

DATED

April 1st 2020

LICENCE TO OCCUPY FOR SUMMER SEASON 2020

relating to the area known as [Location x] within

[name of park]

between

(1) THE GOVERNMENT OF BERMUDA

and

(2) [NAME OF CONCESSION AND NAME OF OWNER]

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THIS LICENCE is dated _____

PARTIES

- (1) THE MINISTER OF PUBLIC WORKS whose registered office is at the General Post Office Building, 56 Church Street, Hamilton HM12, Bermuda, on behalf of the GOVERNMENT OF BERMUDA acting through the Minister or its agents from time to time (**Licensor**).
- (2) [NAME OF CONCESSION [NAME OF OWNER]] whose registered office is outlined within the Schedule One. (**Licensee**).

AGREED TERMS

1. INTERPRETATION

The following definitions and rules of interpretation apply in this licence.

1.1 Definitions:

Common Parts: such roads, paths, entrances, access in or upon the Relevant Protected Area the use of which is necessary for obtaining access to and egress from the Property as designated from time to time by the Licensor.

Competent Authority: any statutory undertaker or any statutory public local or other authority or regulatory body or any court of law or government department or any of them or any of their duly authorised officers.

Designated Hours: seven days a week from sunrise until dusk unless otherwise stipulated elsewhere in this License.

Licence Fee: the amount per month agreed as per Schedule One of this Licence.

Licence Fee Commencement Date: the date as per Schedule One of this Licence.

Licence Period: the period from 1st of April 2020 to 31st of October 2020

Necessary Consents: all statutory and regulatory permissions, other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use.

Permitted Use: The use as stipulated in Schedule One.

Plan: the Plan, [name of park], location x, attached to this licence.

Property: the area edged red shown on the Plan within the Relevant Protected Area.

Relevant Protected Area: [name of park].

1.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this licence.

1.3 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

- 1.4 The Schedule forms part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the Schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.8 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.9 A reference to **writing** or **written** excludes fax and e-mail.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.
- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.13 Unless expressly provided otherwise, the obligations and liabilities of the Licensee under this licence are joint and several.
- 1.14 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in Bermuda.

2. LICENCE TO OCCUPY

- 2.1 Subject to clause 3 the Licensor permits the Licensee to occupy the Property for the Permitted Use for the Licence Period during the Designated Hours in common with the Licensor and all

others authorised by the Licensor (so far as is not inconsistent with the rights given to the Licensee to use the Property for the Permitted Use) together with the right[s] mentioned in the Schedule.

2.2 The Licensee acknowledges that:

- (a) the Licensee shall occupy the Property as a Licensee and that no relationship of landlord and tenant is created between the Licensor and the Licensee by this licence;
- (b) the Licensor retains control, possession and management of the Property under the Bermuda National Parks Act 1986 and The Bermuda National Parks Regulations 1988 (as amended) and the Licensee has no right to exclude the Licensor from the Property;
- (c) the licence to occupy granted by this agreement is personal to the Licensee. The Licensee shall not assign, underlet, charge, part with or share possession or share occupation of this Property or assign, part with or share any of the benefits or burdens of this License without first obtaining the written permission of the Licensor;
- (d) the rights given in clause 2 may only be exercised by the Licensee, its volunteers and its employees;
- (e) The Licensee has rights over such Common Parts of the Relevant Protected Area for the purpose of access to and egress from the Property as shall from time to time be designated by the Licensor for such purpose and within the Designated Hours.

