

July 28, 2020

BOROUGH OF BRADLEY BEACH

RESOLUTION 2020-196

AWARDING OF LEASE FOR RENTAL OF NEWARK AVENUE CONCESSION AT OCEANFRONT AND NEWARK AVENUE

WHEREAS, a proposal was received in accordance with N.J.S.A. 40A:11-5(3) on July 27, 2020 for the Lease for Rental of the Newark Avenue Concession at Oceanfront and Newark Avenue for a term of three (3) years, from the Summer of 2020-2022, with David G. Brown II, Borough Administrator/QPA, and

WHEREAS, Bids have been advertised pursuant to section 4 of P.L. 1971, c198 on two (2) occasions and no bids have been received on both occasions in response to the advertisement, therefore allowing the Borough of Bradley Beach to proceed with negotiations, and

WHEREAS, Amy Russo, 415 5th Avenue, Bradley Beach, NJ 07720 submitted a bid in the amount of \$24,000 for a term of three (3) years from July 30, 2020 – October 31, 2022 with no rent due in 2020 Season; and

WHEREAS, the Borough of Bradley Beach and Amy Russo further agree to all the term and conditions contained in the Lease Agreement hereto attached, and

NOW, THEREFORE, BE IT RESOLVED that Amy Russo, 415 5th Avenue, Bradley Beach, NJ 07720 is awarded the bid for the Lease for Rental of the Newark Avenue Concession at Oceanfront and Newark Avenue in the amount of \$24,000 for a term of three (3) years from July 30, 2020 – October 31, 2022 with no rent due in 2020 Season and that the Mayor and the Borough Clerk are hereby authorized to execute the necessary Lease and any other associated documentation.

AYES NAYS ABSTAIN ABSENT

Mr. Bonnell
Mr. Gubitosi
Mr. Sexsmith
Mr. Weber
Mayor Engelstad

CERTIFICATION

I, Erica Kostyz, Deputy Municipal Clerk, Borough of Bradley Beach, Monmouth County, New Jersey, do hereby certify that the foregoing resolution was duly adopted by the Mayor and Council at the July 28, 2020 meeting.

Erica Kostyz, RMC, CMR
Municipal Clerk

The parties hereto hereby agree that the Lessor does lease hereby unto the Lessee and the said Lessee does hereby lease from the said Lessor the following described space, concession and premises:

All such areas as described in the Notice to Bidders/Invitation to Bid and associated bid documents which are to be and are located on the beach proper at the oceanfront in the Borough of Bradley Beach at Newark Avenue (MCU) concession for the sale of food, beverages and sundries and the deck area immediately adjacent thereto for the placement of picnic tables and chairs in areas approved by the Borough.

The parties further agree as follows:

- 1. DUE DILIGENCE.** Lessee is renting the premises "as is" with no guarantee or representation as to the contents of the premise or layout. The Tenant is familiar with and knows the area leased and the uses permitted therein. Tenant states that he/she/it did inspect the premises, and the floor plan and description of the mobile concession unit (MCU) prior to submitting Tenant's bid to the Borough of Bradley Beach for the same to his/hers/its satisfaction. The Tenant has made its bid and has entered into this lease without any representation on the part of the Landlord as to the condition of the leased property or other items subject to the lease. The Tenant states that it is fully aware of the surrounding area, properties and conditions including those presented by the proximity of the property to the Atlantic Ocean and its beaches.
- 2. CONTRACT DOCUMENTS.** Lessee has read in full and complete detail the Notice to Bidders/Invitation to Bid, all associated bid documents, (the bid documents) and this form of lease prior to Lessee's bid and is familiar with the requirements contained in all of these documents which are hereby incorporated into this agreement.

3. LEASE TERM. This lease is for a three (3) year term commencing on July 30, 2020 or the date of the acceptance of the bid by the governing Body on a date thereafter and ending October 15, 2024.

4. RENT. This lease must be executed within five (5) days after the acceptance or award of the Bid through a specified public process by the Lessor. Payment in full of the first-year rent shall be \$0.00, as established by negotiation.

The following shall be the balance of the three (3) year schedule of annual rent payment payable upon May 1st of the season:

2nd Year 2021; \$12,000.00

3rd Year 2022; \$12,000.00

5. ADDITIONAL EQUIPMENT. Tenant will furnish and install any additional equipment not included in the bid documents, at Tenant's own cost and expense, but in no case shall any additional equipment be installed without the express written permission of the Landlord. Any such additional equipment so installed shall become the property of the Landlord except as provided otherwise in the authorization to install same. Notwithstanding any authorization to install additional equipment, the landlord shall have the right to have any such additional equipment removed from the property and have the property restored to its original condition by, or at the expense of, the Tenant at the termination of the lease.

