, grill (kiosk) and beverage carts.

Attached is the latest draft of the lease agreement for the commissioners to review. Staff is asking for approval of the lease at the January 30, 2023, special board meeting.

Highlights of the draft lease are listed below.

- 1) The proposal is for providing operations at Rose Creek for the golf season only.
- 2) They would not provide winter hours at this time.
- 3) The rent proposed is 12% of gross for the first two years. After year two, the percentage can increase to 15% for sales \$500,000.01-\$750,000.00 and 18% for sales \$750,000.01 and above.
- 4) They will use the equipment owned by the Park District and included in Exhibit 1.4.
- 5) The District will cover costs including utilities, maintenance, repair and replacement of the equipment and building.
- 6) The improvements that they would like to make are to the grill (kiosk) next to the pro shop before opening. This is Exhibit 1.1-A

In addition to creating the lease, the City of Fargo has discussed the request for the FA Golf license to be available as a seasonal license. The Liquor Control Board supported this request and staff has sent it to the City Commission for approval.

If you have questions, please contact Dave Leker or myself.

Thank you!

Sample Motion: Motion to approve the lease for the restaurant at Rose Creek Public Golf Course as presented.

Dave Leker, Executive Director
PARK COMMISSIONERS – Vicki Dawson * Joe Deutsch * Aaron Hill * Dawn Morgan * Jerry Rostad
CLERK – Dave Leker

LEASE

This **LEASE** is effective the ____ day of January, 2023, by and between by and between **Park District of the City of Fargo**, 701 Main Avenue, Fargo, North Dakota 58103 ("Landlord"), and **Kjerbeersten, LLC d/b/a 19th Hole at Rose Creek**, a Minnesota limited liability company whose post off address is 705 18th Avenue, North, Moorhead, Minnesota, 56560 ("Tenant"), and **Andrew M. Skatvold**, an individual whose post office address is 705 18th Avenue North, Moorhead, MN 5656 ("Guarantor").

Whereas, Landlord is the owner of the Rose Creek golf course, including the grounds, buildings, parking lot and all exterior improvements;

Whereas, Tenant desires to lease a portion of the main clubhouse for purposes of operating and bar and restaurant;

Whereas, each party recognizes that the success of its operation is, in part, dependent on the successful operation of the other, in that a successful golf course operation will enhance the prospect for a successful food and beverage business for Tenant; and that Tenant's food and beverage operation will enhance the golfing experience for patrons of the golf course; and

Whereas, the parties acknowledge that they will have to cooperate in jointly using areas surrounding the building, including golf course staging areas and the parking lot, doing their best to address such matters in this Lease.

For and in consideration of the rentals herein reserved and the conditions, covenants and agreements herein contained, to be kept, observed and performed by Tenant, Landlord does hereby lease to Tenant the Leased Premises as described in Paragraph 1 below.

1. Leased Premises. Restaurant, bar, kitchen, and grill facilities, consistent of the ground and second levels, all as shown on Exhibit "1" attached, effectively the entire building less the common areas, pro shop area and banquet area ("Leased Premises"), all in the building owned by the Landlord and located at 1500 Rose Creek Parkway South, Fargo, North Dakota 58104 ("Building" or "Clubhouse"). The golf staging area to the west of the building is for the primary use of the Landlord and its golf course operation. To accommodate the Tenant's support of the golf course operation, Tenant may be using the staging area at various times in consultation with the Landlord's golf pro. The site plan is attached as Exhibit 1-B and in intended to also describe the locations of dumpsters, delivery access routes, and similar use areas.

- 1.1. Tenant shall be responsible for paying the costs of any additional "fit up" of the Leased Premises as it deems necessary, all subject to the approval of the Landlord, which approval will not be unreasonably withheld. Any and all such "fit up" shall be included in floor plans and spec terms on Exhibits "1.1-A" attached and Exhibit "1.1-B", if needed, which may be included following the execution of this Lease. The Tenant will contract for its "fit up" and pay for the same. Tenant will be

responsible for all costs associated with its "fit up." "Fit up" is intended to cover the Tenant's interior signage, task lighting or such other items that may be specifically related to the Tenant's use of the Leased Premises. All Tenant fit up, except signage, will inure to the Landlord on termination of the Lease. The parties agree to share information regarding "fit-up" on a timely basis. The Tenant accepts the Leased Premises "AS IS" as later herein described.

- 1.2. Notwithstanding the above, Landlord shall be generally responsible for providing an electrical power system and an HVAC system throughout the Leased Premises, to include the maintenance, repair and replacement of equipment related thereto, as provided in Paragraph 15 below. The payment of utilities and common area expenses related to such systems and the operation of the Building is described in Paragraph 11 below.
- 1.3. Landlord and Tenant specifically acknowledge and agree that Tenant shall, at its own expense, design, coordinate the installation of and pay for all telephone, computer and all other data cabling within the Leased Premises and any security systems and alarms related to the Tenant's business, all as desired or required by Tenant for its business purposes, to the extent such wiring is not already available on site.
- 1.4. This Lease shall also include the leasing of the Landlord's personal property described on Exhibit "1.4" currently on site related to the food and business operation, to include all current kitchen equipment, tables, chairs, flatware, glassware and silverware owned by Landlord. Landlord shall be responsible for maintaining, repairing and replacing such items as provided in Paragraph 15 below. Tenant accepts such personal property "AS IS" and later herein described.

2. Common Areas and Expenses.

- 2.1. Area Included. Tenant and its invitees shall have the use in common with others of parking areas, sidewalks, walkways, hallways and public rest rooms also shown on Exhibit "1," and all other common areas and facilities (collectively "common areas") which are now or in the future a part of the Building, subject to reasonable rules and regulations for use prescribed by Landlord.
- 2.2. Maintenance and Expenses. Except where otherwise stated herein, Landlord shall be responsible to maintain the common areas in good order and condition, including the public restrooms, and will keep the common areas well lighted during normal business hours. Landlord, at its sole cost and expense, shall provide Tenant with paper products, can liners, and soap for the public restrooms. Landlord will keep the walkways free of snow and ice and any other debris and obstructions shall be

removed by the Landlord during the Golf Season. Included in the common area expenses to maintain and service the Building and parking lot shall be, but is not limited to, the following: utilities for the parking lot and Building, maintenance and cleaning of the common areas and periodic exterior window cleaning and janitorial services. Landlord will be solely responsible for landscaping and yard care around the Building and maintenance and repair of the staging area to the east of the Building. Landlord will remove snow in the parking lot at the level of its regular standards of operation during the Golf Season. Tenant acknowledges that if this level does not meet the necessary expectations, the Tenant will make arrangements at its expense to have the snow moved.

2.2.1. Tenant shall be responsible for snow removal from the parking lot and the walkways in the event of non-Golf Season events.

3. Use. Tenant shall occupy and use the Leased Premises solely for the purposes of a restaurant to provide a food and beverage service in south Fargo and to support the Rose Creek Public Golf Course. Tenant acknowledges that Landlord has contracted with Livin' the Dream, LLC d/b/a Legends Sports Bar & Grill, the previous tenant, that Livin' the Dream, LLC d/b/a Legends Sports Bar & Grill has a Class FA Golf liquor license (as that term is defined by Fargo City Ordinances), and Tenant may negotiate with Livin' the Dream, LLC d/b/a Legends Sports Bar & Grill on a lawful transfer of that license. Tenant will cooperate with Landlord and Livin' the Dream, LLC d/b/a Legends Sports Bar & Grill on transitioning such services. This Lease is contingent on Tenant procuring the appropriate liquor and food licenses to provide the services herein described and contemplated by the Landlord.

3.1. Tenant agrees to operate in three (3) fashions: (1) a bar and restaurant on the 2nd floor of the Clubhouse; (2) a kiosk for quick services on the main floor of the Clubhouse; and (3) beverage carts on the golf course (collectively the "Services"). Tenant is obligated to operate the Services from April 1 through at least October 31 (the "Golf Season") of each year of Term of the Lease, which is roughly the equivalent of the golf season every year. The Tenant shall have the right, but not the obligation, to operate the restaurant during the non-Golf Season at its own election.

3.1.1. The parties understand and acknowledge that the weather is often unpredictable and that the Golf Season may be shorter or longer than contemplated above in any given year. In the event inclement weather causes a delay in the opening of the golf course, or alternatively, closure of the golf course prior to the end of the regular Golf Season, Tenant and the Landlord's golf professional at Rose Creek shall negotiate modified operating hours in good faith. Similarly, in the event of cooperative weather

that allows the golf course to open earlier than April 1 or stay open later than October 31 of a Golf Season, Tenant and the Landlord's golf professional at Rose Creek shall negotiate modified operating hours in good faith.

