

## LEASE AGREEMENT

### BEACH PAVILION, BEACHWAY, KEANSBURG

This Lease is made on \_\_\_\_\_, between the Borough of Keansburg, a New Jersey municipality having its principle offices at 29 Church Street, Keansburg, New Jersey (LANDLORD) AND \_\_\_\_\_ herein referred to as the (TENANT) Telephone No. \_\_\_\_\_.

**1. Lease Agreement.** The Landlord agrees to Lease to the Tenant agrees to Lease from the Landlord the Property described in paragraph 2, upon the terms and conditions set forth in this Lease.

The Tenant has read in detail the “Notice to Bidders” and “Lease Agreement” and is familiar with all the requirements contained in each of these documents.

**2. Property.** The Property to be Leased constitutes a facility, known as The Beach Pavilion located at 1 Beachway, Keansburg, New Jersey

**3. Term.** The Lease is for a term commencing on the execution of this Lease agreement on May 1, 2023 and expiring on October 31, 2023. Lessee shall be entitled to renew this Lease for (2) two additional one-year terms.

If Lessee wishes to exercise the renewal option, it must be exercise in writing by a notice from Lessee to Lessor by November 1, 2023. At the time the Option is exercised, and as of the commencement of a Renewal Term, Lessee shall be in full compliance with all terms and conditions of this Lease and there shall be no events or circumstances which, with the passage of time, would constitute an Event of Default.

**4. Rent.** The Tenant shall pay the first month's rent and security deposit for 2023 in full upon signing of the lease.

- If lease is renewed for 2024, payment must be made in full by April 1, 2024.

Date of Payable Amount of Bid Period Covered Signing of Lease 2023

2023 Rent shall be monthly, payable on:

May 15, 2023  
June 15, 2023  
July 17, 2023 and  
August 15, 2023

If rental lease payment is not received as noted on the schedule above – Lessee will be considered in default.

- (Bid Amount plus Security Deposit of 1½ times the bid monthly rental fee)  
April 1, 2024

**5. Condition of Property:** The Property is being Leased in as “As Is” condition. The Tenant has been given the opportunity to inspect the Property, and the Tenant accepts possession of the Property in its present condition.

**6. Fixtures & Equipment.** The Lease includes existing fixtures and equipment only. *Any permanent fixtures installed by the tenant shall become property of the Borough at the end of the lease.*

**7. Compliance With Codes.** The Tenant shall be solely responsible for making any and all repairs and for performing any and all work necessary for the Property to comply with all applicable building, maintenance, and occupancy codes, and all other applicable municipal ordinances, county ordinances and regulations, and State statutes and regulations including without limitation, environmental laws and regulations, and the terms of this Lease Agreement. If any structural renovations or substantial exterior alterations are required for compliance, the Tenant shall be required to obtain the written permission of the Landlord prior to commencing the renovations or alterations. All improvements and decorations shall be made in accordance with the specifications of the Borough Engineer.

B. If the Tenant fails to comply with the requirements of the foregoing Paragraph, the Landlord or its agents may enter the Property after ten (10) days notice, in order to effectuate compliance at Tenant’s expense, whereupon Tenant shall reimburse Landlord for all costs incurred. The notice required in this Paragraph shall not apply in an emergency.

C. Tenant shall indemnify, defend and hold the Landlord harmless from fines, claims and losses of every kind arising out of or in connection with spills or discharges of hazardous substances or wastes, occurring at or about the Property.

Tenant shall not use the Property in any manner as to prevent Landlord for obtaining a “negative declaration” or Letter of Non-Applicability (or their equivalent) pursuant to the Environmental Cleanup Responsibility Act and the Spill Compensation and Control Act or any similar or succeeding legislation or rules and regulations thereunder.

Tenant shall furnish Landlord and the appropriate governmental agencies with information required in connection with environmental laws and if a cleanup plan must be prepared and a cleanup undertaken, Tenant shall prepare, submit and implement same at Tenant’s sole cost and expense.

