



**AGREEMENT**  
**BETWEEN**  
**THE TOWN OF NANTUCKET**  
**AND**  
**THE SANDBAR, LLC**

THIS AGREEMENT made effective November 2, 2016, by and between the **TOWN OF NANTUCKET, MASSACHUSETTS**, a municipal corporation, acting by and through its Town Administrator, with offices at 16 Broad Street, Nantucket, Massachusetts 02554 (hereinafter called the "TOWN"), and **SANDBAR, LLC** whose principal office address and state of incorporation are as set forth on Exhibit A (hereinafter called the "CONCESSIONAIRE").

**General:** The Concessionaire is responsible for the Operation of a typical “family-friendly” snack bar, restaurant and retail concession with the ability to have functions in the approved function area after 5pm at Jetties Beach, 4 Bathing Beach Road, Nantucket, MA. The Concession is not allowed to be closed to the public for Private Functions or Private Events in July and August.

The Concessionaire is responsible for the operation of food service in order to offer breakfast (optional), lunch and dinner service. The Concessionaire is also responsible for custodial maintenance of the Maintenance Area, as indicated on Exhibit F. Note: The Maintenance Area is within a traditional habitat area for both State and Federally protected shorebirds as well as the lower parking lot adjacent to the concession. The Town of Nantucket’s agent will be the Chief Procurement Officer or his/her Designee.

**Concession Premises:** The Concession premises (hereinafter called the Premises) shall include the Concession building, Retail Shop, the Bathhouse and the tent function area; beginning at the corner of the concession deck closest to the parking lot walking approximately 180’ perpendicular towards the ocean at that point turning west, parallel to the ocean, walking approximately 100’ thence turning south heading approximately 180’ to the corner to Bathhouse squaring off the parameters of the tent function area as shown in Exhibit F.

**A. CONCESSION FEE AND OTHER CHARGES**

- 1) **Concession Fee:** The Concessionaire shall propose an annual Fee in the amount set forth on the Bid Form attached to this Request for Proposals as Exhibit B for each occupancy period during the term hereof.

For all days the restaurant is closed to the public for a private event, the concessionaire shall be expected to remain open an extra day at the end of the season (Labor Day) in addition to the normal lease period.

The Annual Concession Fee shall be payable in two equal installments, the first due on or before

July 1 and the second due on or before August 1 of each year.

The fee based on the percentage above gross sales of one million dollars (\$1,000,000) shall be submitted to the Finance Department by December 31 along with the audited financial statements.

All applicable Town of Nantucket Event Permitting Fees for Private Events held on the Premises will be paid before the start of each event. This does not include public events approved by the Town for other organizations such as the Annual Nantucket Cottage Boston Pops Event.

The Concessionaire's 10% bid deposit will be credited toward the first payment of the first year's annual concession fee.

- 2) **Security Deposit:** The Concessionaire shall file with the Town of Nantucket a \$5,000.00 security deposit on or before May 1 of the first year of the lease; refundable at the end of the lease term, without interest to the Concessionaire within sixty (60) days, after determination has been made that the Concessionaire has fulfilled all of the terms of the contract and left the premises in adequate condition according to the Town and after presenting proof that all utility payments as well as landfill and sewer fees have been made and no defaults are left outstanding.
- 3) **Utility Payments:** The Concessionaire shall pay all water, power, gas, sewer, landfill, oil and telephone costs incidental to its operation hereunder. This obligation includes but is not limited to payment of water and electric bills, Landfill and Sewer User Fees for both the Concession and the Bathhouse portions of the premises. The Concessionaire is also responsible for turning on and turning off of all utilities and any and all utility deposits required doing so. The Concessionaire shall present proof of payment of all utilities to the Town of Nantucket within thirty days of closing for the season. Should proof of payment not be presented the Concessionaire shall be considered in default and the Town of Nantucket has the right at its discretion to pay any outstanding amounts from the security deposit as stated in Section A3 above.
- 4) **Other Fees and Utilities:** The Concessionaire shall also be responsible for all licensing fees as determined by the Town, all utilities, small and large event permitting fees, entertainment or pouring licenses, and all other costs associated with the operation of the Premises including events; including any additional fees brought on by the presence of listed shorebirds and the protection plan implemented by the Town of Nantucket's Endangered Species Program, through the Beach Management Plan. Those items specifically provided herein are excluded.

## **B. TERM**

- 1) **Lease Term:** Five years beginning January 1, 2017 and expiring on December 31, 2021.
- 2) **Operation Dates:** Successful bidder shall be permitted to occupy the Premises only during the Occupancy periods, which run from the second weekend in May through the Monday after Columbus Day each calendar year.

## **C. CONCESSIONAIRE'S OBLIGATIONS**

- 1) **Concession Facility:** Concessionaire agrees to operate a concession facility of a typical beach “family-friendly” snack bar restaurant and a small retail business in accordance with the applicable rules and regulations and to obtain appropriate licenses before operating the facility and presenting the Town of Nantucket with the same. Retail sales are required in the Retail Shop. The Concessionaire is responsible to offer food service in order to offer breakfast (optional), lunch and dinner service. The concessionaire shall operate the premises so as to enhance the public’s use and enjoyment of the adjacent public beach facility and in the best interest of the Town of Nantucket. The Concessionaire is responsible for compliance with all laws and regulations applicable to the operation of the premises, including but not limited to compliance with applicable ADA regulations. “Family-friendly” includes but is not limited to such elements as a Children’s Menu; no cover charges; picnic tables and casual furniture with no abundance of couches and lounge furniture; no over-crowding of furniture on the patio or beach to allow for a more open and relaxing atmosphere leaving room for the public to set up beach chairs to enjoy the sand; unamplified music indoors only; non-club hours (8:00 am to 10:00 pm); and no more than fifteen (15) permitted events per season (May-October), which includes no more than four (4) private events that close down the Concession to the public. These fifteen permitted events do not include events permitted by the Town for other organizations such as the Nantucket Cottage Hospital’s Boston Pops, the Nantucket Triathlon, the Opera House Cup, the Swim Across America, etc.
  