- 3.2. Tenant shall be responsible to provide prompt, courteous and consistent food and beverage services at the Clubhouse for the benefit of the Rose Creek Public Golf Course. It will provide quality food and beverages at reasonable prices. Pricing for food, room rentals and related services for special events shall not depend on or change because a special event does or does not have alcohol sales associated with the event ("dual pricing is prohibited").
- 3.3. The Leased Premises shall be used for food and beverage service and any other reasonably related uses and shall be used for no other purpose and by no other persons without written consent of Landlord. The providing of food and beverage service at the Clubhouse shall be exclusive to Tenant. Landlord and Tenant acknowledge that there may be certain future tournaments or activities in which the tournament or event sponsor may provide limited food or beverage services on the course or grounds, but not inside the Clubhouse, that will be in addition to Tenant's services. In the event such tournaments or events are scheduled, Landlord and Tenant agree to negotiate the terms and conditions of such limited food or beverage services in good faith.
 - 3.3.1. Tenant and Landlord may work together in good faith for the pro-shop at the Clubhouse to sell Tenant's food and beverage within the pro shop and how the parties will properly account for such sales on a monthly basis.
- 3.4. In addition to the customary food and beverage services that are to be provided by Tenant to the customers of Rose Creek Public Golf Course during the golf season, it is understood that the Tenant's intentions are to run a full-service restaurant during the Golf Season, to include but not be limited to a full food and beverage service for the general public, wedding rehearsal dinners, receptions, group luncheons or a Sunday breakfast buffet. Tenant will provide alternate services, appropriately staffed, for the users of the golf course if a special event is held in the Clubhouse.
- 3.5. Landlord has entered into a concession agreement with a local company ("Beverage Concessionaire") granting the Beverage Concessionaire an exclusive concession for furnishing for sale on Landlord's property and in Landlord's buildings of canned and bottled drinks and other non-alcoholic beverages customarily dispensed from vending machines, coolers and portable dispensing facilities. Tenant's rights under this Lease shall be subject to and in accordance with the exclusive Concession Agreement between Landlord and Beverage Concessionaire. Tenant acknowledges

and agrees that it will provide exclusively those products listed in the Landlord's beverage contract so as to allow Landlord to be in full compliance with its current or later awarded beverage contract. A copy of such contract is attached hereto as Exhibit "3.5".

4. Term. The initial term of this Lease shall be for approximately five (5) golf seasons beginning on or about February 1, 2023 and ending on approximately October 31, 2023, then continuing each Golf Season thereafter for four additional Golf Seasons beginning on April 1 of each year and ending on approximately October 31 of each year through approximately October 31, 2027. Proof of insurance with the Landlord listed as additional insured will be required before Tenant is given access for fit-up prior to restaurant opening.

4.1. Provided Tenant has complied with all of the terms and conditions of this Lease, Tenant shall have two (2) renewal options of five (5) Golf Seasons each from and after the original term, by giving to Landlord written notice of the exercise of such option at least one hundred twenty (120) days prior to the expiration of the original term and any renewal term. If one or more of the options are exercised, this Lease shall be extended on the same terms and conditions as for the original term.

4.2. Should Tenant elect to operate the restaurant to provide food and beverage service year-round, Tenant and Landlord shall execute an acknowledgement recognizing the Tenant electing to operate year-round.

4.3. Landlord agrees that it shall not rent out the Lease Space to any other party during the non-Golf Season during the Term of the Lease.

5. Rent. Tenant shall pay to the Landlord, at its office or such other place designated by the Landlord, without deduction or setoff whatsoever, monthly rent as follows:

5.1. Rent shall be paid in monthly in arrears based on the previous month's sales. For the 2023 and 2024 Golf Seasons, monthly rent shall equal 12% of Tenant's gross sales for all of Tenant's operations at the Leased Premises. Payment shall be made by the 15th day of each month for the preceding month's rent (i.e. April rent shall be due on or before May 15th of each year based on Tenant's gross sales from April).

5.2. For the remainder of the initial term and for any Golf Season during the renewal term(s), base monthly rent shall be equal 15% of Tenant's gross sales with payments being made by the 15th day of each month for the preceding month's rent. At the end of the Golf Season, Tenant shall pay additional rent based on the total gross sales of the Tenant for the entirety of the golf season based on the following schedule:

Total Gross Sales

Percent of Total Sales to Landlord

\$0.00 - \$500,000.00	12%
\$500,000.01 - \$750,000.00	15%
\$750,000.01 and above	18%

The additional rent shall be due and owing to the Landlord prior to December 31 for the preceding Golf Season. By way of example only, if Tenant has monthly gross sales equaling \$125,000.00, for total Golf Season gross sales of \$875,000.00, then base monthly rent during the Golf Season shall total \$15,000 per month (totaling \$105,000.00 in base rent for Golf Season). Prior to December 31 of that year, Tenant shall owe to Landlord additional rent of \$15,000.00. (Calculated as \$120,000.00 in base rent plus additional rent owed for the Golf Season less \$105,000.00 in total rent paid throughout the Golf Season).

- 5.3. Tenant shall furnish to Landlord a statement in writing, on forms to be provided by Landlord showing the total gross sales made in, upon or from the Leased Premises no later than the 10th day of each calendar month that this Lease remains in effect. Tenant shall pay to Landlord a sum equal to the above-stated percentages of the total month gross sales on or before the 15th day of each month. Within thirty (30) days after the close of the Golf Season, Tenant shall furnish to Landlord a statement, certified to be correct, showing the total gross sales by months made in, upon or from the Leased Premises during the Golf Season. If the due date for any written statement, report, or rental payment falls on a Saturday, Sunday, or legal holiday on which the Landlord's offices are closed, the written statement, report, or rental payment, as the case may be, shall be due on the next day that is not a Saturday, Sunday, or legal holiday on which the Landlord's offices are closed.
- 5.4. The term "gross sales" as used in this Agreement shall include the entire gross receipts, less sales taxes applied to such sales, of every kind and nature from sales and services made in, upon or from the Leased Premises, whether upon credit or for cash, including the sales of a concessionaire that Tenant may have brought on the Leased Premises for a special event and including amounts charged for admission to any special event. Sales upon credit, whether personal credit or credit card, shall be deemed cash sales and shall be included in the gross sales from the monthly period in which the goods were delivered to the customer, whether or not Tenant has collected such sum.
- 5.5. Tenant shall keep full, complete and proper books, records and accounts of its daily gross sales, both from cash and on credit. Landlord, or its agents and employees, shall have the right at reasonable times, during regular business hours, to examine and inspect the books and records of Tenant, including any sales tax reports and income tax returns pertaining to the business of the Tenants conducted in, upon and from the Leased Premises.

- 5.6. Rent is due monthly on the 15th day of each month, except the rent due for any partial month will be paid pro rata upon the Tenant taking possession and opening for business. The rent shall be considered delinquent if not paid within three (3) days of the due date and Landlord shall receive a late payment charge of 5% of the delinquent payment for rent. Rent, plus the late payment charge, not paid within seven (7) days of the due date shall accrue interest at the rate of 9% per annum.
6. Security Deposit. On or prior Tenant commencing fit-up under Section 1.1 or March 1, 2023, which ever soon, Tenant will deposit with Landlord the sum of Seven Thousand Five Hundred Dollars (\$7,500.00). This deposit shall be held by Landlord without liability for interest, as security for the faithful performance by Tenant of all the terms, covenants and conditions of this Lease to be kept and performed by said Tenant during the term hereof. If at any time during the term of this Lease any of the rent herein reserved shall be overdue and unpaid, or any other sum payable by Tenant to Landlord hereunder shall be overdue and unpaid, then Landlord may, at its option, appropriate and apply any portion of the security deposit to the payment of any such overdue rent or other sum. Also, Landlord at its option may appropriate and apply all or part of the security deposit, as necessary, to compensate Landlord for loss or damage sustained or suffered by it due to any breach, default, or neglect of Tenant to keep and perform any of the terms, covenants and conditions of this Lease. Should the entire deposit, or any portion be appropriated and applied by Landlord as provided herein, then Tenant shall, upon written demand, pay to Landlord a sufficient amount in cash to restore the security deposit to the original sum deposited, and Tenant's failure to do so within ten (10) days after receipt of such demand shall constitute a breach of this Lease. Should Tenant comply with all said terms, covenants and conditions and promptly pay all the rental as it falls due, and all other sums payable by Tenant to Landlord under this Lease, the security deposit shall be returned in full to Tenant at the end of the term of this Lease, or upon its earlier termination as provided herein.
7. Hours of Operation. During the Golf Season, Tenant shall, at a minimum, maintain the following hours for each of Tenant's Services:
- 7.1. Bar and Restaurant at the Clubhouse:
- Monday-Sunday 11:00AM – 8:00PM
- 7.2. Kiosk at the Clubhouse and Beverage Carts:
- During the months of April and October, Tenant agrees that at least one of the Kiosk or the Beverage Carts will be open for the following hours:
- Monday – Sunday 11:00AM – Sunset

During the months of May and September, Tenant agrees to following hours:

Monday – Wednesday 11:00am – Sunset (at least one of the Kiosk or the Beverage Carts)

Thursday-Sunday 10:00am – Sunset (both the Kiosk and the Beverage Carts)

During the months of June, July and August, Tenant agrees that both the Kiosk and the Beverage Carts will be open for the following hours:

Monday – Thursday 11:00AM- 8:00PM

Friday – Sunday – 9:00AM – 8:00PM

- 7.3. Tenant has the unilateral authority to expand the hours beyond those listed in Sections 7.1 and 7.2.
- 7.4. Tenant shall not be obligated to operate the Kiosk at the Clubhouse or the Beverage Carts on days which the Golf Course is closed due to inclement weather.
8. Real Estate Taxes. Landlord shall pay all real estate taxes that may be assessed arising out of Tenant's use and occupancy of the Leased Premises. Landlord will be solely responsible for any special assessments levied against the Leased Premises.
9. Insurance. Landlord, at its expense, shall carry fire and extended coverage insurance upon the Building and the Landlord's fixtures and personal property located on the Leased Premises.
- 9.1. Tenant, at its expense, shall keep in force public liability insurance for bodily injury and property damage with limits of at least \$1,000,000 per occurrence and \$2,000,000 aggregate, with the Landlord named as an additional insured. Tenant shall also maintain fire legal liability insurance with coverage in such reasonable amounts as may be determined by Landlord on Tenant's personal property located in and on the Leased Premises. Tenant shall also cause to be carried liquor liability or dram shop insurance of at least \$1,000,000. Copies of insurance policies or certificates of insurance shall be delivered to Landlord, if requested by Landlord. All policies shall require the insurance company to notify Landlord in writing at

least twenty (20) days prior to any cancellation of the insurance and that no act or omission of others shall avoid coverage as to Landlord.

