



# TOWN OF NANTUCKET

## AGREEMENT BETWEEN THE TOWN OF NANTUCKET, MASSACHUSETTS AND AMBERGRIS d/b/a THE HUNGRY MINNOW

THIS AGREEMENT made effective March 22, 2017, by and between the **TOWN OF NANTUCKET, MASSACHUSETTS**, a municipal corporation, acting by and through its Town Administration, with offices at Town Hall, Nantucket, Massachusetts 02554 (hereinafter called the "TOWN"), and **AMBERGRIS d/b/a THE HUNGRY MINNOW** whose principal office address and state of incorporation are as set forth on Exhibit A (hereinafter called the "CONTRACTOR") expiring on December 31, 2021.

### RECITALS:

WHEREAS, the TOWN desires to retain the CONTRACTOR to provide certain services for the TOWN, as described below, and the CONTRACTOR is willing to accept such engagement, all on the terms hereinafter set forth,

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**General:** The Concessionaire is responsible for the Operation of a food and beverage Concession and optional retail sales exclusively along with a non-exclusive license to use the remainder of the Premises along with the public at Children's Beach, Harbor View Way, Nantucket, MA. The Concessionaire is also responsible for custodial maintenance of the Premises Area on a daily basis as well as to support the clean-up of the Beach Management area on a weekly basis, as indicated on Exhibit E. Note: The Premises Area is within a traditional habitat area for both State and Federally protected shorebirds.

**Concession Premises:** The Concession premises (hereinafter called the Premises) shall include the Concession Building, Restrooms and the area immediately surrounding the facility as shown in Exhibit E.

### A. CONCESSION FEE AND OTHER CHARGES

1. **Concession Fee:** The Concessionaire shall pay an annual Fee in the amount set forth on the Bid Form attached to this Lease agreement as Lease agreement Exhibit B for each occupancy period during the term hereof. The Concession Fee shall be payable in two equal installments, the first due on or before August 1 and the second due on or before September 1 of each year. The Concessionaire's 10% bid deposit will be credited toward the first payment of the first year's Concession fee. The fee based on the percentage above gross sales of one hundred thousand dollars (\$100,000) shall be submitted to the Finance Department by December 31 of each year of the contract. Monthly financial statements (profit & loss) are required to be submitted to the Director of Municipal Finance through the Facilities Manager or his/her designee by the 15<sup>th</sup> of each month, with the final statement totaling the season due no later than December 31 of each year.

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2. **Property Tax Assessments:** Property tax assessments may be made by the Nantucket Assessor's office. The Concessionaire is responsible for payment of these bills, and for filing abatement if appropriate.

3. **Security Deposit:** The Concessionaire shall file with the Town a \$2,000.00 security deposit payable prior to the signing of the lease, refundable at the end of the 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 Lease agreement and left the premises in adequate condition according to the Town and after presenting proof that all utility payments have been made and no defaults are left outstanding.

4. **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 all 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 Finance Department 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 has the right at its discretion to pay any outstanding amounts from the security deposit as stated in Section A-3 above. The Concessionaire is required to report payments of all utilities for the year to the Facilities Manager or his/her designee no later than December 1 of each year of the contract. Monthly reporting is acceptable.

5. **Other Fees and Utilities:** The Concessionaire shall also be responsible of all licensing fees as determined by the Town, all utilities and all other costs associated with the operation of the premises; 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 the date of the Lease agreement award 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 mid-April through mid-October unless otherwise agreed upon with the Facility Manager to open and close the facility on different dates; with preference to keep at least some limited hours from Mid-April through Memorial Day and from Labor Day through the Monday of Columbus Day Weekend. See C. CONCESSIONAIRE'S OBLIGATIONS, 2. Food Services.

## C. CONCESSIONAIRE'S OBLIGATIONS

### OBLIGATIONS

1. **Concession Facility:** Concessionaire agrees to operate a Concession facility of a typical snack bar business in accordance with the applicable rules and regulations and to obtain appropriate licenses before operating the facility and presenting the Town with the same. Food menus may be limited. The Concessionaire shall operate the Premises so as to enhance the public's use and enjoyment of the

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Town of Nantucket

Children's Beach Concession Lease – Ambergris

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adjacent public beach facility and in the best interest of the residents of and visitors 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.

2. **Food Services:** The Concessionaire may run a limited menu of a typical snack bar from at least 11:00 AM through 5:00 PM seven (7) days per week from the Friday prior to Memorial Day through ten (10) days after Labor Day each calendar year required; with preference to keep at least some limited hours from Mid-April through Memorial Day and from Labor Day through the Monday of Columbus Day Weekend. Breakfast and dinner options are encouraged and may be served at the discretion of the Concessionaire, but are not required. Concessionaire shall limit service to the area immediately adjacent to the Concession facility. Chairs, tables or picnic benches with/without umbrellas are allowed on the deck and immediately adjacent to Concession building but are not allowed in the Parking Lot, Playground, or Beach Area. Concessionaire may put additional picnic benches on the Park lawn with the permission of the Town.