- 2) **Private Functions/Special Events:** No Private Functions or Private Special Events resulting in the closure of the Concession shall occur in July and August. No closing of the Concession and Retail Shop in July and August except for the Nantucket Cottage Hospital Boston Pops Event or extreme weather-related instances. Events will be limited to under 250 people per Event in July and August, with the exception of the Fourth of July Fireworks Event and the Nantucket Cottage Hospital Boston Pops Event. Tented events are not permitted in July and August unless tents do not obstruct the view from the Concession Facility as approved by the Town. Private Functions or Private Special Events may occur however Concession operations cannot be interrupted. Concessionaire is subject to the published Event Permitting Fees for Special Events (under 250 persons) and Public Assembly Events (over 250 persons) for any Private Function or Special Event on the Premises. In the shoulder months (May, June, September and October) only four (4) Private Functions or Private Special Events that close the Concession operations to the public are allowed in total during these months. The Concessionaire may have additional Events under 250 persons each in the shoulder months as long as the Concession operations are not closed to the public.

Prior to holding any Private Function, Special Event or Public Assembly Event, the Concessionaire shall obtain in writing approval from the Town of Nantucket and the Events Manager. A list of upcoming events, as well as completed Beach Event Forms (Exhibit C) must be submitted to both the Events Manager and the Chief Procurement Officer by May 1st. Any additional events after May 15<sup>th</sup> will require a Beach Event Form to be completed and submitted to the Town of Nantucket as soon as the event is scheduled. The Town of Nantucket shall have full discretion to deny permission to hold any Private Function, Special Event, or activity.

Should the Town of Nantucket approve such a function all of the following conditions must be met:

- a) If a fire on the beach is planned the Concessionaire must obtain a permit from the Fire Department. A copy of the permit will be give to the Town of Nantucket prior to the day of the function.
  - b) Concessionaire will be responsible for compliance with all Massachusetts, County and Town laws regulations and ordinances governing noise.
  - c) Private functions at the concession will be held in the premises only as shown on Exhibit F and not on the remainder of the beach or dunes. The Town of Nantucket's policy is to disallow private functions on the remainder of the property.
  - d) Section C 2 Private Functions may be overridden by the additional provisions of this lease. Not any other part of the lease is affected by any such changes.
  - e) A completed copy of the Beach Event Form (Exhibit C) must be submitted to the Events Manager and the Chief Procurement Officer.
  - f) Depending on the status of the State & Federally listed species and after the review of the Town, the Concessionaire may be required to hire monitor(s) through the Town's Endangered Species Program. If the hiring of monitor(s) is deemed necessary a completed Detail Form must be completed and submitted to the Events Manager before the event (Exhibit D)
- 3) **Public Restrooms, Bathhouse and Shower facilities:** All areas designated as Public Restrooms, Bathhouse and Shower facilities shall be available as such for the public's use. At a minimum when the concession is not in operation the Concessionaire shall operate the Bathhouse, toilet and shower facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the second weekend in May through Columbus Day Weekend each year. Concession operating hours may be different than the Public Restroom, Bathhouse and Shower Facilities hours above, however the Concessionaire shall open the Bathhouse and toilet facilities at all times while the concession is operating. The Town of Nantucket reserves the right to open and staff the toilet facilities only at other hours for special events. Toilet room facilities must remain open even in inclement weather. The Concessionaire shall be responsible for the cleanliness of the Public Restroom facility and area surrounding the Public Restroom facility.
- 4) **Kitchen Equipment:** The Concessionaire shall provide and install all kitchen equipment and food and drink equipment not already provided by the Town of Nantucket. List of current assets is provided in Exhibit G. Any purchase of equipment by Concessionaire from previous Concessionaire would be a private agreement and is not part of the contract for the facilities. Concessionaire is responsible for maintenance; replacement and removal of his/her own equipment. Any equipment affixed permanently to the premises shall immediately become the property of the Town of Nantucket subject only to the Concessionaire's right to use such equipment during the term hereof. The Concessionaire is responsible for preventive maintenance for the equipment provided by the Town of Nantucket. In addition the Concessionaire agrees to perform annual maintenance prior to closing the building each fall. A schedule of the minimum annual maintenance requirements is attached hereto, and incorporated herein, marked Exhibit G. Any such equipment remaining after the expiration of this contract shall, at the option of the Town of Nantucket, either become the property of the Town of Nantucket or be removed and disposed of by the Town of Nantucket at the expense of the Concessionaire. The Concessionaire shall not use the kitchen as a commercial kitchen for off-premise catering services such as for a mobile food unit. On-premises catering is allowed when the restaurant is closed to the public for

approved and permitted Private Event Functions.

- 5) **Custodial Services:** The Concessionaire shall clean the restrooms as often as required to maintain them in a condition satisfactory to the Town of Nantucket. The Concessionaire shall supply and maintain paper, soap and supplies as needed.
- 6) **Maintenance:** The Concessionaire shall provide all custodial maintenance inside the buildings and outside the buildings in the Maintenance Area indicated on Exhibit F, policing the beach and parking areas at least twice daily to keep it free of all litter and other trash generated by the patrons of the beach. All rubbish/trash collected by the Concessionaire or generated from the concession's operation will be secured, removed from the beach and disposed of at the Concessionaire's expense including landfill fees. The Concessionaire is responsible for repairing and maintaining any and all windows and door screens and must inform the Town of Nantucket immediately of any and all repairs so made. The Concessionaire will be required to provide a work order for all exterior and structural repair work to be performed by the Town of Nantucket. Once a pair of potentially nesting listed shorebirds has been recognized, all cleaning of the beach's litter must be done by hand. NO beach raking will be permitted until the status of the State and Federally listed shorebirds has been examined by the Town and has been deemed permissible. Removal of the wrack line by hand or machine is prohibited. The Town is responsible for beach raking. All repairs, maintenance construction, power washing, or any other action that may involve excessive noise must be completed prior to April 15<sup>th</sup>
- 7) **Signs and Structures:** Before any temporary or permanent signs or structures are erected the Concessionaire shall first obtain such written approvals as may be required under existing Town regulations including but not limited to a Certificate of Appropriateness from the Historic District Commission of the Town. The Concessionaire shall then obtain the written permission of the Town of Nantucket.
- 8) **State and Federally Protected Species:** The Concessionaire must be aware that Jetties Beach is a known traditional habitat area for State and Federally listed species, such as the Piping Plover. Such listed species are protected under the Endangered Species Act and are monitored and protected by the Town of Nantucket's Endangered Species Program. The Town's Endangered Species Program is based on set State and Federal Guidelines. Failure to follow the rules, regulations and guidelines created by the State and Federal Government and implemented by the Town of Nantucket's Endangered Species Program may result in the potential closure of Jetties Beach. The Concessionaire is required to abide by all rules and regulations set forth regarding the "State and Federally listed species" and therefore must notify the Town of any "Private Function, Special Event or Activity" as soon as they are scheduled and no later than one week in advance of the event. See Exhibit D.
- 9) **Alcoholic Beverages:** In accordance with Section 54-1C of the Nantucket Code, the Town of Nantucket hereby grants its consent to the Concessionaire to serve alcoholic beverages for possession and consumption on the premises subject to the following condition:
  - a) Concessionaire must obtain a liquor license from the Nantucket Board of Selectmen in accordance with all local, state and federal rules and regulations.
  - b) The area of the Premises in which alcoholic beverages will be served and consumed shall be

limited and clearly delineated to the satisfaction of the Town of Nantucket. Appropriate precautions shall be taken to assure that alcoholic beverages are not consumed outside the premises.