9.1.1. It is anticipated that Tenant will use golf carts owned by Landlord for beverage cart purposes and/or hauling of garbage and supplies. Tenant agrees to insure its use of Landlord's golf carts, including public liability insurance for bodily injury and property damage with the limits described in Section 9.1 and to list Landlord as an additional insured.

9.2. To the extent Tenant has personal property or equipment that remains on the Premises during the non-Golf Season and while Tenant is not leasing the Premises, Tenant shall continue to retain insurance on its own personal property and equipment.

10. Waiver of Subrogation. The parties release each other from all claims for recovery for any loss or damage to any of its property which is insured under an insurance policy to the extent of any recovery collectible under the insurance. This release and waiver shall apply only when permitted by the applicable insurance policy.

11. Utilities. Each party shall pay for its own telephone, cable television and internet connections servicing their respective areas. Landlord shall pay for all fuel, electricity, gas, oil, water and other utilities used in the Building.

12. Damage or Destruction. If the Leased Premises shall be partially or totally damaged by fire, tornado, or other casualty, Tenant shall immediately give notice thereof to Landlord. Receipt of notice by Landlord shall be the starting date for the time required in these paragraphs. Landlord, in its sole discretion, shall decide whether or not the Leased Premises shall be rebuilt. If Tenant's business is substantially interfered with, the proportionate part of the rent shall be abated until the Leased Premises are rebuilt.

12.1. If the Building and/or the Leased Premises shall be so damaged that rebuilding or repairs cannot reasonably be completed within one hundred eighty (180) days from the date of written notification by Tenant to Landlord of the happening of the damage, this Lease shall terminate and the rent shall be abated for the unexpired portion of this Lease, effective as of the date of said written notification.

12.2. If the Building or other improvements situated on the Leased Premises should be damaged by fire, tornado, or other casualty, but to the extent that rebuilding or repairs can be reasonably completed within one hundred eighty (180) days from the date of written notification by Tenant to Landlord of the occurrence of the damage, this Lease shall not be terminated. If Landlord repairs or rebuilds after damage,

Landlord's obligation shall be limited to rebuilding or restoring the Leased Premises to substantially the same condition as prior to the damage and limited to the amount of insurance available to Landlord. Tenant shall be obligated to fully repair or replace all its exterior and interior signs, trade fixtures, furniture, equipment, display cases, decorations and other personal property and improvements originally installed by Tenant at its expense. If the Building and/or the Leased Premises are untenable in whole or in part following the damage contemplated herein, the rent payable hereunder, Tenant's common area maintenance obligations hereunder, and Tenant's obligations to pay its share of the utilities during the period in which the Leased Premises are untenable shall all be pro-rated accordingly. In the event that Landlord shall fail to complete such rebuilding or repairs within one hundred eighty (180) days from the date of written notification by Tenant to Landlord of the happening of the damage, Tenant may, at its option, terminate the Lease by written notification at such time to Landlord, whereupon all rights and obligations hereunder shall cease.

13. Condemnation. If any part of the Leased Premises are taken over or condemned for a public or quasi-public use and a part remains which is suitable of occupancy hereunder, this Lease shall, as to the parts so taken, terminate on the date title shall vest in the condemnor and rent payable shall be adjusted so Tenant shall pay only that portion of the rent as the value of the part remaining bears to the value of the entire Leased Premises at the date of condemnation. However, Landlord shall have the option to terminate this Lease as of the date when title to the part condemned vests in the condemnor. If all of the Leased Premises or a part thereof be taken or condemned so that there does not remain a portion suitable for occupancy hereunder, this Lease shall terminate.
14. Assignment. Tenant shall not assign, sublet or mortgage this Lease or any rights hereunder without the prior written consent of Landlord. An assignment includes a change of control in the ownership of the Tenant. If assignment or subletting is permitted, Tenant shall continue to be liable for the rent and performance of all covenants in the Lease. Neither this Lease nor any right hereunder shall be assignable by operation of law, including bankruptcy or other law relating to debtors, and no trustee, receiver, sheriff, creditor or purchaser at judicial sale, or any officer of any court shall acquire any right under this Lease or to the possession or use of the Leased Premises or any part thereof without the prior written consent of Landlord. If this Lease or the Leased Premises or any interest therein is levied on by any legal process against Tenant which shall be allowed to remain thereon for a period of twelve (12) days, it shall, at the option of Landlord, cause a termination of the Lease.

15. Repair and Maintenance. Landlord shall keep the foundations, exterior walls and roof of the Building in good repair and shall keep the HVAC, plumbing and electrical systems servicing the Building in good repair. Tenant shall be responsible for the cost of maintaining the kitchen exhaust system at the Leased Premises, including but not limited to regular cleaning, and routine and preventive maintenance.

Landlord shall be solely responsible for costs associated with the repair and maintenance of the parking lot, including resurfacing and restriping, parking lot lights and walkways leading directly from the parking lot to the building and the staging area to the east of the building. Notwithstanding the above, Landlord shall have the day-to-day upkeep responsibilities as described in paragraph 2.2 above.

- 15.1. Tenant's rent payment does not contemplate Landlord's responsibility to provide any janitorial service, or nominal maintenance and/or repairs which cost less than \$500.00 within the Leased Premises. Janitorial service, nominal maintenance and repairs within the Leased Premises shall be the sole responsibility of Tenant unless such repairs are necessitated by systems in which Landlord has the obligation of maintenance and repair. Repairs to the common areas necessitated by the negligent or willful conduct of Tenant or its employees are the responsibility of the Tenant.
- 15.2. The Leased Premises shall not be altered, repaired or changed without the prior written consent of Landlord, which consent shall not be unreasonably withheld. All expenses of redecorating during the term are the responsibility of the Tenant.
- 15.3. Tenant and Landlord shall work together in good faith to set forth an annual maintenance and replacement plan for Landlord's personal property and equipment as outlined in Section 1.4 and Exhibit 1.4, which generally shall be Landlord's responsibility. Tenant shall use and operate Landlord's personal property and equipment in a professional manner consistent with other restaurant and bar operators. Tenant be responsible for any maintenance or replacement of personal property or equipment on Exhibit 1.4 that is caused by the negligent or intentional acts of Tenant.
16. "As Is" Acceptance by Tenant. Except as otherwise stated herein that Landlord will provide repairs or replacements, Tenant accepts the Premises in the condition in which they now are, "AS IS", "WHERE IS" and "WITH ALL FAULTS" and with all defects and deficiencies, whether patent or latent. Tenant assumes all risks related to the condition of the Premises, including those risks posed by all such defects and deficiencies, from and after the date of this Lease.

17. Charitable Gaming. Tenant is under no obligation to offer charitable gaming at the Leased Premises. In the event that Tenant does elect to offer charitable gaming, the Fargo Park District Foundation shall have the right of first refusal to offer charitable gaming operations, whether it is the Foundation directly or through a partner of the Foundation. The Fargo Park District Foundation shall have the right to decide the kinds of games that are offered. Tenant shall notify the Landlord if it intends to offer charitable gaming operations. This right shall renew on a year-to-year basis.
18. Indemnity. Tenant shall defend, indemnify and hold Landlord harmless and free from all liability and claims for damages by reason of any injury to any persons, including Tenant, or property, including Tenant's, occurring because of Tenant's negligence or occupation of the Leased Premises and Tenant's operation of the beverage carts and golf carts outside of the Leased Premises. Tenant shall defend, indemnify and save Landlord harmless from all liability, loss, costs, reasonable attorney's fees and obligations arising out of such liability and claims.