3. **Retail Sales.** A small retail sales operation will be allowed and is exclusive to this lease. The sale of clothing, souvenirs and/or traditional beach-related goods from inside the Concession building is permitted. Display of beach chairs, umbrellas, windbreaks and other comparable equipment offered for sale or rent will not be permitted on the Concession deck, Bandstand, Park, Beach or Parking Lot.

4. **Rental Equipment:** The Concessionaire is allowed to rent beach chairs, beach towels, boogie boards and other approved beach/surf equipment from the Concession facility.

5. **Accessible Beach Wheel Chairs.** Concessionaire is also expected to manage (reserve, arrange delivery, loan out and collect) the "free rental" of beach wheel chairs as provided by the Department of Public Works. The Concessionaire is not required to repair or maintain these accessible beach wheel chairs, however the Concessionaire is required to inform the Department of Public Works of needed repairs.

6. **Private Functions:** No private functions are allowed in the Premises area. Public Special Events may occur in the Premises Area or Beach Maintenance Area if properly permitted by the Town.

7. **Public Restrooms:** At a minimum the Concessionaire shall operate the Bathroom facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the Friday prior to Memorial Day through Columbus Day Weekend each year. The Concessionaire shall open the Bathroom facility at all times while the Concession is operating. The Town of Nantucket reserves the right to open and staff the Bathroom facility 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. A Maintenance Log of twice daily cleanings shall be provided and visually displayed in bathroom area for inspection. Exhibit D.

8. **Kitchen Equipment:** The Concessionaire shall provide and install all kitchen and food and drink equipment not already provided by the Town of Nantucket. Any purchase of equipment by the Concessionaire from previous Concessionaire would be a private agreement and not part of the Lease agreement for the facilities. Concessionaire is responsible for maintenance and 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. It shall be the sole responsibility of the Concessionaire to remove one's own

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equipment installed in the Premises prior to the expiration of this Lease agreement and to repair any damages resulting from such removal. Any such equipment remaining after the expiration of this Lease agreement shall, at the option of the Town, either become the property of the Town or be removed and disposed of by the Town at the expense of the Concessionaire. The Concessionaire is responsible for preventive maintenance for the equipment provided by the Town. 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 Lease agreement Exhibit F.

**9. Custodial Services:** The Concessionaire shall clean, or arrange for cleaning of, the Bathrooms twice daily to maintain them in a condition satisfactory to the Town. The Concessionaire shall supply and maintain paper, soap and supplies as needed. The Concessionaire shall provide adequate numbers of trash receptacles in the Concession Stand area and the walkway to the Beach that will be maintained by the Concessionaire in addition to the receptacles supplied by the Town.

The Concessionaire shall provide for daily trash pick-up throughout the Premises (Concession, Bathroom, Playground area) twice daily. The Concessionaire shall coordinate with the Town (through the Department of Public Works and the Marine Department) to provide for at least weekly beach-cleaning assistance to ensure the walkway and beach area are tidy without trash or hazardous materials.

**10. Maintenance:** The Concessionaire shall provide all custodial maintenance inside the buildings and outside the buildings in the Premises Area indicated on Exhibit E, policing the Premises area 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 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 informing the Department of Public Works 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 Public Works Department.

**11. 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 approval from the Parks and Recreation Commission and a Certificate of Appropriateness from the Historic District Commission. The Concessionaire shall then obtain the written permission of the Town.

**12. Alcoholic Beverages:** No Alcoholic Beverages are to be served or consumed anywhere on the premises at any time.

**13. Use of Automobiles:** The Concessionaire may use a maximum of two (2) parking spaces adjacent to the Concession stand and must keep parked vehicles out of all traveled roadways in the parking area. This includes but is not limited to any delivery, trash or pick-up vehicle or any vehicle owned or operated by the Concessionaire or any employee of the Concessionaire.

**14. No Pets:** The Concessionaire and/or its employees are prohibited from bringing his/her pet (s) to work with the exception of certified service animals.

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15. **End of Season Inspection:** The Concessionaire shall schedule with the Department of Public Works a date and time for the end of season inspection, no later than November 1 of each year. 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 and 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 the written consent of the Town of Nantucket in advance. 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. In the event the Beach area becomes a habitat area for any State and Federally listed species then 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 of Nantucket 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 Lease agreement 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.

## 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 \$1,000,000. 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 is to be provided to the Town of Nantucket yearly 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 Facility:** The Concessionaire may run a limited menu of a typical snack bar from at least 11:00 AM through 5:00 PM seven (7) days per week from the Friday prior to Memorial Day through ten (10) days after Labor Day each calendar year required; with preference to keep at least limited hours through the Monday of Columbus Day Weekend. Breakfast and dinner options are encouraged and may be served at the discretion of the Concessionaire, but are not required. The Concessionaire is encouraged

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to extend the hours of operation in from May 1 through Columbus Day. In the event of the beach being unoccupied and closed due to inclement weather the Concessionaire may close after notifying the Town of Nantucket.