- c) The Concessionaire will be responsible for compliance with all Massachusetts and Nantucket laws, regulations and ordinances governing the serving and consumption of alcoholic beverages on the premises including the consumption of alcoholic beverages by minors.
- d) Alcohol may only be served as indicated on the Concessionaire's liquor license.

**If it is the intent of the successful concessionaire to extend the liquor license hours they will be required to obtain Board of Selectmen approval.**

- e) The Concessionaire shall hire a police detail for any private function at which alcohol will be served where more than 150 persons are expected to attend. The cost of such police detail will be paid by the Concessionaire or the sponsor of the function.
- f) The Concessionaire hereby agrees to indemnify and hold harmless the Town and County of Nantucket and all of their officials, members, officers, employees and agents from any and all claims arising out of the sale or consumption of alcoholic beverages on the premises and all other costs (including legal fees) related thereto. The Concessionaire will maintain liability insurance with respect to the serving of alcoholic beverages as required by the laws and regulations of the Commonwealth of Massachusetts and the Town and County of Nantucket. All Such policies of liability insurance shall name the Town and County of Nantucket and all other indemnified parties as additional insured parties under the policy. The Concessionaire shall deliver written proof of such insurance, by a certificate of insurance or otherwise as required by the Town, to the Town's designee on or before March 1 of each year during the term herein.
- g) Such provisions are subject to review, modification or termination by the Town of Nantucket at its sole discretion at any time.
- h) Tents set up on the beach portion of the premises cannot be set up until the day of the event for which they are being used and must be removed by Noon on the day after the event without written approval by the Town of Nantucket. Problems with this provision should be brought to the attention of the Town of Nantucket at least one week prior to the event if not previously addressed during the permitting process. Before erecting or removing a tent and/or floor on Jetties Beach, the Events Manager and the Chief Procurement Officer must be notified of the size of the tent(s), the times and the date(s). If the Town feels it is necessary, the Concessionaire will hire monitor(s) through the Town's Endangered Species Program to be present during both the erection of the tent and/or floor and the removal. Failure to contact the Town regarding a tent and/or floor may result in the loss of future tent/floor use.

**11) Use for dwelling purposes:** The Concessionaire is expressly prohibited from using any part of the premises for dwelling purposes except upon the following terms and conditions:

- a) Only that portion of the second floor of the main building known as the apartment ("Apartment") may be used for dwelling purposes and may be so used only by the Concessionaire or employees of the Concessionaire during the period of Occupancy if approved by the Town. If allowed to be used by the Concessionaire, immediate family only may enter the Apartment two weeks prior to the occupancy period or two weeks prior to opening the concession whichever is later for the sole purpose of preparing the buildings for

the summer season. The Concessionaire with immediate family only may remain in the Apartment for up to two weeks after the occupancy period or two weeks after closing the concession whichever is earlier for the sole purpose of closing and winterizing the buildings.

- b) Use of the Apartment is specifically restricted to a single family occupancy with the number of occupants allowed determined by the Nantucket Building Inspector.
  - c) Leasing of the Apartment or rooms or space to transients or in any temporary basis is strictly prohibited.
  - d) The Apartment may not be sublet.
  - e) Occupancy of the Apartment for dwelling purposes may commence only after it has been inspected and approved by the Nantucket Building Inspector. Concessionaire shall be responsible for requesting this inspection by the Nantucket Building Inspector and for complying with all required safety requirements. The Nantucket Building Inspector shall have the right from time to time and upon reasonable notice to the Concessionaire to inspect the premises to see that all terms and conditions of these specifications are being met.
  - f) No structural changes or improvements may be made to the Apartment by the Concessionaire without written consent of the Town of Nantucket. Any improvements made to the Apartment including those necessary to meet building codes are the sole responsibility of the Concessionaire.
- 12) **Beach Access:** The Concessionaire will contact the Town of Nantucket if he/she requires vehicle access to the beach. The Town of Nantucket may deny access to the beach for motorized vehicles at the Town's discretion.
- 13) **Tennis Courts:** The Town of Nantucket reserves the right to sell liquid refreshments at any Town of Nantucket facility located at Jetties Beach Tennis Courts.
- 14) **Hospital Event:** The Nantucket Cottage Hospital will have the use of the beach and the concession for two days during the summer to use for a major fund raiser. The Town of Nantucket will be responsible for providing the Concessionaire with up to three alternate dates for this event six months prior to the date of the event and providing the concessionaire the final date and dollar amount of compensation to be paid to the Concessionaire at least six months prior to the event. The Concessionaire can charge up to but no more than twenty-five thousand dollars (\$25,000) to the Nantucket Cottage Hospital for disruption of operations during this time.
- 15) **Fourth of July Fireworks:** The Town has discretion to schedule this event at Jetties Beach at any time from July 1 through July 6 weather dependent. Concession operations are not required to be closed during this event and are encouraged to stay open to serve the public during this event. The Town of Nantucket will not reimburse the Concessionaire for disruption of services for this event.
- 16) **Boardwalk/Mobility Mat:** The Boardwalk/Mobility Mat will be installed each season by April 15<sup>th</sup> by the Department of Public Works in concert with the Town of Nantucket. The Boardwalk/Mobility Mat will be placed to the far right, between the leased area and the parking area, and will be flush with the sand. The Boardwalk/Mobility Mat will remain in place for the summer season. The only event for which the Boardwalk/Mobility Mat may be moved is the Hospital Fundraiser. Problems with this provision should be brought to the attention of the Town

of Nantucket at least 48 hours prior to the event.

- 17) **No Pets** - The Concessionaire and/or its employees are prohibited from bringing his/her pet(s) to work.
- 18) **End of Season Inspection:** The Concessionaire shall schedule with the Town of Nantucket a date and time for the end of season inspection. The purpose of the inspection is:
  - a) To ascertain any and all repairs necessary prior to opening for the upcoming season.
  - b) To make sure the premises are clean & all items are secured prior to closing for the season.