**8. Use of Property.** The Tenant agrees to use the Property only for the purpose of sale of food products, beverages, ice cream, frozen yogurt, frozen fruit products or other dessert products. The concession must be open May 15<sup>th</sup> to October 31<sup>st</sup>.

**9. Installation of Fixtures and Equipment.** The Tenant shall not install any fixtures or equipment on or in the Property without the prior written consent of the Landlord. Any request for such consent shall be accompanied by a description of the fixtures and/or equipment to be

installed and a sketch showing the location for each installation. The landlord shall not be required to give its consent. If consent is given, all permanent installed fixtures and equipment shall, upon the expiration of the Lease, become the Landlord's Property unless an exception is explicitly set forth, in writing.

**10. Repairs and Maintenance by Tenant.** The Tenant shall keep the Property in good repair and properly maintained. The Tenant shall be responsible for repairing all damage to the Property occurring during the term of the Lease. At the expiration of the Lease, the Tenant shall return possession of the Property was in at the commencement of the Lease, normal wear and tear excepted.

**11. Renovations and Maintenance by Landlord.** The Tenant acknowledges that the Landlord may desire or be required to make certain renovations and/or to perform certain maintenance at the Property during the term of the Lease. The Tenant shall, upon notice from the Landlord, permit the Landlord to enter the Property and to perform the desired and/or required renovations or maintenance. Nothing in this paragraph shall obligate the Landlord to make any renovations or perform any maintenance.

**12. Alteration of Property.** The Tenant shall not undertake to physically alter the Property without the Landlord's prior written consent.

**13. Required Insurance:** Prior to taking possession of the Property, the Tenant shall provide the Landlord with proof that the Tenant has obtained comprehensive general liability insurance coverage naming the Borough of Keansburg as an additional insured and having limits of liability of at least \$1,000,000. combined aggregate for bodily injuries and for Property damage. In addition, the Tenant shall provide the Landlord with proof that the Tenant has in effect Workmen's Compensation coverage for the Tenant's contractors when renovations are being performed. The Tenant shall keep the insurance in full force and effect for the entire term of this Lease. Each of Tenant's insurance policies shall: (1) contain an express waiver of subrogation by the insurance carrier in favor of Landlord, Landlord's agents, employees, and mortgages; (2) be issued by a nationally recognized and reputable carrier licensed to do business in the State of New Jersey having a Best Rating of not less than A-14 and which is approved by Landlord; and (3) contain a provision that the policy shall not be canceled, terminated or materially changed without thirty (30) days prior to notice to Landlord from the insurance carrier. An original or manually countersigned certificates of insurance evidencing that all required coverages are in effect shall be delivered to Landlord ten (10) days prior to the Commencement of the Lease Term, and renewal or replacement policies or certificates shall be delivered to Landlord at least (20) days before each expiration date.

**14. Flood and Hazard Insurance.** The tenant shall be responsible for obtaining their own flood insurance to cover their equipment and product.

**15. Hazardous Materials and Product Control.** The Tenant shall not keep or store any hazardous or explosive materials on the Property. Tenant shall not permit at any times an outdoor storage of inventory, stock, equipment, utensils or other items on or about the Premises. No refuse, trash, recyclables or other waste products, or containers or trash bags and only after 6:00p.m. the evening before a scheduled pickup. Tenant may be permitted, in the sole discretion

of the Borough Council, to construct at Tenant's sole cost an outdoor storage enclosure subject to the specifications of the Borough Engineer. All design and permit expenses related to the construction of said enclosure shall be borne by Tenant.

If Tenant desires to place tables, seats or benches outside of the Premises, Tenant shall first submit a proposed plan for said outdoor dining area to the Borough Council for its approval.

Tenant understands that any outdoor seating shall set forth the proposed layout of the receptacles and other furniture and items proposed. Tenant acknowledges that outdoor advertising of any kind is not permitted. This prohibition shall extend to and include logos or other commercial brand identification of any kind contained on umbrellas.

If outdoor seating is permitted the Tenant may not restrict the seating area to its own customers.