6. CLEANING The Lessee will have the MCU professionally cleaned at the end of the season and provide proof of same.

7. UTILITIES. Lessee shall be exclusively responsible for the payment of all utilities.

8. MAINTENANCE and REPAIRS. Lessee shall be responsible for the maintenance and repair of any equipment subject to this agreement. The Lessee shall keep and maintain the leased area in a good, clean and presentable

condition. Failure to maintain any property in good, clean and presentable condition, in the exclusive judgment of the Lessor, may be deemed a breach of the lease contract

9. GARBAGE. The Lessee agrees to keep the immediate area of its operations clean at all times, and will not permit garbage, waste or debris of any kind or nature to remain in or about said area. The Lessee agrees to handle and dispose of all garbage, waste and debris from its operations in accordance with the regulations established by the Borough from time to time and to police the entire area to keep same free and clear of any and all garbage, waste or debris that may have been or was generated as a result of Lessee's operations.

10. HOURS of OPERATION. The Lessee agrees that the business permitted herein shall be conducted continuously and uninterrupted during the entire summer season which shall be defined as all days comprising of and falling between the weekends associated with the Memorial Day and Labor Day Holidays of all years under this lease. During such time period the Lessee shall be open and operating the described business on each and every day during all hours which are regular and customary for such type business but shall be generally expected to be open and operating during all hours of the Borough's beach operation. It is understood that the Lessee may determine not to operate its business when not feasible to do so because of weather conditions.

11. USE of PROPERTY. Said area is to be used solely as set forth in this lease and the bid documents and shall be subject to the terms and conditions contained therein. The Lessee shall be generally permitted to locate its concession area at a location of its choosing within the leased area. The Lessee agrees that the Lessor shall be permitted to direct the Lessee to relocate the concession, in its discretion, for whatever reason, except that said relocation shall not unreasonably frustrate the operation of said concession. The Lessee and his agents, representatives, servants, or employees, shall use only that portion specifically described herein, and not any other part of the beachfront, beach or boardwalk area or municipal buildings, for the Lessee's business operations. The Lessee agrees not to block

any access, entrance or exit to the beach, beachfront, or boardwalk, nor encumber or obstruct nor allow the same to be obstructed or encumbered in any manner. The Lessee hereby expressly agrees not to interfere with the rights of the public or any person or persons lawfully using the beach, beachfront or the boardwalk. The Lessee understands that the area described or established is and shall be subject to the rights and use of the general public, and of the Lessor, during non-operating hours and the Lessee shall in no way interfere with such rights or use. The Lessee agrees that, on any question as to the use of the subject area, or as to the class of goods, wares, or merchandises to be sold by the Lessee, or as to the type of equipment and machines to be placed or used therein, or the general conduct thereof, the determination thereof by the Lessor shall be final and controlling.

12. PROHIBITED ACTS. The Lessee shall not perform or permit any acts or practices which may injure the leased area or any building or structure located thereon. The Lessee shall not conduct its operations in any manner or for any purpose deemed disreputable, illegal or against public policy or unduly hazardous on account of fire or otherwise. The Lessee shall not solicit trade or bark or cry his, her or its wares or use any devices mechanical or otherwise which may create noise, music or sounds to attract attention to the Lessee's business or wares, nor to in any manner audibly attempt to advertise his business, merchandise or wares. The Lessee shall not place, nor allow to be placed or affixed, any signs or objects of any kind whatsoever upon, in or about the leased area without same being approved in writing by the Lessor. It is distinctly understood and agreed that under no circumstances are alcoholic beverages to be kept at or sold from the concession.

13. INDEMNIFICATION. The Lessee agrees to indemnify and hold harmless the Lessor against any and all claims, liens, suits, fines, penalties, judgments, demands, damages, costs, and expenses, including reasonable attorney fees incurred by the Lessor for the defense of such claims and demands, arising from the use of the leased area by the Lessee, or other property used by or under the control of the Lessee, whether subject to this lease or not, or the conduct or

management of the Lessee's operations on or about the leased premises, or on or about property used by or under the control of the Lessee, or from any breach on the part of the Lessee of any conditions of this lease, or from any act or negligence of the Lessee, its agents, contractors, employees, servants or representatives in or about the leased premises. This clause shall apply to all claims regardless of how said claim is characterized and shall apply regardless of the actual, active, contributory or other acts or negligence of the Lessor.