#### **D. IMPROVEMENTS**

- 1) **Consent:** The Concessionaire shall not undertake any improvements to the premises without having first received the written consent of the Town of Nantucket. Should the Town of Nantucket consent to such improvements the Concessionaire shall obtain all required permits and present copies of all permits to the Town of Nantucket prior to starting work. Any improvements to the premises shall be completed before April 15<sup>th</sup>. Should there be an emergency need for improvements after April 15<sup>th</sup> the Town must be provided with copies of the permits and details of the work. Before any work begins an assessment may be made by the Town of Nantucket based on the current status of the State and Federally listed species and the effect the work may have on their habitat/productivity.
- 2) **Ownership:** Any improvements made by the Concessionaire to the premises during the term of the contract including any structure, fixture or equipment affixed permanently to the premises shall become the property of the Town of Nantucket except as agreed upon in writing prior to installation.

3)

#### **E. INSURANCE**

**Insurance:** The Concessionaire will maintain insurance as listed below and will deliver certificates to the Town of Nantucket, on or before March 1 of each year during the term, stating this insurance is in force, in any calendar year for the duration of this Agreement before he enters the premises:

- 1) **Worker's Compensation:** Worker's Compensation insurance in accordance with Massachusetts General Laws Chapter 152, as amended.
- 2) **Liability:** Comprehensive General Liability insurance including products liability for a combined single amount of \$2,000,000. This policy must have as one of its terms a provision that the Town and County of Nantucket and its Town of Nantucket are additional insured parties. A copy of this policy showing the Town as an additional insured is to be provided to the Town of Nantucket annually on or before March 1. Such policy must also contain a provision that the Town of Nantucket will be provided with ten (10) days written notice by the insurer of any intent to cancel or a determination that such insurance will not be renewed.

## **F. OPERATING HOURS**

- 1) **Concession, Restrooms and Bathhouse Facilities:** The Restroom, Shower and Bathhouse Facilities shall be operated between 9:00 am and 5:30 pm seven (7) days per week from the second weekend in May through the Monday of Columbus Day Weekend. Concessionaire must ensure the cleanliness of the Premise including the Bathhouse and Concession Bathrooms in a condition satisfactory to the Town.

At a minimum, the Concessionaire shall operate the Concession between the hours of 10:00 am and 5:00 pm seven (7) days per week from the third week in June through Labor Day Weekend.

Additional Concession operating hours in May, June, September and October are preferred but not required. Concession operating hours in May and June and after Labor Day through Columbus Day in conjunction with operations of the restaurant and bar are encouraged.

The Concessionaire may offer breakfast service which will require expanding the hours of Concession and Restroom and Bathhouse operations. The Town of Nantucket agrees to support expansion of the hours of operation necessary to provide breakfast and/or dinner service at the discretion of the Concessionaire. The Concessionaire may extend or reduce the hours of operation subject to the written approval of the Town of Nantucket.

In the event of the beach being unoccupied and closed due to inclement weather the Concessionaire may close after notifying the Town of Nantucket (Event Manager and/or Chief Procurement Officer). For all days the restaurant is closed to the public for a private event, the concessionaire shall be expected to remain open an extra day at the end of the season (Labor Day) in addition to the normal lease period.

## **G. INDEMNIFICATION**

- 1) **Indemnification:** The Concessionaire agrees at all times during the term of this contract to indemnify, hold and save harmless, the Town of Nantucket and the Town of Nantucket and its officials, employees and agents from and against any and all action or causes of actions, claims, demands, liabilities, losses, damages or expense of whatsoever kind and nature including all legal costs arising out of or in connection with the operation and rental by Concessionaire of the premises or its performance or failure to perform or any provision of this contract.
- 2) **Waiver of Rights of Recovery:** The Concessionaire also agrees to waive all rights of recovery it may have against the Town of Nantucket and the Town and County of Nantucket for any loss to property or person for which the Concessionaire is insured.

## **H. TOWN OF NANTUCKET OBLIGATIONS**

**The Town of Nantucket agrees to the following:**

- 1) **Repairs:** To make exterior and structural repairs to the premises subject to funding by Town Meeting. This would include Boardwalk/Mobility Mat repair, parking lot maintenance, bike rack

maintenance and safety inspections (with 24 hour notice to the Concessionaire). The Town of Nantucket is also responsible for sewer and water lines, repair of plumbing and wiring faults due to normal use, recreational equipment, as well as providing trash barrels during occupancy period.

- 2) **Special Events:** To inform the Concessionaire of any and all special events taking place on the premises.
- 3) **Improvements:** Any improvements or replacement of equipment made to the premises at the Town of Nantucket's expense will become the property of the Town of Nantucket.

#### **Waiver of Liability**

- 1) **Town of Nantucket's Obligation:** Except as a result of its failure to perform the obligations specifically provided herein within a reasonable period after receipt of written notice thereof, the Town of Nantucket shall not be liable to the Concessionaire for any injury or damage to the Premises or to any property of the Concessionaire or to any property of any third person, firm, association or corporation on or about the Premises.
- 2) **Beach Use:** Operation of the Premises by the Concessionaire is independent of the operation of the beach. The Town of Nantucket of Town may from time to time close the beach, acting in the public's interest or in the interest of the State and Federal regulations and guidelines set in place for the protection of listed species. The Town of Nantucket shall not be financially or otherwise liable to the Concessionaire or to the Concessionaire or its agents for any such closure, and such closure shall not change the Concessionaire's obligations as detailed elsewhere in this lease.

#### **I.DEFAULT, DETERMINATION & REMEDIES**

- 1) **Events of Default.** The occurrence of any of the following shall constitute an Event of Default by the Concessionaire hereunder:
- 2) **Failure to Make Payment.** The Concessionaire shall default in the payment of any installment of rent, utility, fee, or other sum herein specified on or before the date such payment is due; or
- 3) **Failure to Operate in the Public Interest or to Fulfill Other Non-Monetary Terms:** The Town of Nantucket determines that the Concessionaire has failed to operate the Premises in the best interest of the Town and/or has failed to operate in accordance to the guidelines set for the management/protection of the State and Federally listed species, or the Concessionaire shall default in the observance or performance of the Concessionaire's non-financial covenants, agreements or obligations hereunder, and such default shall not be corrected within twenty (20) days after written notice thereof; or
- 4) **Failure to Fulfill Monetary Terms.** If Concessionaire shall default in the observance or performance of the Concessionaire's monetary obligations hereunder, and such default shall not be corrected within seven (7) days after written notice thereof.
- 5) **Bankruptcy.** The Concessionaire shall be declared bankrupt or insolvent according to the law,

or, if any assignment be made of the Concessionaire's property for the benefit of creditors.