In like manner, Landlord shall defend, indemnify and hold Tenant harmless and free from all liability and claims for damages by reason of any injury to any persons, including Landlord, or property, including Landlord's, occurring because of Landlord's negligence or its obligations to maintain the common areas under this Agreement. Landlord shall indemnify and save Tenant harmless from all liability, loss, costs, reasonable attorney's fees and obligations arising out of such liability and claims.
19. Landlord's Access. Landlord may enter upon the Leased Premises at any reasonable time to inspect and to make reasonable changes, alterations or repairs which Landlord may desire to the Leased Premises or the building in which the Leased Premises are situated. Landlord shall have the right to post any notice provided for by law or otherwise to protect any and all rights of Landlord, all without liability against Landlord unless Landlord shall unreasonably interfere with Tenant's business, nor shall Tenant be entitled to any abatement of rent by reason of the exercise by Landlord of any rights hereunder.
20. Notices. Any notice required or desired to be given by either party shall be deemed given if left at the address or deposited in the United States Post Office for certified mail, return receipt requested, postage prepaid, at its address stated in this Lease or at such other place as the party may designate in writing. For purposes of Notice, the addresses of the parties shall be:

<p>If to Landlord:</p> <p>With copy to:</p>	<p>Fargo Park District Attn: Executive Director 701 Main Ave Fargo, ND 58103</p> <p>Kennelly Business Law Attn: Jeff Gunkelman 1213 NP Ave, Suite 301 Fargo, ND 58102 jeff@kennellybusinesslaw.com</p>
<p>If to Tenant:</p>	<p>Kjerbeersten, LLC 705 18th Avenue North Moorhead, MN 5656</p>

21. Naming and Rights. Tenant may, at its own expense, install signs on the interior of the Leased Premises, such signage being subject to the Landlord's approval, which approval shall not be unreasonably withheld. No signs shall be erected on the outside of the Leased Premises without the written consent of the Landlord. Landlord will provide space on the marquee sign for the golf facility located on University Street. The Tenant's signage on the marquee sign will be subject to the approval of the Landlord, which approval will not be unreasonably withheld. All expenses for the signage and installation of such signage shall be the sole responsibility of the Tenant.
22. Parking. Both the Landlord and the Tenant may designate two (2) parking spaces to be exclusively used by such party. All other parking spaces in the parking lot located to the south of the Building are designated as common area parking and there are no specified or designated parking spaces available to Tenant for its customers or other visitors to the Tenant's restaurant/bar. Landlord and Tenant will establish parking rules/areas for employees of the Landlord and Tenant. Neither party will store or otherwise allow vehicles to be parked for extended periods of time in the common parking area. The parties acknowledge the need for a relatively clear parking lot to accomplish snow removal and other maintenance required by under this Lease.
23. Quiet Possession. Tenant, upon paying the rent and performing the agreements of this Lease, shall peaceably and quietly have, hold and enjoy the Leased Premises for the specified term.
24. Liens. Tenant shall not permit any construction or other lien to stand against Landlord's properly arising out of any act or omission of Tenant. Tenant may contest the validity or amount of any lien if Tenant gives Landlord security required by Landlord to ensure

payment or prevent any forfeiture of the property. Tenant shall have all liens released or judgments satisfied at Tenant's expense.

25. Subordination. Landlord may subordinate this Lease to existing or future mortgages on the Leased Premises. Tenant shall execute and deliver any instrument necessary to effectuate the subordination; however, each mortgagee shall agree that this Lease will remain in full force and effect as to Tenant upon foreclosure of any mortgage, provided Tenant shall not be in default under this Lease.
26. Operation. Except as otherwise provided in this Lease during non-Golf Season, Tenant shall not abandon or vacate the Leased Premises and Tenant shall operate the Leased Premises during the entire term of the Lease unless prevented from doing so by fire, windstorm or other casualty.
27. Requirements of Public Authority. Tenant shall comply with all covenants and restrictions of record, and all laws, ordinances and regulations of governmental authority which affect the Leased Premises, building, improvements, business or use thereof. Tenant shall obtain, at its own expense, all licenses and permits necessary for Tenant's business.
28. Default. If Tenant shall fail to pay the rent when due or default in any provisions of this Lease, or if Tenant shall make an assignment for the benefit of creditors, enter bankruptcy, receivership or insolvency, Landlord may, at its election, give notice to Tenant in writing specifying the default. Tenant shall have five (5) business days after notice is sent to cure any default arising out of its failure to pay rent, shall have five (5) business days after a notice is sent to cure any default for failing to operate under the agreed upon hours in Article 7, and shall have thirty (30) days after notice is sent to cure any other default. If default continues thereafter, Landlord may declare the term ended and re-enter the Leased Premises without a forfeiture of rents to become due hereunder, either with or without process of law, and to expel the Tenant and all persons on the Leased Premises, using force as may be necessary to repossess and enjoy the Leased Premises without prejudice to any other remedy which might be available. Landlord may re-rent at a price and terms as Landlord determines, and receive the rent applying it to payment of the rent due under this Lease, after all expenses of re-rental, including advertising, rental commissions, decorating, repairs and maintenance. Tenant shall pay any deficiency and remain liable for failure to comply with all terms and conditions of the Lease. Landlord may, but is not obligated to, make payments or to keep covenants required of Tenant under this Lease. All expenses of Landlord in so doing shall be additional rent and paid by Tenant to Landlord. All of Landlord's remedies are cumulative and pursuit of any remedy shall not be an election of remedies. Landlord shall have all remedies allowed by law and this Lease.

If Landlord is in default under this Lease, Landlord shall have a reasonable time to cure the default after written notice specifying the default to Landlord by Tenant.

28.1 Notwithstanding anything to the contrary, in the event of a third (3rd) default for failing to operate under the agreed upon hours in Article 7 within one Golf Season which Landlord provides notice of default to Tenant under this Section on the first two defaults, Landlord may terminate the Lease without providing Tenant an opportunity to cure upon the third such default. Landlord may elect to wait to terminate the Lease until the end of a Golf Season for three such failures to operate under the agreed upon hours. Waiting to terminate this Agreement until the end of a Golf Season shall not constitute a waiver by Landlord of Tenant's breach or a waiver of Landlord's rights to terminate.

29. Nonwaiver. No waiver by a party of any breach by the other of its obligations hereunder shall be a waiver of any other subsequent or continuing breach. Forbearance by a party to seek a remedy for any breach by the other shall not be a waiver of its rights or remedies with respect to the breach, or the required time of payment of rent or performance of a party's obligations.
30. Holding Over. If Tenant shall continue to occupy the Leased Premises after termination of this Lease, such occupancy shall create a tenancy at will only and shall not be a renewal of this Lease. Tenant shall pay rent for the Leased Premises during any holding- over period at a rate equal to one hundred ten percent (110%) of the last month's rent payable under the contracted term of this Lease.
31. Surrender. At the termination of this Lease for any reason, Tenant shall quit and surrender the Leased Premises in as good condition as when received, reasonable wear and tear or causes beyond Tenant's control excepted. Tenant may remove its fixtures, equipment and property installed by Tenant at its expense, provided it shall repair all damages caused by removal.
32. Obligation of Parties. The agreements in this Lease shall be binding upon and enforceable by the parties, their heirs, representatives, successors and assigns.
33. Relationship of Parties. Nothing contained in this Lease or any act or omission of the parties shall be construed to create a relationship of principal and agent, partnership, joint venture or association or any relationship between the parties other than the relationship of Landlord and Tenant.
34. Governing Law. This Lease covers property in North Dakota and shall be construed according to North Dakota law. Invalidity of any provision of this Lease shall not affect the validity of any other provision.

Tenant: Kjerbeersten, LLC

By: _____
Its: _____

Landlord: Park District to the City of Fargo

By: Dawn Morgan
Its: President

Guaranty

The undersigned, for and in consideration of the above lease, hereby guarantees the full and prompt performance when due of any and all the Tenant's obligations under the above-described Lease, including the payment of all rent and other financial obligations of the Tenant to the Landlord. This is an absolute and continuing guaranty and no release or discharge of the Tenant or other party obligated under the Lease will effect a discharge of the undersigned's obligations hereunder.

Dated: _____

Andrew M. Skatvold

Legend:

- Common
- Tenant
- Fargo Parks District
- Owner Access to Utilities

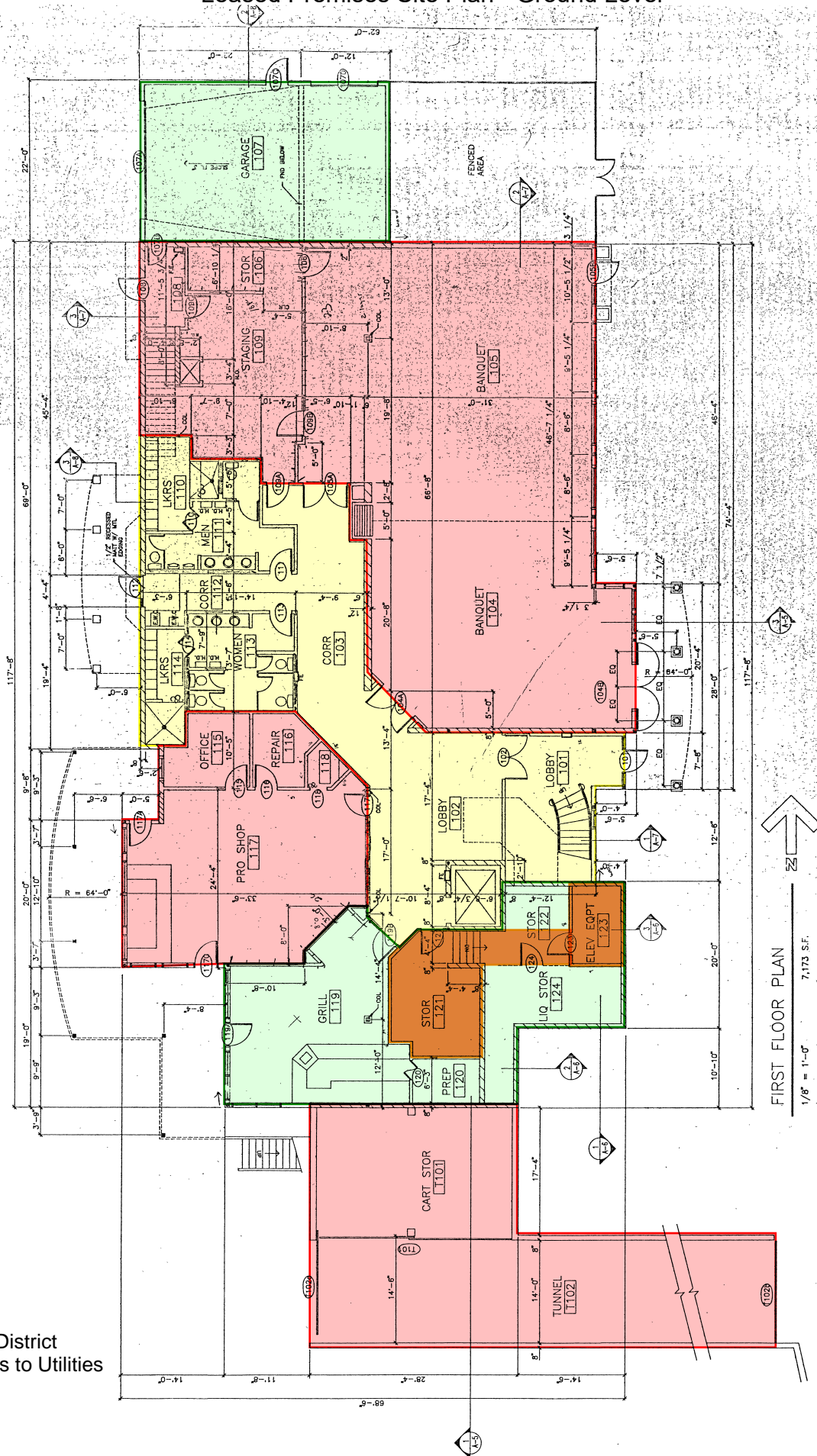
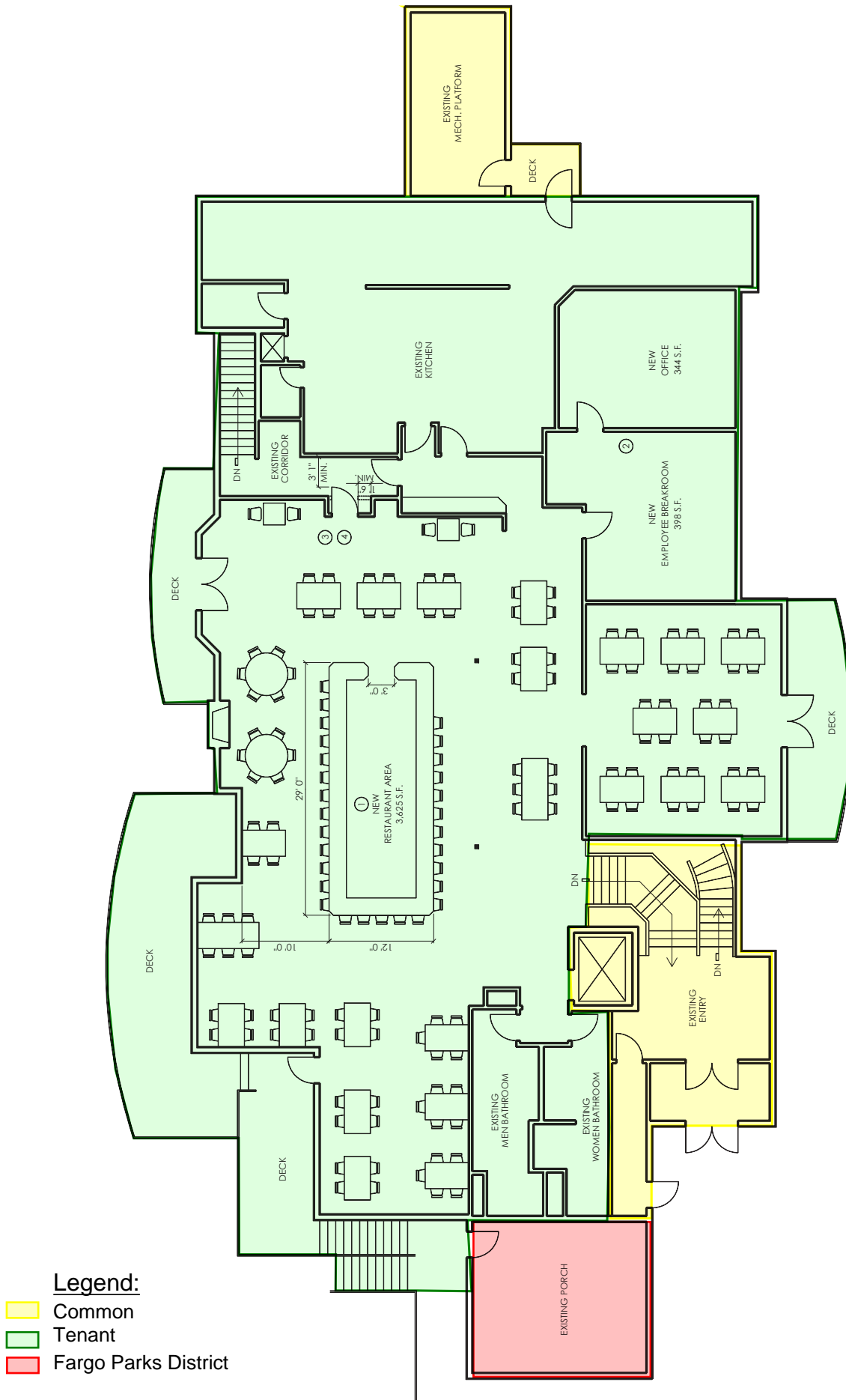


Exhibit 1
Leased Premises Site Plan - Second Floor



Legend:

- Common
- Tenant
- Fargo Parks District

Exhibit 1-B
Leased Premises Site Plan



Legend:

- Fargo Parks District
- Common Parking Guests
- Dumpster, Grease, Employee

Exhibit 1.1A

Grill (Kiosk) Fit - Up

1. Demo-carpet, counter, counter top, stools, ceiling tiles
2. Replace carpet with commercial carpet tiles,
3. Replace counter and countertop with new
4. Replace ceiling tiles with tiles or wood
5. Paint all walls
6. Add window blinds
7. Add additional seating and tables

Exhibit 1.4 Asset List

Quantity	Description
	Kitchen Items
10	Garbage Cans
1	Always Cans Can Rack- 27 Spaces
1	Avantco Refrigeration- Double Door Freezer
1	6 Shelf Storage Stainless Rack- Eastern Steel
1	Avantco Refrigeration- Single Door
1	Avantco Deep Fryer- 80LB-Natural Gas
1	Dean Deep Fryer 35LB- Natural Gas
1	Chef Base Refrigerator 4 Drawer
1	Vulcan Flat Top- 6' (72") Divided 6 Burner
1	Star 36" Stainless Steel Shelf -Under Hood
1	60" Stainless Steel Shelf - Under Hood
1	Avantco 6 Burner Top Gas Range 150,000 BTU
1	Patriot Equipment Stand 36"x28"- Under Avantco 6 Burner Top
1	Avantco 2-Door Prep Fridge
1	Work Counter 30"x72" w/ Storage
1	Saturn 2-Door Prep Fridge 48"
4	4 APW Heat Lamp Warmers 48" Each
1	Prep Table 126" Stainless Steel- 6 Outlets
1	Order Screen/TV 31" Pro Scan
1	Soup Kettle- APW - Missing Insert
1	Pizza Oven- Wisco Industries
1	Alto Sham-Hot Holding Cabinet-2-Door
1	Avantco Refrigeration- Refrigerator- Double Door
1	Shelf-5 Shelf Wire Storage Rack
3	(3) Restroom Stainless Steel Shelves New Age Industries 36" (1) New Age 48" (2)
1	New Age 20 Space Sheet Pan Metal Rack
1	28 Space Plastic Max 7316 Side Panel Sheet Pan Holder
1	Garbage Disposal- Insinkerator
1	4' Shelf- Stainless Steel
1	Tru- 2 -Door Work Top
4	Vulcan 2-Door Convection Oven (2)
1	Avantco Charbroiler-23"- Gas
1	Avantco 6 Burner Gas Range
1	Regency Equipment Table 60"
1	Saturn Deep Fryer 40LB Approx. 90,000 BTU
3	Shelves (3) Stainless Steel 36"
1	43" Stainless Steel Work Table w/Storage
1	28 Pan Plastic Sheet Pan Holder
2	2-36" Regency Shelves
1	12 Space, 4 Shelf Can Holder