14. LESSOR'S ACTS. The Lessor shall not be liable for any damage or injury which may be sustained by the Lessee or any other person, from the carelessness, negligence or improper conduct on the part of the Lessor or the Lessor's agents, employees, guests, licensees, invitees, or successors; or attributable to any interference with, interruption of, or for the failure of any services to be furnished or supplied by the Lessor. If at any time during the term of this lease, the Lessor shall engage in the reconstruction, repair or removal of any Borough building or property, including the Boardwalk, or the streets, ramps and sidewalks adjacent thereto, and such work shall result in damage to the business of the Lessee, the said Lessee shall have no claim whatsoever for any such loss of business or profits or any other claim whatsoever against the Lessor arising directly or indirectly as a result of said work.

15. INSURANCE. The Lessee shall carry insurance for liability in the amount of three million (\$3,000,000.00) dollars for injuries to one person, one million (\$1,000,000.00) dollars for any one accident and one hundred thousand (\$100,000.00) dollars for property damage. The Borough of Bradley Beach shall be an additional named insured on the policy and said policy will provide for at least ten (10) days notice to the Borough of Bradley Beach before cancellation or non-renewal.

16. COMPLIANCE with LAWS. The Lessee shall promptly comply with all laws, ordinances, rules, regulations, requirements and directives of the Federal, State and Municipal Governments or Public Authorities and understands that this lease may be modified, amended or changed by the Division of Green Acres of the

NJDEP. It is the Lessee's sole responsibility to ensure that all code standards are met. The Lessee shall obtain a mercantile license from the Borough. Failure to comply with code standards may result in the Lessor declaring a breach of the lease.

17. ASSIGNMENT. The Lessee shall not assign this lease or sub-let, mortgage or hypothecate the property, real or personal subject to this lease, except with the written consent of the Lessor. Any violation of this provision may result in the Lessor declaring that the lease is in default.

18. SEVERABILITY. If any clause or provision of this lease shall be or become invalid, such invalidity shall not affect the remaining clauses, terms, or provisions of the lease.

19. BOROUGH CONTROL of BEACH and BOARDWALK. This lease is made and the Lessee accepts same expressly subject to such rules and regulations of the Mayor and Council of the Borough of Bradley Beach governing the sand, beach, beachfront, pavilions, structures and all other appurtenances and property of the Borough of Bradley Beach, between the easterly line of Ocean Avenue and low water mark of the Atlantic Ocean which may now exist or which may hereafter be adopted by the said Mayor and Council of the Borough of Bradley Beach. The Lessor does hereby reserve unto itself the right to impose further restrictions concerning the use of the entire property or any part of the property of the Borough of Bradley Beach between the easterly line of Ocean Avenue and the low water mark of the Atlantic Ocean, and to prohibit persons clothed in bathing attire, and persons otherwise clad in violation of any ordinance, from entering upon the property of the Borough of Bradley Beach between the easterly line of Ocean Avenue and the low water mark of the Atlantic Ocean, unless such persons comply with the rules and regulations which may now be in effect or which may hereafter be adopted and put into effect by the Mayor and Council or other governing body, and also to rescind any or all of the said rules and regulations which may now be in effect or which may hereafter be adopted and put into effect. The Borough of Bradley Beach

has the absolute right to add, delete, modify, alter or close any of its ramps, staircases or accesses to the beach. Any change in accesses to the beach as aforementioned will not affect the enforcement of the within lease and the Lessee shall make no claim whatsoever for any loss of business or profits or any claim whatsoever against Lessor arising directly or indirectly as a result of the change of accesses to the beach as aforementioned.

20. DAMAGE to PROPERTY. It is further agreed that if the herein leased premises or any area in the proximity of same shall become damaged by fire, storm, hurricane, flood or other act of God, to the extent that the Mayor and Council deem it necessary to acquire control of said premises for the protection of property or for the public safety, or to discontinue said concession for said reasons, the decision of the Mayor and Council as to same shall be final and binding upon the Lessee, the Lessee shall upon the receipt of written notice forthwith discontinue operation of business thereon, yield up control of the premises to the Lessor, and remove its effects, equipment, structures, etc. from the premises as promptly as is reasonably possible. In the case of total destruction of the property, not the fault of the Lessee, its representatives, employees or occurring otherwise as a result of Lessee's operations, either party may terminate the lease upon written notice to the other which will be effective upon receipt. In such case the Lessee shall be entitled to a pro-rata refund of the lease amount paid by the Lessee which amount shall be paid by the Borough no later than the next fiscal cycle. Upon partial destruction of the leased premises or property located thereon, not the fault of the Lessee, its representatives, employees or otherwise occurring as a result of Lessee's operations, the Lessor shall have the option but not the obligation to effect repairs or otherwise restore the property to substantially pre-loss conditions. If the Lessor does not so repair and restore the property within 30 days, and the damage substantially interferes with the operation of the Lessee's business, the Lessee shall be permitted to terminate the lease and receive a pro-rata refund of the lease amounts paid by the Lessee which amount shall be paid by the Borough no later than the next fiscal cycle.