- 6) **Termination.** Upon the occurrence of any Event of Default hereunder, the Town of Nantucket shall have the right thereafter, in its discretion, to re-enter and take complete possession of the Premises, to declare the term of this Agreement ended, and to remove the Concessionaire's effects, without prejudice to any remedies which might otherwise be used for arrears of rent or other default.
- 7) **Remedies.** The Concessionaire shall indemnify the Town of Nantucket against all loss of rent and other payments which the Town of Nantucket may incur by reason of such termination during the residue of the term. If the Concessionaire shall default (after reasonable notice thereof in the case of non-monetary default) in the observance or performance of any conditions or covenants on Concessionaire's part to be observed or performed under or by virtue of any of the provisions in any article of this lease, the Town of Nantucket, without being under any obligation to do so and without thereby waiving such default, may remedy such default for the account and at the expense of the Concessionaire. If the Town of Nantucket makes any expenditures or incurs any obligations for the payment of money in connection therewith, including but not limited to reasonable attorney's fees in instituting, prosecuting or defending any action or proceeding, such sums paid or obligations incurred, with interest at the rate of the Prime Rate plus two percent (2%) per annum and costs, shall be paid to the Town of Nantucket by the Concessionaire as additional rent. "Prime Rate" shall be the interest rate published from time to time in the Wall Street Journal as the prime rate charged by the US money center commercial banks.

## **J. GENERAL PROVISIONS**

- 1) **Late Charges.** A late charge of three percent (3%) of any amount due and unpaid fifteen (15) days after due date shall be added to the amount due from Concessionaire and a finance charge of one point five percent (1½%) per month will be added to all amounts remaining unpaid thirty (30) days after the date the amount was originally due, such charge constituting a charge equal to eighteen percent (18%) per annum.
- 2) **Compliance with M.G.L. Ch. 7.** The Concessionaire covenants and agrees that it will comply with the requirements of M.G.L. Ch. 7, § 40J, including but not limited to, the filing with the Massachusetts Executive Office for Administration and Finance, Division of Capital Asset Management of a disclosure statement in connection with the disposition of an interest in real property by the Town of Nantucket. A copy of the Disclosure Statement is attached hereto.
- 3) **Independent Concessionaire Relationship.** There is no relationship of joint venture, partnership, employment or agency between the Town of Nantucket, on the one hand, and the Concessionaire on the other, and neither party shall have nor exercise any control or direction over the method by which the other performs its work or functions, aside from such control or direction as provided in this Agreement, which the parties view as consistent with their independent Concessionaire relationship.
- 4) **Binding Obligations, Related Obligors.** It is further intended by the Concessionaire and its principals as a condition to this Agreement, that any corporations or other entities which control or are under direct or indirect common control of or with the Concessionaire or which may otherwise be reasonably considered to be a part of its operating business, shall be jointly and

severally liable with the Concessionaire for its liabilities as a party to the Town of Nantucket hereunder.

- 5) **Successors and Assigns; No Right to Assign.** Concessionaire shall have no right to assign this Agreement or the rights granted hereby with respect to the Premises, or otherwise delegate any of its duties hereunder without the prior written consent of the Town of Nantucket, which may be withheld at the sole discretion of the Town of Nantucket. Any such attempted disposition without the consent of the Town of Nantucket in writing shall be null and void and of no force and effect. The terms, covenants and agreements herein contained shall be binding upon and shall insure to the benefit of the permitted successors and assigns of the respective parties hereto.
- 6) **Decisions by the Town of Nantucket.** Except as otherwise expressly provided in this Agreement, any decision or action taken by the Town of Nantucket relating to this Agreement or its operation or its termination shall be made by a majority vote of the Board of Selectmen. Responsibilities to monitor obligations shall be undertaken by the Procurement Office.
- 7) **Notices.** All notices required or permitted to be given to Town of Nantucket or Concessionaire shall be in writing and shall be given personally, or sent by certified mail return receipt requested, addressed to such party at its latest address of record. Notices to and payments to the Town of Nantucket shall be addressed to the Town of Nantucket at its offices, Two Bathing Beach Road, Nantucket, MA 02554 and notices to the Concessionaire addressed to it at its principal business address, which Concessionaire represents as appearing on the first page of this Agreement, or to such other addresses as the parties may designate to each other by such notice from time to time.
- 8) **Governing Law.** This Agreement is governed by the laws of the Commonwealth of Massachusetts. In any controversy, litigation or action arising hereunder, each party, including successors and assigns, irrevocably consents to the jurisdiction of the courts of Massachusetts, agrees that venue shall be proper only there; and waives personal service of any summons, complaint or other process and agrees that service thereof may be made in the manner of other notice given hereunder.
- 9) **Entire Agreement; Amendment Interpretation.** This Agreement and the specifications advertised by the Town of Nantucket constitute the entire agreement between the parties superseding all prior or contemporaneous oral or written understandings. No amendment or other modification of the terms of the Agreement shall be binding unless in writing, and duly executed by the parties hereto. No waiver of default by either party of any of the terms, covenants, and conditions of this Agreement shall be deemed continuing or extending beyond the terms specifically waived in writing. If any provision of this Agreement shall be held unlawful, invalid, or unenforceable, the remainder of the Agreement shall not be affected thereby. Paragraph headings contained herein are for reference only and are not intended to define or limit the scope of any provisions of this Agreement.

**K. OTHER CONCESSIONAIRE'S OBLIGATIONS**

- 1) **Keys.** Provide keys to the Town for all locked areas within the Premises.
- 2) **Non Emergency Repairs.** Concessionaire shall request prior written approval from the Town for any non emergency repairs to be made to the Premises at Concessionaire's expense. If the work is scheduled between April 15<sup>th</sup> and Labor Day the Town must also sign off on any non emergency repairs. Pending the status of the State and Federally listed species and the description of the non emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the approved repairs.
- 3) **Emergency Repairs.** Any emergency repairs Concessionaire will confirm in writing; responsibility for payment of such repairs will be determined in accordance with the terms herein. If the work is scheduled between April 15<sup>th</sup> and Labor Day the Town must also sign off on any emergency repairs. Pending the status of the State and Federally listed species and the description of the non emergency repairs, the Concessionaire may be required to hire monitor(s) through the Endangered Species Program to be present during the repairs.
- 4) **Accidents.** Concessionaire shall report any emergencies, accidents or incidents that occur within the Premises to the Town in a timely manner. Exhibit E

IN WITNESS WHEREOF, the parties shall in good faith negotiate the terms and conditions of the Lease in accordance with the terms contained in this term sheet as well as all customary and usual lease provisions.