Tenant shall provide an adequate number of trash receptacles in and adjacent to the outdoor dining area, which trash receptacles shall be of a size, style and color approved in advance by the Borough Council. Tenant shall not permit the trash receptacles to overflow, and shall regularly police the tables, outdoor dining area, and the vicinity of the outdoor dining area to pickup and dispose of any and all litter.

**16. Compliance with Laws.** The Tenant shall use and occupy the Property in compliance with all applicable municipal and county ordinances, State laws and regulations, and Federal laws and regulations.

**17. Indemnification.** The Tenant agrees to hold the Landlord (and the Landlord's agents, servants, and employees) harmless for any and all claims, actions, and judgements for personal injuries and/or Property damage arising out of or in any way connected with the Tenant's use or occupancy of the Property, and to defend the Landlord (and the Landlord's agents, servants and employees) against any and all such claims and actions. If during the Lease term, any lien or claim is filed against the Property for work, supplies, services or materials provided to or on behalf of the Tenant, the Tenant shall within thirty days of the date of filing of such lien or claim discharge same or else be found in breach of this Lease.

B. Tenant hereby releases Landlord from liability for loss, damage, injury or claim for contribution (including business and other consequential losses) caused to Tenant, its employees, agents, offices, invites or visitors by steam, electricity, gas, water, rain, ice or snow or any leak or flow from any part of the Property or any equipment therein, or from the condition, design or defect in the Property and from any acts or omissions of co-Tenants or other occupants of the Property and from liability for any damage to or loss of Tenant's Property from any and all causes whatsoever.

C. Tenant shall notify Landlord if any event occurs which requires or which may require indemnification. Tenant shall defend with legal counsel satisfactory to Landlord any claim proceeding which may be brought against Landlord, its mortgagee or others to whom this Section applies, if any, with respect to the foregoing or in which they may be implicated. Tenant shall pay, satisfy and discharge any judgement, order or decree which may be recovered against, Landlord, or others to whom this section applies.

**18. Subletting and Assignment Prohibited.** The Tenant shall not sublet the Property or assign this Lease.

**19. Security Deposit.** Upon execution of this Lease, the Tenant shall deposit with the Landlord the sum of \$1,000.00, as a Security Deposit for Water/Sewer and the pro-rata amount of one month's full, unreduced rent for building security. These security deposits are due upon signing of this Lease. When the Lease expires, the Landlord shall inspect the Property, and within 45 days after the expiration of the Lease, the Landlord shall mail to the Tenant a written notice specifying all damage to the Property and the cost of repairing or correcting the damage, all unpaid water and sewer charges, and all other charges incurred because of the Tenant's failure (if any) to perform the Tenant's Lease obligations. If the total of the charges exceeds the amount of the security deposit, the Tenant shall, within 15 days after the date when the notice is mailed, pay the amount of the excess to the Landlord. If the total of the charge is less than the amount of the security deposit, the Landlord shall include with the notice a check, payable to the Tenant, for the difference.

**20. Utilities.** The Tenant shall be responsible for arranging and paying for all utility services to the Property during the term of the Lease, including municipal water and sewer service.

**11. Sign Restrictions.** Any signage must be in accordance with the Borough of Keansburg's Sign

Ordinance and be approved by the Borough Administrator. A sketch, denoting the location, size, construction material, wording, colors, size of letters and printing, explaining the use of said sign.

**22. Remedies Upon Breach.** If the breaches any of the terms or conditions of this Lease, the Landlord may re-take possession of the Property by any lawful means, and upon re-taking possession, relet the Property. The Landlord may also take any other permitted legal action against the Tenant. In the event that the Landlord is required to institute any court proceeding against the Tenant, the Tenant agrees to pay the Landlord's court costs and reasonable attorney's fees.

Notwithstanding provisions of paragraph 19 hereinabove, the security deposit provided under this Lease may be used by the Landlord to remedy any breach by the Tenant of this Lease Agreement.