3. LICENSEE'S OBLIGATIONS

The Licensee agrees and undertakes:

- (a) to pay:
 - (i) to the Licensor the Licence Fee payable; and
 - (ii) where applicable, the relevant suppliers all costs in connection with the supply of electricity, gas, water, sewage, cleaning, telecommunications and data and other services and utilities to or from the Property;
- (b) to keep the Property clean, tidy and clear of rubbish and to remove all waste from the Property. The Department of Parks shall charge for the costs of any special clean up should the Licensee fail to reasonably perform;
- (c) not to use the Property other than for the Permitted Use;
- (d) not to make any alteration, addition, move location or set up outside the area of the Property whatsoever except as previously agreed with the Licensor;
- (e) not to display any advertisement, signboards, nameplate, inscription, flag, banner, placard, poster, signs or notices at the Property or elsewhere within the Relevant Protected Area without the prior written consent of the Licensor such consent not to be unreasonably withheld or delayed;

- (f) not to do or permit to be done on the Property or in the Relevant Protected Area anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or the patrons of the Relevant Protected Area or any owner or occupier of neighbouring property whatever they may be;
- (g) not to cause or permit to be caused any damage to:
 - (i) the Property, or any neighbouring property; or
 - (ii) any property of Licensor or its agents having reasonable cause to be in the Relevant Protected Area;
- (h) not to obstruct the Common Parts, make them dirty or untidy or leave any rubbish on them;
- (i) to apply for and be responsible for the Necessary Consents in respect of their use of the Property;
- (j) not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or the Relevant Protected Area which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property or the Relevant Protected Area from time to time;
- (k) where necessary, to comply with all laws and with any recommendations of the relevant suppliers relating to the supply of electricity, gas, water, sewage, telecommunications and data and other services and utilities to or from the Property;
- (l) to observe any rules and regulations the Licensor makes and notifies to the Licensee from time to time governing the Licensee's use of the Property and the Common Parts;
- (m) to leave the Property in a clean and tidy condition and to remove the Licensee's furniture equipment and goods from the Property at the end of the Licence Period;
- (n) to indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
 - (i) this licence;
 - (ii) any breach of the Licensee's undertakings contained in clause 3; and/or
 - (iii) the exercise of any rights given in clause 2;
- (o) to observe all other obligations and responsibilities as set out more particularly in Schedules 3 of the Licence.

4. LICENSEE'S ADDITIONAL OBLIGATIONS

- 4.1 This Licensee covenants to acquaint themselves at all times with the Bermuda National Parks Act 1986 and The Bermuda National Parks Regulations 1988 (as amended) and abide by any of its stipulations that apply to the Permitted Use and their enjoyment of the Relevant Protected Area.

4.2 Particularly, the Licensee shall;

- a) The Licensee shall be responsible for all waste generated by their operation and shall ensure that the Property or any parts of the Relevant Protected Area are kept clean of all litter and refuse and shall properly dispose of them at their expense. Should the Licensee default to leave the Property or the Relevant Protected Area free of litter and refuse, the Licensor shall arrange for these to be undertaken at the cost of the Licensee. Should charges for this remain unpaid, the Licensee would not be permitted to operate anywhere else in the National Park system.
- b) This License does not include any vehicular parking close to the Property or on any part of the Relevant Protected Area. On written application, the Licensee can be permitted by the Licensor to bring vehicles up to the Property only for the purposes of active loading and unloading or parking as relates to the Permitted Use.
- c) Unless otherwise agreed with the Licensor, pushcarts, trailers and mobile units must be removed from the Property and the Relevant Protected Area outside of the Designated Hours.
- d) The Licensee irrevocably appoints the Licensor to be the Licensee's agent to store or dispose of any stock, chattels, fittings or items it has fixed to the Property or kept within the Relevant Protected Area and which have been left by the Licensee for more than two working days after the end of the License Period. The Licensor shall not be liable to the Licensee by reason of that storage or disposal and shall indemnify the Licensor in respect of any claim made by a third party in relation to that storage or disposal. Should charges for this remain unpaid, the Licensee would not be permitted to operate anywhere else in the National Park system.
- e) The Licensee undertakes not to engage in any solicitation whatsoever either by themselves or their agents or employees. They shall not solicit or demand gifts, money, goods or services from the patrons of the Relevant Protected Area.
- f) Licensee shall not sell or distribute alcoholic beverages or tobacco products and shall not offer entertainment, food, hair braiding etc. without obtaining the requisite licenses. There is no authorization under this License to undertake any operation for which there is no relevant statutory or regulatory license.
- g) Where the Licensor directs at any time during the License Period, the Licensee shall make good any unsafe condition or remediate any public hazard resulting from, or associated with the Licensee's activities without delay.
- h) In certain circumstances, the Licensor reserves the right to relocate the Licensee within the Relevant Protected Area to enable them carry out their mandate or that of any Government Department under any relevant Legislation. Should this occur, any rent abatement or any compensation shall be at the Licensor's absolute discretion.