TOWN OF NANTUCKET

SANDBAR, LLC

  
\_\_\_\_\_  
C. Elizabeth Gibson  
Town Manager

  
\_\_\_\_\_  
George Kelly  
Co-Owner

  
\_\_\_\_\_  
Nicholas Nass  
Co-Owner

MUNIS Org/Obj (Revenue Account):

01122 43621

Approved:  
  
\_\_\_\_\_  
Brian Turbitt,  
Director of Municipal Finance

TAX COMPLIANCE CERTIFICATION

Pursuant to M.G.L. 62C, Sec.49A, the undersigned certifies under the penalties of perjury that it, to the best knowledge and belief of management, has filed all state tax returns and paid all state taxes required under law (if any, are so required).

By: *[Signature]*

*Kathy Kelly*

Name, ~~President~~ *owner - MANAGER*

*11/2/16*

Date

*81-3784348*

FEIN:

## EXHIBIT A

### CONTRACTOR, SCOPE OF WORK, TERM

1. **Name of Contractor:** SandBar, LLC.
2. **State of Incorporation:** Massachusetts
3. **Principal Office Address:** SandBar, LLC  
29A South Shore Road  
Nantucket, MA 02554
4. **Description of Services (§2.1):** Jetties Beach Concession and Retail Shop lease as described herein
5. **Person, Department, or Committee, if any, to whom CONTRACTOR reports (§ 2.2):**  
  
For Lease Terms and General Oversight: Chief Procurement Officer  
For Facility Matters: Facilities Manager  
For Beach and Endangered Species Matters: Natural Resources Coordinator
6. **Term of Agreement (§3.1):**  
  
Five-year lease (January 1, 2017 through December 31, 2021)
7. **Completion Date (§3.2):** December 31, 2021
8. **Additional Insurance Coverage (§6.2(e)):**

**EXHIBIT B**  
**LEASE PAYMENTS**

1. Lump Sum Method

a. **Maximum Lease Amount:** \$663,075.00

b. **Payment Increments:**

July 1, 2017:	\$60,000.00
August 1, 2017:	\$60,000.00
July 1, 2018:	\$63,000.00
August 1, 2018:	\$63,000.00
July 1, 2019:	\$66,150.00
August 1, 2019:	\$66,150.00
July 1 2020:	\$69,457.50
August 1, 2020:	\$69,457.50
July 1, 2021:	\$72,930.00
August 1, 2021:	\$72,930.00

c. ***Monthly Sales Percentage Over \$1,000,000 Gross Sales:***

2017:	5.0%
2018:	5.0%
2019:	6.0%
2020:	6.0%
2021:	6.0%

d. **Reimbursable Expenses** (if any): None.



## EXHIBIT C

### JETTIES BEACH & PAVILION – BEACH EVENT FORM

One of these forms must be completed and submitted to the Natural Resources Department for each event, either before the initial May 15<sup>th</sup> deadline or directly after any event at Jetties Beach has been scheduled. Failure to do so may result in the loss of Jetties Beach use for future events. It is required by the state that the Town of Nantucket implement a Beach Management Plan, including an Endangered Species Program, to protect both state and federally listed species. The following information will be required for any event held within proximity of any state or federally listed species habitat, nesting adults, juvenile chicks, and/or unfledged chicks. Each event must hire endangered species monitor(s) through the Town to be present during the event and, if necessary, during the set up and removal of any tent(s), tables, floors and etc. There will be a **\$15/hr fee (per monitor)\*** for any additional use of the monitors outside of their scheduled times, usually 8am-6pm. If needed, alterations may be made to this information within 48 hours of the event.

#### BASIC INFORMATION

Location of Event:		Type of Event:
Date of Event:	Time of Event (start-finish):	Number of Expected Guests:

#### TENT INFORMATION

Is a Tent being used; if yes what Company? <input type="checkbox"/> No <input type="checkbox"/> Yes, _____		Contact person of Tent Company and Phone Number:
If yes to tent:	Date to set up Tent:	Time to set up Tent:
	Contingency date to set up Tent:	Contingency time to set up Tent:
	Date to remove Tent:	Time to remove Tent:
	Contingency date to remove Tent::	Contingency time to remove Tent::

#### FLOOR INFORMATION

Is a Floor being used; if yes what Company? <input type="checkbox"/> No <input type="checkbox"/> Yes, _____		Contact person of Floor Company and Phone Number:
If yes to Floor:	Date to set up Floor:	Time to set up Floor:
	Contingency date to set up Floor:	Contingency time to set up Floor:
	Date to remove Floor:	Time to remove Floor:
	Contingency date to remove Floor::	Contingency time to remove Floor::

#### MUSIC INFORMATION

Is there going to be Music? <input type="checkbox"/> No <input type="checkbox"/> Yes		If yes by whom/what type?	Contact name & information for Music:
If yes to Music:	Sound Check Date:	Sound Check Time:	

#### CATERING INFORMATION

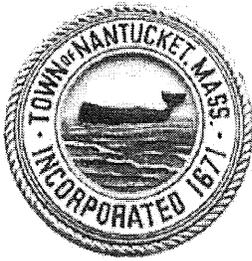
Is it Catered? <input type="checkbox"/> No <input type="checkbox"/> Yes		If yes, by whom?	Contact Number:
If yes to Caterer	Number of Caterers Staff:	Set up time:	Take down time:
	Are there going to be other structures used at the event, if yes what type (tables, chairs, generators, etc.) and how many? <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> No <input type="checkbox"/> Yes, _____		

#### REMINDER: A THOROUGH CLEAN UP PLAN IS REQUIRED FOR EVERY EVENT!

Note: Monitors are usually scheduled to be on the beaches from 8:00am to 6:00pm 7 days a week. It is suggested that any preparations for the event, such as tent erection, be done between the hours when monitors are scheduled to be present on the beach. Anything before or after these hours will be **\$15 per hour/per monitor\***, and will be charged to the event. No event, or setting up/taking down of an event, can take place without a monitor present first. Be sure to contact the Beach Manager beforehand to be sure the appropriate people will be present.