1	Crown Tonka Walk-In Freezer 3 Metal Storage 1 Plastic 4 Rack Riser
1	Walk-In Refrigerator 2 Metal Storage Racks 4 Sheet Pan Racks (3 Metal & 1 Plastic)
1	17' Shelf Above Sinks- Back North Wall
3	3- 4' New Age Shelves
1	6' Work Table- North Wall
1	Robot Coupe Food Processor
1	Berkel Meat Slicer
1	8' Stainless Steel Work Counter w/ 3 Drawers & 3 Bins
1	Ed Lund Can Opener
	Wait Staff Area Items
1	Stainless Steel Shelf 36"
4	Liquor Storage Room - 4 Metal Storage Racks
	Glassware
100	100 Stemmed Glasses
150	150 Shot Glasses
48	48 Mug Tumblers
	Bar
23	23 TV's and Cable/Mounting Bracket- 9 Double Sided
100	100 Glassess
50	50 Plastic Pepsi
10	10 Mules- Titos
1	Beverage Aire 4 Slide Top Cooler 8'
1	Perlick- 3 Slide Top Cooler
1	Avantco 3 Slide Cooler 80"
4	Regency 5-Tier Shelf Bottle Holder w/Stand
1	Beverage Aire 2- Door Top Fridge 64"
2	2 Liquor Hanging Storage Shelves At Each End of the Bar
	Mens Closet
2	2 BNG-POS Switch ?
10	10 Earlyn Chairs- Valet Closet
2	2 Benches
	Grill
1	Cambro Bleach- Rolling Bar
1	Stainless Steel Utility Table 30"x30"

1	Continental Refrigerator - 2- Door Classic Combo Refrig/Freezer Dual Zone
1	Chest Freezer- Small 7 Cu.Ft.
	Utility
2	2 Dunnage Racks
8	8 Metal Racks
2	Sysco Coffee Urns
4	4 Poker Table Covers
1	Dishwasher Tray-Storage Racks
2	Storage Racks
1	15 Can Rack
1	Portable Hand-Made Bar
100	100 Green Fabric Chairs
1	2x2 Table
2	2- 34"x48" Rectangle Tables
4	4- 8" White Tables
	Catering Kitchen
3	Closet- 3 Wire Storage Racks
100	100 Stem Glassess
	Misc Catering Items
	Flatware- Misc
1	Table SkirtingBlack & White
1	Metal Storage Rack
1	Moen Garbage Disposal
1	Prodigy Plus Scotsman Ice Machine w/90LB Bin Bottom
1	Work Table 10'
	Chaffring Dishes and Pans
1	36" Right Hand Dishwasher Table Stainless Steel
1	Glass Rack Cart
1	Storage Bin w/Sheet Pan Rack
10	10 Coffee Crofts
1	Food Warmer- FEW 2- Door
	Misc Plates
150	Stem Glasses (150)
	Coffee Cups - 4 Bins
	Bin of Napkins- Fabric-Colors
1	Metal Storage Rack
1	Traulsen Refrigerator- 2 Drawer- Needs Seal Repair
1	True Freezer 1-Door

	Garage Beverage area
1	True 2- Door Beverage Fridge
1	NorPeake Micro Matic Glycol Line Cook Cooler
1	6' Stainless Steel Table- Outside Fence Area
3	3- Beverage Hot/Cold Cambros in Garage
50	50 Condiment Cups
	100 Sets Flatware (Steak Knives, Knives, Forks)
200	200- White Dinner Plates
30	30- White Bowls
100	100- Lunch Plates
	Walk-in cooler/keg cooler Nor lake
	Outside Porch
16	16- Storage Tables 4x8
1	Hobart Mixer-Dough
10	10 -Wire Chairs- Green High-top
11	11 -High-tops 30"x42"
4	4 -30"x48" Low Tables
15	15 -Black Chairs
19	19 -Stools

Exhibit 3.5 Beverage Contract

CONCESSION AGREEMENT

THIS AGREEMENT ("**Agreement**") shall be effective the 1st day of January, 2021 between **THE PARK DISTRICT OF THE CITY OF FARGO**, 701 Main Avenue, Fargo, North Dakota 58103 (the "**Park District**") and **BOTTLING GROUP, LLC**, a Delaware limited liability company, and its affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 4314 20th Ave. S, Fargo, North Dakota 58103 (the "**Concessionaire**"). The parties acknowledge that the current contract runs through December 31, 2020.

FOR VALUABLE CONSIDERATION, the Park District grants Concessionaire the exclusive right to furnish drinks as herein described on Park District facilities (the "**Facilities**") and in connection therewith, the parties agree as follows:

1. **Term.** For a period of five (5) years commencing January 1, 2021 and ending December 31, 2025 (the "**Term**") the Park District grants to Concessionaire the exclusive right to furnish for sale to the Park District for dispensing on, at or inside property and buildings now owned or operated or hereafter acquired by the Park District, canned and bottled soft drinks and other non-alcoholic beverages customarily dispensed from vending machines, coolers and portable dispensing facilities. For purposes of this Agreement, a "**Year**" means a 12-month period commencing on January 1 and ending on December 31. The exclusive concession rights consists of furnishing Beverages (as defined below) including, but not limited to, soft drinks, bottle/can products, premix and other beverages sold under the trademarks of Concessionaire or an affiliate thereof (each a "**Product**", collectively the "**Products**") and the furnishing and servicing of vending machines and coolers at the locations shown on the attached Exhibit A and such other locations as may be from time to time added to Exhibit A. Concessionaire shall be the exclusive Product supplier for all concessions at the Park District facilities unless prior contractual arrangements for the furnishing of similar product are applicable. "**Beverages**" shall mean carbonated and non-carbonated nonalcoholic beverages including carbonated soft drinks; mixers; flavored and unflavored packaged waters; fruit juices; fruit juice containing or flavored drinks; fruit punches and ades; isotonic and fluid replacement drinks (sometimes referred to as "sport drinks"); tea drinks; pre-packaged coffee products, bottled water; energy drinks and all drink or beverage bases, whether in the form of syrups, powders, crystals, concentrates or otherwise, from which such drinks and beverages are made. In addition, and with the consent of the Park District as to locations, Concessionaire will have a non-exclusive right to furnish snack products ("**Snacks**") through vending machines.

2. **Pricing.** The prices stated in Exhibit B shall remain fixed for the first three (3) Years of the Term. Concessionaire may increase said prices in Years four (4) and five (5) of the Term, provided that any such price increase does not exceed three (3%) percent of the then-current prices. The Concessionaire will consult with and seek the approval of the Park District on any new products suggested by either party, the Park District's approval not to be unreasonably withheld. Concessionaire will be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed on manufacturers, distributors, consumers or otherwise). The pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products will not be subject to any

pricing cap or notification restrictions that may be specified in this Agreement.

3. Consideration. In consideration of this Agreement, Concessionaire shall pay to the Park District an annual support fund in the amount of Twenty Thousand and no/100 (\$20,000.00) U.S. Dollars. (the “**Annual Support Funds**”). The Annual Support Funds will be paid to the Park District within sixty (60) days after the first (1st) day of each Year this Agreement remains in effect, except that for Year one, such payment will be made within sixty (60) days of the later of (i) the first day of the Term or (ii) the signing of this Agreement by both parties. The Annual Support Funds are earned throughout the Year in which they are paid. In the event of early termination for any reason other than an uncured material breach by Concessionaire, the unearned Annual Support Funds will be repaid pro-rata to Concessionaire within fourteen (14) days after the expiration of the opportunity to cure such material breach as set forth in Section 13 herein. Further, Concessionaire shall provide in-kind services pursuant to Exhibit E, which in-kind services may be modified or exchanged for other in-kind services as mutually approved by both parties.

4. Maintenance of Beverage Dispensing Equipment. All beverage dispensing equipment including, but not limited to, vending machines (“**Equipment**”), shall be loaned by Concessionaire to the Park District at no charge. The Park District agrees that the Equipment shall be exclusively used to display and merchandise the Products, and the Park District shall not use the Equipment to display, stock, advertise, sell or maintain any other products (including on the exterior of the Equipment) without the prior written approval of Concessionaire. Concessionaire, at its sole cost and expense, shall be responsible for all maintenance and repair service to the Equipment. Title to such Equipment shall remain vested in Concessionaire and all such Equipment shall be returned to Concessionaire upon expiration or earlier termination of this Agreement. With respect to the vending machine Equipment placed at the Facilities (the “**Vending Machines**”), Concessionaire will have the additional responsibility for (i) stocking the Vending Machines with the Products and (ii) collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for collected monies. The Park District agrees to provide reasonable assistance to Concessionaire in apprehending and prosecuting vandals. Concessionaire shall not be obligated to pay Commissions on documented revenue losses resulting from vandalism or theft of Product with respect to any Vending Machines. Concessionaire shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment at the Facilities.

5. Health Promotion. In beverage Vending Machines that provide bottles, at least one option shall be bottled water without artificial flavoring or coloring. Concessionaire is required to provide a product mix to supply Vending Machines with a minimum of 25% of its products to be “**healthy choices**,” as defined on Exhibit C, attached hereto. Concessionaire agrees that at least part of its marketing plan shall promote healthful behaviors, including water consumption, and that its pricing structure shall promote healthy options. A copy of Concessionaire’s marketing plan that includes the promotion of such health choices and behaviors is attached hereto as Exhibit D.

6. Advertising. For the term of this Agreement, the Park District grants the Concessionaire the right to display signage advertising its Products, trademarks and logos on Park District properties and at events sponsored by the Park District, provided that all such signage shall be approved in advance by the Park District. The cost of new signage, updating, repairing, replacement, maintenance, or changes to signage shall be the sole responsibility of Concessionaire,

and Concessionaire agrees to maintain all fixed advertising in good repair, presentation and condition at its cost.