5. TERMINATION

5.1 This licence shall end on:

- (a) 31st of October 2020; or
- (b) the expiry of a two week notice given by the Licensor to the Licensee at any time for the breach of any of the Licensee's obligations contained in clause 3 and 4 above; or
- (c) the expiry of a seven day notice given by the Licensor to the Licensee at any time for a serious incidents pertaining to public order, indecency, unsociable behaviour and crime that involve the Licensee, its agents, employees, volunteers, visitors or invitees; or
- (d) the revocation, variation (where conditions cannot be reasonably satisfied) of any statutory or regulatory licence relevant for the Permute Use; or
- (e) the close down of the Relevant Protected Area for any reason.

5.2 On termination of this licence, the Licensee shall forfeit all payments made. This shall not however affect the rights of either party in connection with any breach of any obligation under this licence which existed at or before the date of termination.

6. NOTICES

6.1 Any notice or other communication given under this licence shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or other next working day delivery service to the relevant party as follows:

- (a) to the Licensor at: the General Post Office Building, 3rd floor, 56 Church Street, HM 12 and marked for the attention of Mr. Randy Rochester; and
- (b) to the Licensee at the address stated in the Schedule One of this License.

6.2 Any notice or other communication given in accordance with clause 6.1 will be deemed to have been received:

- (a) if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
- (b) if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the next working day after posting.

6.3 A notice or other communication given under this licence shall not be validly given if sent by e-mail.

6.4 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

7. NO WARRANTIES FOR USE OR CONDITION

- 7.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.
- 7.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in clause 2.
- 7.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensor before the date of this licence as to any of the matters mentioned in clause 7.1 or clause 7.2.
- 7.4 Nothing in this clause shall limit or exclude any liability for fraud.

8. LIMITATION OF LICENSOR'S LIABILITY

- 8.1 Subject to clause 8.2, the Licensor is not liable for:
- (a) the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or
 - (b) damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or
 - (c) any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2.
- 8.2 Nothing in clause 8.1 shall limit or exclude the Licensor's liability for:
- (a) death or personal injury or damage to property caused by negligence on the part of the Licensor or its employees or agents; or
 - (b) any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

9. THIRD PARTY RIGHTS

A person who is not a party to this licence shall not have any rights to enforce any term of this licence.

10. GOVERNING LAW

This licence and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of Bermuda.

11. JURISDICTION

Each party irrevocably agrees that the courts of Bermuda shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this licence or its subject matter or formation (including non-contractual disputes or claims).

This licence has been entered into on the date stated at the beginning of it.

DRAFT

Signed by [name of Director of Parks]
for and on behalf of GOVERNMENT OF BERMUDA

Signed by
[name of owner]
For and on behalf of [name of concession]
Licensee

DRAFT

Schedule One – Specific Conditions

1. Address for Notices:
 - (a) Licensee: [address]
2. Parking:
 - (a) The Licensee shall park within the designated parking spaces within the Relevant Protected Area.
3. Access:
 - (a) The Licensee shall only access the Property through the public entrance to [name of park].
4. License Fee:
 - (a) The License Fee shall be based upon the square footage used by the Licensee, at a cost of \$1.00 per square foot per month.
 - (b) As the Licensee is using one 10' x 15' area the License Fee shall be \$150.00 per month.
5. License Fee Commencement Date:
 - (a) The License Fee shall commence on April 1st 2020.
6. Permitted Use:
 - (a) The sale of beach rental items, packaged snacks and drinks from the Property in accordance with the food license issued by the Department of Health.