**23. Quiet Use/Enjoyment:**

A. Landlord covenants that upon Tenant paying rent, other monies required of Tenant to be paid hereinabove and performing all of Tenant's other obligations under the Lease, Tenant shall peacefully and quietly have, hold and enjoy the Property throughout the Lease Term without interference by the Landlord or anyone claiming through or under Landlord, subject, nevertheless, to the other provisions of this Lease.

B. When the term "Landlord" is used herein, it shall mean and include only the Borough of Keansburg.

## **24. Force Majeure:**

Failure of either Party to perform any of the provisions of this Agreement by reason of any of the following shall not constitute a Default or breach of this Agreement: declarations of public emergency, labor disputes, strikes, picket lines, unavailability of materials, freight and delivery delays, blackouts, power failure, energy shortages, boycott efforts, fires, floods, freezes, extreme weather conditions, hurricanes, tornadoes, accidents, acts of public enemy, war (whether or not declared), riots, acts of God, acts of government (including without limitation any agency or department of the United States of America or the State), governmental embargos, appeals of any governmental approvals, acts or omissions of other third parties, including litigation by third parties (other than third parties for whom the Party asserting an excusable delay is responsible, such as contractors performing work for that Party), epidemics, quarantine restrictions, or other causes which are beyond the reasonable control of the Party asserting an excusable delay (“Force Majeure”). Any extension for Force Majeure shall be contingent upon the Party claiming a Force Majeure Delay providing written notice within five (5) days after the receipt of a Default Notice.

In the event of any weather conditions, hurricanes, tornadoes, accidents, acts of public enemy, war, riots etc. that may render the Premise inhabitable as certified by the Building Code Official; it is the practice of the Borough of Keansburg to suspend the rent schedule until such time as the building is rendered habitable. Such suspension of rent shall be by resolution of Mayor & Council.

**25. Late Payment Charge:** If rent is unpaid for more than five (5) days after the date on which it is due, Tenant shall immediately pay, for each and every late payment, a late payment equal to the greater of (1) Fifty Dollars (\$50.00), or (2) Ten Dollars (\$10.00) per day for each day after the due date that such payment has not been received by Landlord or (3) three percent (3%) of the amount in arrears for each month the arrears remain unpaid.

**26. Counsel Fees:** Tenant agrees to pay Landlord as Additional Rent, reasonable attorney’s fees and all costs and expenses incurred to recover possession of the Property and to enforce any provision of this Lease and recover damage in connection therewith.

**27. Events of Default:** Each of the following shall constitute a “Default” by Tenant under this Lease:

A. If Tenant fails to pay Rent and/or Additional Rent, other monies due hereunder or Security Deposit when due, or fails to deliver, as and when required by the Lease, any instrument of subordination, estoppel certificate, insurance certificate, or certificate of occupancy as requested by the Landlord.

B. If Tenant (1) fails to commence and complete Tenant’s Work promptly after delivery of possession, or (2) fails to open for business, or (3) vacates or abandons the Property, or fails to operate its business in the entire Property for the Permitted Use; Tenant’s Work shall mean any obligation placed upon Tenant to be performed under this Lease or as otherwise agreed upon between Landlord and Tenant or as requested by Landlord;

C. If Tenant transfers, assigns, mortgages or encumbers Tenant's interest in this Lease, or attempts to sublet or grant a right to a third party to use or occupy all or a portion of the Property except as expressly permitted herein;

D. If (i) Tenant fails to comply with any obligation or term of this Lease required of Tenant other than the payment of Rent, and such failure continues for five (5) days after notice; however, the then (10) day period shall be extended if such Default cannot be cured within then (10) days, provided Tenant has commenced and diligently continues to cure same; or (ii) if Tenant fails on more than two (2) separate occasions during any twelve (12) month period to comply with any obligation or term of this Lease, regardless of whether cured by Tenant after notice from Landlord.

E. If Tenant makes an assignment for the benefit of creditors, files a petition in bankruptcy, or applies for the appointment of a trustee or receiver;

F. If a bankruptcy petition is filed against Tenant and is not dismissed or vacated within thirty (30) days;

G. If a receiver or trustee or other fiduciary is appointed for Tenant for all or any portion of the assets of either of them, and such receivership or trusteeship is not vacated or dismissed within thirty (30) days; or

H. If a levy under judgement against Tenant on assets at the Property is not satisfied or bonded within thirty (30) days.