7. Commissions. Concessionaire agrees to provide the Park District with commissions, as a percentage of the actual cash ("**cash in bag**" or "**CIB**") collected by Concessionaire from the Vending Machines placed at the Park District properties, less any applicable government-imposed taxes/fees and deposits, as applicable ("**Commissions**"). Such Commissions shall be at the rates set forth below (the "**Commission Rate**") and shall be calculated as follows: **(CIB – applicable taxes/fees/deposits) * Commission Rate = Commission due.** Vending machine locations are shown in attached Exhibit A page 2.

8.

Product	Minimum Vend Price	Commission Rate*
20oz Carbonated Soft Drinks	\$2.00	38%
Gatorade & Propel	\$2.00	38%
20oz Aquafina	\$2.00	38%
Energy Drinks	\$3.00	38%
Snacks	\$1.00	16%
*Commission Rates and Vend Prices for new Product will be mutually agreed upon by Pepsi and Customer.		

(a) Commissions Payment. shall be remitted by the Concessionaire to the Park District within thirty (30) days of the end of each quarterly accounting period established by Concessionaire. Concessionaire shall make all pertinent revenue and sales records respecting the Vending Machines at the Facilities available to the Park District. Concessionaire shall provide the Park District with monthly reports of Concessionaire's product sales in such detail as requested by the Park District. The Park District agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by the Park District in writing within one (1) year of the date such Commissions payment is due. The Park District further acknowledges and agrees that it shall not receive any Commissions payment from Concessionaire if Commissions fail to reach a certain threshold amount per period or quarter. If the sales commission is not at least \$50, commission will continue to accumulate and be paid in period or quarter that the threshold is met. The current threshold amounts are \$50 per four-week period or \$75 per quarter. The threshold may be revised by Concessionaire from time to time.

(b) Change to Commission Rate/Formula. Any changes to the Commission Rate and/or its formula/method for calculating Commissions resulting from changes to applicable laws, regulations, or ordinances promulgated by government entities shall be mutually agreed upon by Concessionaire and the Park District, with the understanding that such changes to the Commission Rate are intended to keep such Commission Rate cost neutral.

(c) Vend Price. The initial vend prices and minimum scheduled increases that are necessary for the Park District to qualify for any Commissions are set forth in the Commission chart above. Concessionaire shall have the right to increase vend

prices by \$0.25 in Year four (4) of the Agreement. The Park District acknowledges that Concessionaire has the right to pass through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed on manufacturers, distributors, consumers or otherwise). The pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products will be in addition to any scheduled Vend Prices increases set forth herein or notification restrictions that may be specified in this Agreement. Commission Rates and Vend Prices for Products will be mutually agreed upon by Pepsi and Customer.

9. Volume Incentive Funds. Concessionaire shall calculate the total number of gallons and cases purchased by the Park District, directly from the Concessionaire, (including volume sold through Vending Machines) for use at the Facilities each Year and if in any Year of the Agreement, the Park District purchases a combined total of six thousand, five hundred cases (6,500 cases) or greater, then for such Year, Concessionaire shall provide the Park District with volume incentive funds based on the incremental growth of gallons and cases in the amount of \$1.00 per case on all such eligible incremental gallons and cases (the "*Volume Incentive Funds*"). The Volume Incentive Funds will be paid to Park District within sixty days (60 days) after the end of each Year.

10. Representations and Warranties of Concessionaire. Concessionaire represents and warrants as follows:

(a) Concessionaire is a limited liability company, duly organized and validly existing under the laws of the State of Delaware.

(b) To the extent required by North Dakota law, Concessionaire is authorized to do business in the State of North Dakota, and has all licenses, permits, powers, and authority to carry on business in North Dakota.

(c) This Agreement has been duly and validly executed by Concessionaire and is a valid and binding obligation and agreement of Concessionaire, enforceable in accordance with its terms.

(d) The consummation of this Agreement and the performance of Concessionaire's obligations hereunder will not conflict with or result in a breach or violation of the terms or conditions of, or constitute a default under any contract or agreement to which Concessionaire is a party.

(e) There is no active, pending, or threatened litigation against Concessionaire.

11. Representations and Warranties of the Park District. The Park District represents and warrants that:

(a) The Park District has all requisite power and authority to execute this Agreement.

(b) This Agreement has been duly and validly executed by the Park District and is a valid and binding obligation and agreement of the Park District, enforceable in accordance with its terms.

(c) The consummation of this Agreement and the performance of the Park District's obligations hereunder will not conflict with or result in a breach or violation of the terms or conditions of, or constitute a default under any contract or agreement to which the Park District is a party.

12. Events of Default. The following events shall be deemed to be events of default by Concessionaire under this Agreement.

(a) If Concessionaire shall fail to comply with any term, condition, or covenant of this Agreement, and shall not cure such failure within thirty (30) days after written notice thereof from the Park District, or if such failure cannot reasonably be cured within said thirty (30) days, and Concessionaire shall not have commenced to cure such failure within thirty (30) days after written notice thereof to Concessionaire, or if such failure cannot reasonably be cured within said thirty (30) days and shall not thereafter with reasonable diligence in good faith proceed to cure such failure.

(b) If Concessionaire shall become insolvent or shall make a transfer in fraud or creditors or shall make assignment for the benefit of creditors.

(c) A receiver or trustee shall be appointed for all or substantially all of the assets of Concessionaire.

(d) A fraud practiced upon one party hereto by the other party, in which case the aggrieved party may, at its option, terminate this Agreement.

(e) If any of Concessionaire's Representations and Warranties set forth above shall be untrue or misleading.

13. Termination. Either party may terminate this Agreement for any breach of this Agreement's material terms by the other party, provided that the non-breaching party shall first provide the breaching party with written notice of the breach and a thirty (30) day opportunity to cure such breach. If the breaching party fails to cure the breach within the thirty (30) day period, the non-breaching party may terminate the Agreement upon written notice to the breaching party.

14. Breach by the Park District. Without prejudice to any other remedy available to Concessionaire at law or in equity in respect of any event described below, this Agreement may be terminated in whole or in part by Concessionaire upon thirty (30) days' advance written notice to the Park District if (i) any of the Products are not made available at the Facilities as required in this Agreement, (ii) any of the rights granted to Concessionaire herein are materially restricted or limited during the Term; or (iii) a final judicial opinion or governmental regulation prohibits, or materially impacts or impairs (e.g., beverage tax or package size restriction) the availability or cost of Beverages, whether or not due to a cause beyond the reasonable control of the Park District.

Before Concessionaire exercises its right to terminate as described in this Section, Concessionaire agrees to engage in good faith renegotiations with the Park District to adjust the funding offered to the Park District herein on an equitable basis to neutralize any negative impact such change may have on the economics of the original Agreement.

15. Breach by Concessionaire. In the event Concessionaire breaches this Agreement by failing to (i) timely pay any amount due and owing to the Park District under this Agreement, (ii) promptly and adequately maintain and stock its Equipment and Vending Machines, or (iii) comply with any other term and condition of this Agreement, the Park District, upon thirty (30) days' advance written notice to Concessionaire and without prejudice to any of its available remedies, at law or in equity, shall have the right to terminate this Agreement. In the event the Park District terminates this Agreement, all unpaid Commissions, Volume Incentive Funds, and/or any other sums of money justly due and owing to the Park District by Concessionaire shall be paid to the Park District no later than fourteen (14) days after the termination of this Agreement.

16. Remedies. If the Agreement is terminated early for any reason other than an uncured material breach by Concessionaire, Concessionaire will, without prejudice to any other right or remedy available to Concessionaire, obtain a reimbursement from the Park District of any unearned funding paid by Concessionaire to the Park District which remains unearned as of the time of termination and the Park District and its Facilities will surrender to Concessionaire all Equipment provided by Concessionaire. The Park District shall forfeit all unpaid Commissions as of the date of termination. In addition, without prejudice to any other right or remedy available to Concessionaire, Concessionaire will have the right to immediately seek reimbursement from the Park District and the Facilities for an amount reflecting reimbursement for all funding previously advanced by Concessionaire but not earned by the Park District pursuant to the terms of this Agreement. With regard to the Annual Support Funds, the amount of such reimbursement shall be determined by multiplying the total amount of such funds paid in the Year during which such termination occurs by a fraction, the numerator of which is the number of months remaining in such Year at the time of such termination or limitation and the denominator of which is twelve.

17. Entire Agreement. This Agreement contains the entire agreement between the parties hereto regarding the subject matter hereof and supersedes all other agreements between the parties. This Agreement may be amended or modified only by a writing signed by each of the parties.

18. Governing Law. This Agreement is entered into and performable in the State of North Dakota and shall be governed by the laws of the State of North Dakota.

19. Assignment. The rights, duties and obligations of the Concessionaire are not assignable without the prior written consent of the Park District.

20. Dispute Resolution. The parties agree that any controversy or claim arising out of or relating to this Agreement, including disputes relating to its formation or the breach thereof, shall be first be subject to good faith, non-binding negotiation between the parties and, if not resolved, a thirty (30) day cooling off period. Subsequently, at a time not exceeding ninety (90) days after the expiration of the cooling off period, any dispute or controversy that exists shall be subject to mandatory mediation

in Cass County, North Dakota. The mediator shall assess the costs and expenses of mediation against the parties in such proportion as may be fair and equitable.