CONCESSIONAIRE: \_\_\_\_\_ DATE: \_\_\_\_\_ NATURAL RESOURCES: \_\_\_\_\_ DATE: \_\_\_\_\_

\* This figure is subject to change at the Annual Town Meeting.



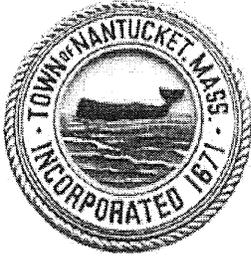
**EXHIBIT D**  
**Nantucket Endangered Species Program**  
**Beach Event Detail**

**Employer-Billing Information**  
**Event/Detail Information**

<b>Type of Detail:</b>  (Wedding, Cocktail Party, Cookout, etc)		<b>Location:</b>	
<b>Date of Detail:</b>	<b>Detail Start Time:</b>	<b>Detail Finish Time:</b>	
<b>Total Hours to be Invoiced:</b>	<b>Detail Rate*:</b>	<b>Total Due**:</b>	
<b>Name of Company/Person to be Invoiced for Detail:</b>			
<b>Name of Contact if Different From Above:</b>			
<b>Billing Address:</b>			
<b>City, State and Zip Code:</b>			
<b>Federal Tax ID Number/SSN:</b>			
<b>Has Company/Person Previously Hired a Detail Beach Monitor?:</b> Y    N			
<i>* Detail/Seasonal Rates may vary annually per Annual Town Meeting vote. Please check with the Natural Resources Department for current rates.</i>			
<i>**The Town of Nantucket applies a 10% Administration Surcharge and a Medicare Surcharge of 1.45% on all Details. This will be added to the Total Due.</i>			

**Beach Monitor Approval**

<b>Approved By:</b>	<b>Date:</b>
<b>Monitor Assigned:</b>	



## EXHIBIT E

### Beach and Concession Incident Report Form

**INSTRUCTIONS:**

1. This Form should be completed by the Concessionaire and representatives from the Natural Resources Department and the Town of Nantucket when s/he or his/her employees are involved with an incident in the vicinity of the Concession or Jetties Beach.
2. Keep a copy for your records and submit the original Form to the Town of Nantucket.

**GENERAL INSTRUCTIONS**

Name of Individual Involved in Incident (one Form per Individual):		
Address:		
Home Phone:	Work Phone:	Email:
Date and Time of the Incident:		
Exact Location of the Incident:		
Witness Name:	Witness Phone Number:	Other Contact Information:

**INCIDENT**

Briefly describe the incident; give as many details as possible. Identify others involved:
Describe any immediate action taken and by whom:
Were Public Safety Officials Contacted/Involved:  Lifeguard    NPD    NFD    NRD    USF&W    EPO    DPW    Other: _____
Contact Person at Official Agency:
Is there a Case/Incident Number: #

## Beach and Concession Incident Report Form Continued

### DAMAGE OR THEFT

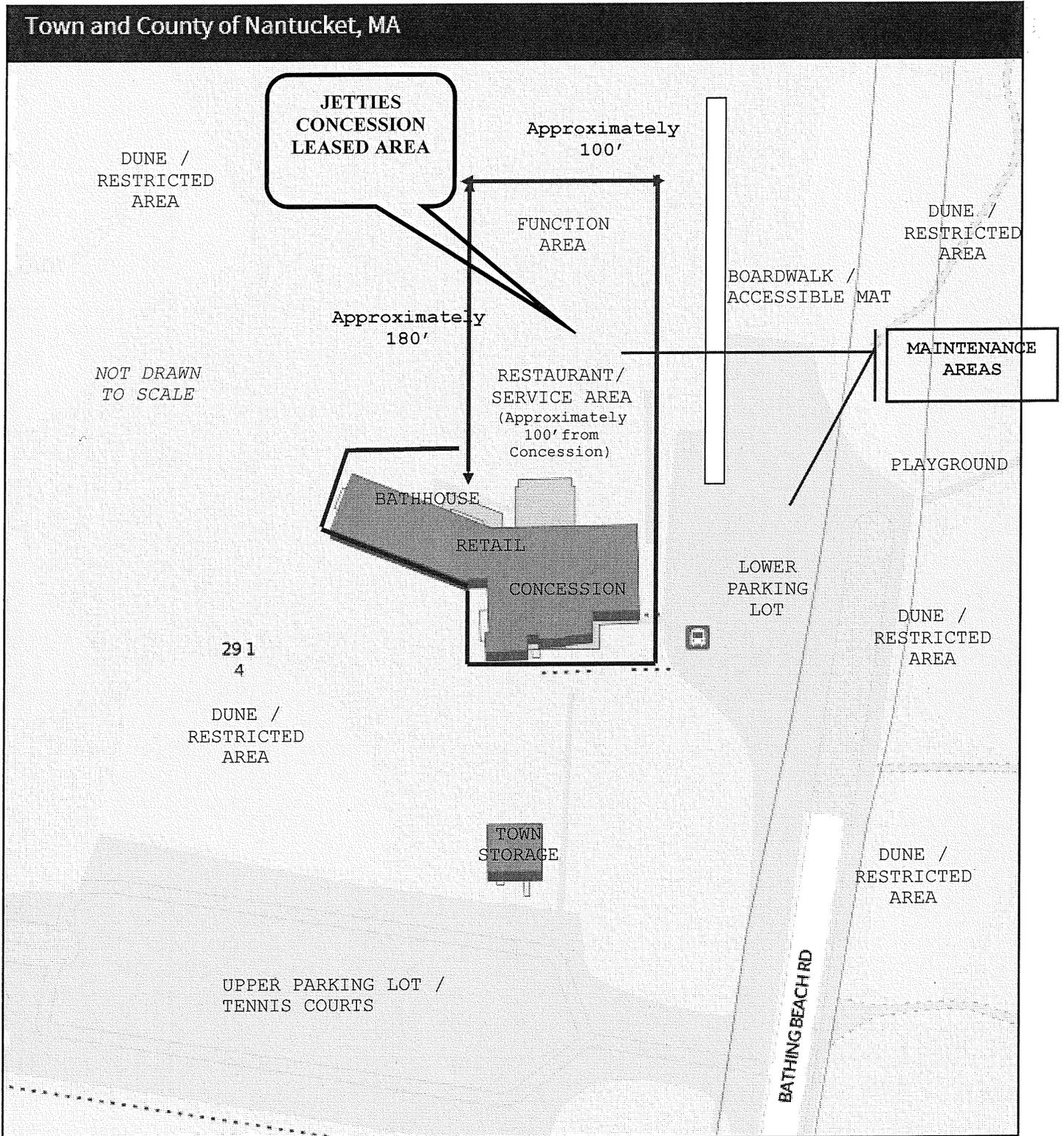
Exact description of damage or loss:	
Describe the Property/Location in detail:	
First noticed by whom?:	Phone Number:

### ADDITIONAL INFORMATION

Person completing this report:	
Phone number:	Email:
Additional information:	
I attest that the information given on this Form is accurate to the best of my knowledge	
_____ Signature	_____ Date

## EXHIBIT F JETTIES BEACH CONCESSION AREA

The Concession premises (hereinafter called the Premises) shall include the Concession building and the Retail/Bathhouse and the tent function area; beginning at the corner of the concession deck closest to the Parking lot walking approximately 180' perpendicular towards the ocean at that point turning West, parallel to the Ocean, walking approximately 100' thence turning South heading approximately 180' to the corner to Bathhouse squaring off the parameters of the tent function area. as shown in Exhibit "F".



**EXHIBIT G**  
**JETTIES BEACH**  
**CONCESSION ASSET LIST**  
**STATEMENT**

(as of July 2016)

The Jetties Beach Concession consists of the following Town owned assets:

Building 1 – Main Concession: Two story, wood framed, non-insulated structure on pier type foundations, with water, sewer, electrical and fire alarm system services.

First Floor

Kitchen area (10' x 40") complete with:

- 1 Large walk-in cooler (10' x 6') with an outdoor condenser.  
Concessionaire is responsible for starting it up for the season and for properly closing it down after the season is over.
- 1 Vent hood (12 ft.) and exhaust fan over a grill/frying area.  
Concessionaire is responsible for properly cleaning it each season and for cleaning any grease filters etc., as needed.
- 1 Fire suppression system mounted to the Vent hood. Concessionaire is responsible for having it inspected annually and for any ongoing maintenance as necessary.
- 1 kitchen scullery sink (3 bay) connected to the floor level grease trap.  
The concessionaire is responsible for emptying the grease trap as needed and for draining and cleaning at the end of each season.
- 1 set of kitchen ventilation/cooling fans with an open wall screened vent..  
(Currently no AC in the building.) Concessionaire is responsible for cleaning and maintaining the fans on an as needed basis.
- Currently kitchen is not plumbed for a dishwasher.
- Gas lines extending from 3 - 420 lb LP tanks (located outside) and leading to the grill area under the vent hood. (Note: the 12 burner grill, fryolators, and charbroiler are owned by the current concessionaire)
- 1 small, wall mounted hand washing sink (Stainless Steel)
- Misc electrical outlets for convection ovens, steamer, freezers and coolers, etc.  
(Note: The convection ovens, freezers and coolers are all owned by the current concessionaire)

Salad, Drink and Order Prep area (12' x 40') with:

- 1 small, wall mounted, hand washing sink (Stainless Steel)
- Take-out windows (2)
- Electrical outlets over the door and take-out window for 2 Air-Doors. (Existing Air Doors are owned by the current concessionaire)
- (Note: The several, various sized refrigerators, coolers and freezers located in the kitchen and the prep area, are all owned by the current concessionaire.)
- Hot food transfer counter (from kitchen to order prep)

Wood Roof covered deck area (14' x 55') with:

- Outdoor bar, sink, cabinet and counter-top. (Bar stools and beer cooler are owned by the current concessionaire)
- 1 small wall mounted, hand washing sink (Stainless Steel)
- The existing 25 or so high top tables are owned by the current concessionaire as do the accompanying bar stools & chairs.
- The three large ceiling fans are owned by the current concessionaire.
- Gas line to service two space heaters. Note, existing space heaters are owned by current concessionaire.
- Two ADA accessible restrooms are entered through this area. Note, the concessionaire is responsible for cleaning and maintaining these restrooms as well as stocking them with appropriate supplies. These restrooms are for both patrons of the restaurant and of the beach. They are to be opened during hours of concession operations or at least 9:00 am to 5:30 pm when concession is closed the second week of May through Columbus Day.

Fabric Awning covered deck area (1,350 ft<sup>2</sup>) with:

- 18 picnic tables
- Fixed wooden decking with wooden railing and posts
- Note the fabric awning and the associated metal framing, are owned by the current concessionaire.

Second Floor

- Office area (Note, office furnishings are owned by the current concessionaire).
- Bedroom 1
- Bedroom 2
- Bathroom
- Open area for shelving storage

Building 2 – Bath House:

- Single storey, wood frame, open construction bath house, with:
  - Public Restrooms
  - Outdoor showers on the beach side wall
  - Retail Shop Area (Outfitted by the Concessionaire)
  - Storage Rooms for concessionaire use
  - Washer and Dryer are property of current concessionaire
  - 4 chest style freezers are property of current concessionaire

Building surroundings:

- The concession has its own paved driveway with room to accommodate 2 vehicles, three roll-off dumpsters, three 420 lb propane tanks and a 6' x 8' plastic storage shed (owned by the current concessionaire)
- Leased Beach Area: The concession also has about 500 ft<sup>2</sup> of moveable boardwalk. They are built in sections that can be arranged in a variety of configurations to suit the concessionaire and are often configured to

accommodate Concessionaire. The Town's Department of Public Works places the boardwalk sections in the spring and stores them in the fall. Public Works also maintain the boardwalk sections throughout the year.

- Electrical Service is the responsibility of the Concessionaire.
- Water Service
  - The Concession is serviced by Town water – Wannacomet Water Company.
  - Concessionaire is responsible for turning the water off at the end of the season (or the lease) and is responsible for all costs associated with that (plumber and water company charges, etc.) and for all water bills during the term of the lease.
  - Concessionaire is responsible for turning the water on at the beginning of each season (or the start of the lease) and is responsible for all costs associated with that (plumber and water company charges, etc). Coordination of these efforts is by the concessionaire.
- Sewer Service
  - The Concession is serviced by Town Sewer.

#### Miscellaneous Information of Note

With the exception of the fire alarm system, the concessionaire is responsible for arranging all necessary permits and inspections (equipment and/or facility) needed for him to operate his business in accordance with all of the applicable laws and ordinances. Concessionaire is also responsible for any costs associated with the permits, the inspections and with bringing everything into compliance.

Concessionaire is responsible for containing and properly disposing of all of his trash in the leased area, including the Lower Parking Lot.