## **28. Landlord's Remedies:**

A. In the event of a Default, Landlord shall have the right to terminate this Lease by giving Tenant ten (10) days notice and at the expiration of such ten (10) day period, Tenant shall immediately surrender possession of the Property, failing which Landlord may recover possession pursuant to the laws of the State of New Jersey. Prior to giving Tenant notice of termination as herein provided, Landlord shall notify Tenant of a Default and Tenant shall have 30 days to cure nonmonetary defaults and ten (10) days to cure monetary defaults.

B. If this Lease is terminated for Default, or if Tenant vacates the Property prior to the expiration of the Term, Landlord shall have the right but not the obligation to re-let same and, if all Rent reserved under Lease (together with costs, legal fees, expenses and damages from Tenant's Default) is not recovered by Landlord, Tenant shall be liable for Landlord's damages, including without limitation, expenses, brokerage commissions and expenses, including without limitation, expenses to put the Property in rentable condition, including alterations, repairs, and replacements necessary in Landlord's sole discretion.

C. Landlord may recover damages for breach of this Lease (1) at the time of the reletting, or (2) in separate actions when damages are ascertained by successive reletting, or (3) in a single proceeding at the expiration of the Term. In all events Tenant hereby agrees that the cause of action shall be deemed to have not accrued until the expiration of the Term.

D. In lieu of recovering damages for breach of this Lease pursuant to Paragraphs B and C of this Section, Landlord, at its option, shall have the right to recover as damages for the breach of this Lease all rent unpaid and owing on the date of the Default plus the difference between (1) the Rent reserved for the balance of the Term, less (2) the fair market rental value of the Property for the balance of the Term, which difference shall be discounted to present value at a rate of two (2) percentage points below the prime rate charged by the Chase Manhattan Bank, N.A., or any successor thereto (the "Discount Rate") as of the date of the Default. Such amount shall immediately become due and payable and shall bear interest from the date of Default at the Discount Rate. If Landlord elects to recover damages pursuant to this subparagraph, payment thereof shall fully discharge Tenant's obligation to pay Rent under this Lease.

E. In the event of a breach or anticipatory breach by Tenant of any of its obligations under this Lease, Landlord shall be permitted all equitable remedies in addition to those provided herein as if such other remedies were specifically provided for herein.

F. The rights and remedies of Landlord set forth herein shall be in addition to any other right and remedy in law or in equity now or hereinafter available, and all such rights and remedies shall be cumulative. Any action or failure to act by Landlord shall not constitute a waiver of Default and any waiver of Default shall be effective only if in writing and signed by the Landlord. Any failure of Landlord to insist upon the strict performance of any Tenant's obligations under this Lease or to exercise any right or remedy available upon a breach thereof by Tenant hereunder during the continuances of any such breach shall not constitute a waiver thereof.

G. Any payment by Tenant of a lesser amount than the Rent provided for or other amounts due under this Lease shall not be deemed to be other than a payment on account of the earlier stipulated Rent, or other amounts due, and any endorsement or statement on any check or any letter accompanying any check or payment as Rent shall not be an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such Rent or pursue any other remedy provided in this Lease.

**29. Waiver of Jury Trial:** Landlord and Tenant hereby waive trial by jury in any action, proceeding or counterclaim on any matters whatsoever arising out of or in any way connected with this Lease, except with respect to any claim covered by insurance.

**30. Waiver of Redemption:** If Landlord recovers possession of the Property by reason of Tenant's Default, Tenant waives its rights of redemption granted under any present or future laws and Tenant further waives Notice of Default, Notice to Quit and Notice of Landlord's Intention to Re-enter except as otherwise provided in Paragraph A of Section 28.

**31. Vacation and Return of Property:** On the expiration or earlier termination of the Term, Tenant shall quit and surrender the Property broom clean, in good order and condition.