If the dispute cannot be settled by mediation as described above, then the dispute shall be settled by arbitration under rules reasonably acceptable to the parties and the arbitrator(s). Unless the parties agree to one arbitrator, each shall select an arbitrator and the two so selected shall select a third arbitrator. The decision of the arbitrator or two of the three arbitrators, as the case may be, shall be final and binding. Nothing herein contained shall bar the parties from seeking equitable remedies in a court of appropriate jurisdiction.

21. Binding Effect. This Agreement is binding upon and inures to the benefit of the parties, their successors and assigns.

22. Concessionaire reserves the right to withhold payments due hereunder as an offset against amounts not paid by Park District or its Facilities for Products ordered from and delivered by Concessionaire pursuant to this Agreement.

23. Severability. In the event one or more provisions contained in this Agreement is held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement and this Agreement shall be carried out as nearly as possible according to its original terms and intent.

24. Notices. All notices shall be given by personal delivery, by certified or registered first class mail, postage prepaid with return receipt requested, or by express delivery services such as Federal Express or Express Mail. Each such notice shall be effective if (a) delivered personally by hand, when delivered at the address specified in this Paragraph 16, (b) given by certified or registered first class mail, on the date appearing on the return receipt therefor or (c) given by express delivery services when delivered at the address specified above.


25. Force Majeure. Concessionaire will not be responsible for any delay or lack of delivery resulting directly or indirectly from any foreign or domestic embargo, product detention, seizure, act of God, pandemic, epidemic, insurrection, war and/or continuance of war, the passage or enactment of any law ordinance, regulation, ruling, or order interfering directly or indirectly with or rendering more burdensome the purchase, production, delivery or payment hereunder, including the lack of the usual means of transportation due to fire, flood, explosion, riot, strike or other acts of nature or man that are beyond the control of Concessionaire or that of the suppliers to Concessionaire unless such contingency is specifically excluded in another part of this Agreement ("**Force Majeure Event**"). Any party(s) so affected, will (i) use all reasonable efforts to minimize the effects thereof and (ii) promptly notify the other party(s) in writing of the Force Majeure and the effect of the Force Majeure on such party's ability to perform its obligations hereunder. The affected party(s) will promptly resume performance after it is no longer subject to Force Majeure. In the event Park District's performance is temporarily suspended pursuant to a Force Majeure Event, Concessionaire's funding obligations will be suspended for the duration of Park District's nonperformance. Once Park District resumes performance or in the event Park District is able to perform some, but not all of its obligations herein, any fixed, advanced, or


guaranteed funding will be adjusted commensurate with the decline in volume associated with the suspended or partial performance.

26.—Waiver. No failure on the part of either party to exercise, and not delay in exercising any right or remedy hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right or remedy hereunder preclude any other or further exercise thereof or the exercise of any other right or remedy granted hereby or any applicable law.

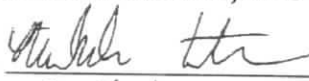
IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

THE PARK DISTRICT OF THE CITY OF FARGO

By: 
Stacey Griggs
Its: President

By: 
Jeffrey Gunkelman
Its: Clerk

BOTTLING GROUP, LLC

By:  Michelle Knutson
Its: Foodservice Sales Rep

[ATTACH EXHIBITS]

EXHIBIT "A"

Fargo Park District
Current Concession Locations for Soft Drink Beverages

Location

Brunsdale Baseball Park
Davies Softball
Mickelson Softball
Southwest Youth Arena
Anderson Softball
Tharaldson Baseball
Sports Arena
Lindenwood Visitor Center and Bike Rental
Coliseum Ice Arena
Edgewood Golf Course
El Zagal Golf Course
Prairiewood Golf Course
Rose Creek Golf Course
Davies Pool
Island Park Pool
Southwest Pool
Northside Pool
Courts Plus Community Fitness
North Softball Complex
Pepsi Soccer Complex
Tharaldson Little League Complex (Formerly Southwest Softball)
Starion
Special Events

***** Locations can be added or deleted by the Park District.***

EXHIBIT “B”

	5 year Bid
Pop 12 oz. cans (per case of 24 cans)	\$7.00
Pop 20 oz. bottles (per case of 24 bottles)	\$14.00
Water 20oz bottles (per case of 24 bottles)	\$8.00
Sports Drink 20oz bottles (per case of 24 bottles)	\$15.00
Enhanced Water 20oz bottles (per case of 24 bottles)	\$24.00
Ice Tea 16.5-18.5oz bottles (12 per case of bottles)	\$16.46
Energy Drinks 16 oz cans (12 per case of cans)	\$34.00
Juice 10oz bottles (24 per case of bottles)	\$17.26
Soft Drinks In The Box (2.5 gallons)	
Soft Drinks in The Box (3 gallons)	\$47.04
Soft Drinks In The Box (5 gallons)	\$75.80
Soft Drinks in The Box (3 gallon juice and bar mixers)	\$75.00
Commission of ____% of gross sales less sales taxes on sales from vending machines	38%
At least 42 soft drink coolers (approx. 28 are single door coolers and 14 are double door cooler)	42+-offer for upgrades
The furnishing of the equipment listed above and any other equipment as may be agreed upon between the Park District and the successful bidder at no cost to the Park District.	Yes
Price schedule for beverages other than soft drinks is attached.	Yes
Marketing Plan with examples of support for healthy behaviors	Yes
Additional Marketing/Media Value - no cash value	
Additional Funding - cash value	\$20,000/year
Additional Annual Funding	
Annual Donated Product	
Estimate Rebates (\$1 paid on annual units over 6,500)	\$3000/year
Price Increase	3% increase proposed for years 4 & 5

EXHIBIT “C”

Healthy Choice Beverages Approved for All Locations

We are utilizing the Smart Snack Standards from the USDA. These are the standards:

- Plain water or plain carbonated water (no size limit)**
- Low-fat milk, unflavored (<12 fl oz)**
- Non-fat milk, flavored or unflavored (<12 fl oz), including nutritionally equivalent milk alternatives**
- 100% fruit/vegetable juice (<12 fl oz)**
- Other flavored and/or carbonated beverage (20 fl oz) that are labeled to contain <5 calories per 8 fl oz, or <10 calories per 20 fl oz**
- Other flavored and/or carbonated beverages (<12 fl oz) that are labeled to contain <40 calories per 8 fl oz, or <60 calories per 12 fl oz.**

Product examples:

Bottled Water

Low or No Calorie Sports Drinks -G2, Gatorade Zero, Powerade Zero, Propel, BodyARMOR Lyte, etc

Flavored Water/Sparkling Water -AHA Sparkling, Bubly, Nestle Splash, Dasani Sparkling, La Croix, etc.

Nutrient Beverages -Vitaminwater Zero, Bai Antioxidant Infusions, etc.

Zero Calorie Tea -Lipton Unsweetened Pure Leaf Tea, Lipton Diet Green Tea Citrus, Gold Peak Diet Tea, honest Tea, etc.

EXHIBIT “D”

Cleaner, Fresher, Functional, and Authentic



Available for delivery in
2021!

hello Goodness™

HELLO GOODNESS WAS DESIGNED TO HIGHLIGHT
OUR EXPANSIVE PORTFOLIO OF BETTER-FOR-YOU
OPTIONS, AND NOW, WITH OVER 60K
PLACEMENTS, IT'S THE #1 BETTER-FOR-YOU
VENDING PLATFORM!



HELLO GOODNESS INSPIRES CONSUMERS



EXPANSIVE PORTFOLIO



INSPIRATIONAL MERCHANDISING



EXHIBIT "E"

Marketing plans with Point of Sale



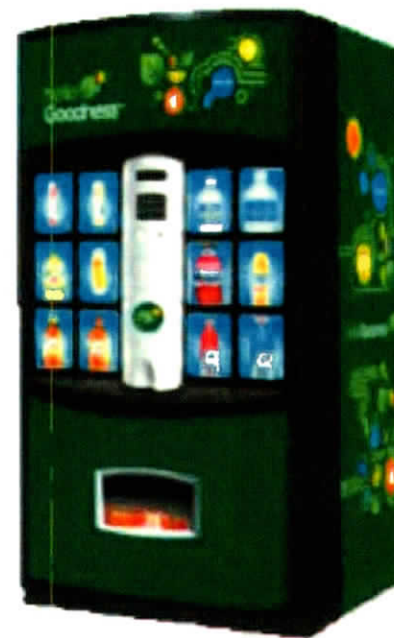
Window Mesh, Cooler Clings, & Menu's can be ordered to meet your concession needs



Upgrades with Hello Goodness



Work with Sam on locations that have 2 machines, replace 1 with Hello Goodness to promote healthier brands



Marketing plans with Truck Backs



Pepsi can add some SMILES with Bubly Window Mesh or Hopscotch Decal



Marketing plans with Menu Upgrades

- Custom Menu Banners can be ordered for concessions



CONCESSION STAND

HOT DOG	\$3.00	POP 20oz	\$2.50
PIZZA	\$3.00	GATORADE	\$2.50
NACHOS W CHEESE	\$3.00	WATER	\$2.50
POPCORN	\$1.50	SIBERIAN CHILL	\$3.50
CANDY	\$1.50	COFFEE	\$1.00
SUCKERS	\$.25	CAPPUCCINO	\$2.00
		HOT CHOCOLATE	\$2.00





HAM & TURKEY SANDWICH



GREEK GYRO



BISCUITS & GRAVY



STEAK & EGGS



RUBEN SANDWICH



STEAK BURGER



LIVE FOR NOW