21. PROPERTY DAMAGE by LESSEE. In the event of any damage or injuries to the subject area, or any part thereof, of any kind or nature whatsoever, caused by either the Lessee or the Lessee's agents, servants, employees, patrons and customers, or by reason of the use of said premises by the Lessee or by operations conducted by the Lessee, then the Lessee shall cause said damage or injury to be repaired forthwith, at the Lessee's own cost and expense, which repairs shall be completed to the satisfaction of the Lessor

22. APPROVALS by LESSOR. Any approval or determinations that need to be made pursuant to the terms of this lease, not otherwise controlled by law, may be made by the Borough's Business Administrator. Nothing herein shall obligate the Borough Administrator to so act in reference to any issue where, in the Borough Administrator's discretion, consideration of any issue by the Governing Body of the Borough is advisable or necessary.

23. DEFAULT. Except as otherwise stated herein, should the Lessee default on any material term of this lease, the Lessor shall provide notice to the Lessee of such default and shall provide a reasonable time for the Lessee to cure said default. Waiver of any default at any time shall not constitute grounds for the Lessee to claim waiver of further or any future default of whatever nature. Acquiescence to any circumstance, for any period of time, shall not constitute a waiver of any default associated with any such circumstance nor grant to the Lessee any additional rights hereunder. Should the Lessee fail to cure any default within the reasonable time permitted hereunder, or should the Lessee commit the same or substantially similar default after the Lessee's initial cure of same, the Lessor shall have the right to remedy the default at the expense of the Lessee or to declare the lease terminated, or both. Should the Landlord elect to cure the defect at the Lessee's expense, then all costs associated with said cure shall be charged against the Lessee as additional rent which shall be immediately due to the Lessor. If there should occur any default on the part of the Lessee in the performance of any condition or covenant herein contained which shall remain uncured, or if during the term hereof the area

shall be or become abandoned or deserted, vacated or vacant, or should any party named on the lease file for bankruptcy protection, or otherwise have its, his, or her interest in the lease become under the control of another or other entity, the Lessor, in addition to any other remedies herein contained or as may be permitted by law, may either by force or otherwise, without being liable for prosecution thereof, or for damages, re-enter the said premises and the same have and again possess and enjoy; and as agent for the Lessee or otherwise, re-let the premises and receive the rents therefrom and apply the same, first to the payment of such expenses, reasonable attorney fees and costs, as the Lessor may incur in re-entering and repossessing the same and in making such repairs and alterations as may be necessary. Nothing herein shall prevent or bar the Lessor from acting in accordance with, or seeking other remedies under, any law controlling the lease of parks and property by municipalities.

24. FORCE MAJEURE. Neither the Lessor nor the Lessee shall be required to perform any term, condition, or covenant in this lease so long as performance is delayed or prevented by force majeure which by due diligence the Lessor or the Lessee is unable to overcome. Nothing herein shall apply to the Lessee's obligation to pay rent or be used as a basis for any claim for rent refund or abatement.

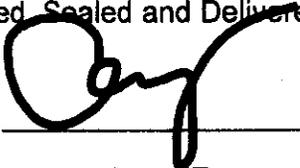
25. ATTORNEY FEES. The Lessee shall be responsible to pay the reasonable attorney's fees of the Lessor should the Lessor be forced to seek legal action or counsel to enforce any provisions of this lease.

26. GOVERNING LAW. The parties agree that this lease shall be governed by and interpreted according to the laws of the State of New Jersey. Both parties will waive a trial by jury.

27. ENTIRE AGREEMENT. This lease and the bid documents constitute the 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 Lessor and the Lessee.

IN WITNESS WHEREOF the parties hereto have interchangeable set their hands and seals or caused these presents to be signed by their proper corporate officers and their proper corporate al affixed hereto, the day and year above stated.

Signed, Sealed and Delivered by

Sign:  _____

Title: _____

Print: Amy Russo

For the Lessee

Gary Engelstad
Mayor, Bradley Beach

Erica Kostyz
Borough Clerk, Bradley Beach