Notwithstanding the provisions of Sections 9 and 12, Landlord shall have the right to require Tenant to remove any or all alterations and improvements installed by the Tenant and repair any damage caused by such installation or removal. All Property not removed by Tenant shall be deemed abandoned and Landlord shall have the right to sell (without necessity of public auction), keep for itself, or dispose of same without accountability to Tenant and charge the cost



of sale, removal and disposal to Tenant, together with the cost to repair and restore as aforesaid. This obligation shall survive the expiration of the Term and surrender of the Property, and acceptance thereof by Landlord.

**32. Holding Over:** If Tenant holds over after the end of the Lease Term or otherwise without Landlord's written consent, then in addition to all other remedies and without limiting Landlord's right to claim consequential damages arising from such breach of this Lease, Tenant shall pay Landlord Rent under Section 4 at one and one-half (1 ½) times the highest annual rate provided for herein and Additional Rent at the annual rate provided for herein for the entire period in which Tenant retains possessions, use or control of the Property.

**33. Notices:** All notices under this Lease shall be in writing and shall have been properly served only if sent by Certified or Registered Mail, Return Receipt Request, postage prepaid, to the Tenant at the Property or at such other address furnished by Tenant and to the Landlord at the address first listed above. Date of service shall be the date the notice is deposited in a facility under the exclusive control of the United States Postal Service. Either party may designate a change of address by serving notice as provided herein.

**34. Showing of Property:** Landlord shall have the right at any time and from time to time during the Term to enter the Property to show the Property to prospective purchasers. Landlord shall have the further right during the last six (6) months of the Term to enter the Property during the business hours to show the Property to prospective Tenants and to place therein. "For Rent" or other offering signs, as Landlord may deem appropriate and not detrimental to Tenant's business. Tenant agrees to cooperate with Landlord or its agents regarding such showings.

**35. Titles and Section Numbers:** The titles, article numbers, section numbers and table of contents appearing in this Lease are inserted for convenience and shall not define or limit the scope or intent of same or in any way affect this Lease.

**36. Tenant Defined, Use of Pronoun:** The word "Tenant" shall mean every person or party named as a Tenant herein, and if there shall be more than one Tenant, any notice required under this Lease may be given by or to any one of them. The use of the neuter singular pronoun to refer to Landlord or Tenant may be in an individual, a corporation, or group of individuals or corporations.

Whenever used in this Lease the singular includes the plural and the plural includes the singular.

**37. Partial Invalidity.** If any provision of this Lease shall be invalid, unenforceable or inapplicable with respect to any party, the remainder of this Lease, or the application of such provision to persons other than those as to which it is held invalid or unenforceable, shall not be affected and each provision of this Lease shall be valid and be endorsed to the fullest extent permitted by Law.

**38. Survival of Obligations.** Tenant's obligation to pay Rent, to comply with any environmental laws, rules and regulations and to reimburse Landlord for costs to perform any obligations that Tenant has failed to perform shall survive the expiration or earlier termination of the Term.

**39. Violation of Local Ordinances:** Nothing contained in this Lease shall be deemed to limit or restrict the Borough's ability to impose fines upon the Tenant for violations of municipal ordinances in addition such rights it has to enforce the terms of this Lease.

**40. Relationship of Parties.** Nothing herein contained shall be deemed or construed by the parties hereto, nor by any third party, as constituting the Landlord a partner of Tenant in the conduct of Tenant's business or as creating the relationship of principal and agent or joint ventures between the parties hereto, it being the intention of the parties hereto that the relationship between them is and shall at all times be and remain that of Landlord and Tenant only.

**41. Governing Law.** The parties agree that this Lease shall be governed by and interpreted according to the laws of the State of New Jersey.

**42. Entire Agreement.** This Lease constitutes that entire agreement of the parties. This Lease may not be altered, amended, or changed in any way except by a separate writing signed by the Landlord and the Tenant.

ATTEST:

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Thomas P. Cusick  
Municipal Clerk

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Raymond O'Hare  
Borough Manager

DATE:

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Tenant  
DATE:

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