2. **Public Bathroom Facilities:** At a minimum the Concessionaire shall operate the Bathroom facilities between the hours of 9:00 am and 5:30 pm seven (7) days per week from the Friday prior to Memorial Day through Columbus Day Weekend each year. The Concessionaire shall open Bathroom facilities at all times while the Concession is operating. The Town of Nantucket reserves the right to open and staff the Bathroom 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 (per C-10 above).

## G. INDEMNIFICATION

1. **Indemnification:** The Concessionaire agrees at all times during the term of this Lease agreement to indemnify and 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 Lease agreement.

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 or annual budget appropriations. This would include parking lot maintenance, bike rack maintenance, beach fencing, 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 and 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 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

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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

A. **Events of Default.** The occurrence of any of the following shall constitute an Event of Default by the Concessionaire hereunder:

1. **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
2. **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 of Nantucket 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
3. **Failure to comply with the Commission's Regulations:** The Concessionaire agrees to comply with the current Town of Nantucket Guidelines.
4. **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.

B. **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.

C. **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

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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

**A. 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.

**B. 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. Exhibits C and G.

**C. 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.

**D. 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.

**E. 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 inure to the benefit of the permitted successors and assigns of the respective parties hereto.

**F. 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 Park & Recreation Commission. Responsibilities to monitor obligations shall be undertaken by the Director.

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**G. 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.

**H. 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.

**I. 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**

**A. Keys.** Provide keys to the Town of Nantucket for all locked areas within the Premises.

**B. Non Emergency Repairs.** Concessionaire shall request prior written approval from the Public Works Department for any non emergency repairs to be made to the Premises at Concessionaire's expense. In the event the Beach area becomes a habitat area for any State and Federally listed species then any improvements and/or work to the premises is scheduled between April 15<sup>th</sup> and August 31<sup>st</sup> the Town of Nantucket 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 said repairs.

**C. 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. In the event the Beach area becomes a habitat area for any State and Federally listed species and if the work is scheduled between April 15<sup>th</sup> and August 31<sup>st</sup> the Town of Nantucket 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 said repairs.

**D. Accidents.** Concessionaire shall report any emergencies, accidents or incidents that occur within the Premises to the Director in a timely manner in Lease agreement Exhibit E.

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E. **Agreement.** The successful bidder shall be responsible for adhering to all of the provisions stated in the Lease agreement.

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

TOWN OF NANTUCKET,  
MASSACHUSETTS:

AMBERGRIS:

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

\_\_\_\_\_  
Rebecca Chapa  
President

Funding Org/Obj: \_\_\_\_\_

FEIN:

Approved as to Funds Available

Purchase Order # \_\_\_\_\_

\_\_\_\_\_  
Brian E. Turbitt – Finance Director or Bob  
Dickinson – Assistant Town Accountant

# TOWN OF NANTUCKET

## LEASE AGREEMENT EXHIBIT A

### CONTRACTOR, SCOPE OF WORK, TERM

1. **Name of Contractor:** Ambergris
2. **State of Incorporation:** Massachusetts
3. **Principal Office Address:** 23 Macy's Lane  
Nantucket, MA 02554
4. **Description of Services:** The Concessionaire is responsible for the Operation of a food and beverage Concession and optional retail sales exclusively along with a non-exclusive license to use the remainder of the Premises (park, bandstand, beach, parking lot) at Children's Beach, Harbor View Way, Nantucket, MA. The Concessionaire is also responsible for custodial maintenance of the Premises Area on a daily basis as well as to support the clean-up of the Beach Management area on a weekly basis, as indicated on Exhibit E
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 Recreation Activities:             | Events Coordinator            |
| For Endangered Species Matters:        | Natural Resources Coordinator |
| For Beach and Lifeguards:              | Harbormaster                  |

Please note that the Parks and Recreation Commission has authority over Children's Beach and questions regarding the use of the property must be directed to the Commission through the Office of Culture and Tourism.

6. **Term of Agreement (§3.1):** Five (5) years
7. **Completion Date (§3.2):** December 31, 2021
8. **Additional Insurance Coverage (§6.2(e)):** None

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## LEASE AGREEMENT EXHIBIT B

### PAYMENTS

#### CHILDREN'S BEACH CONCESSION

a. Maximum Lease Amount: \$93,946

b. Payment Increments:

| CONTRACT YEAR                        | PAYMENT DUE ON OR BEFORE AUGUST 1                | PAYMENT DUE ON OR BEFORE SEPTEMBER 1 | TOTAL ANNUAL BASE PAYMENT | PERCENTAGE SALES OVER \$100,000 GROSS ANNUALLY DUE ON OR BEFORE DECEMBER 1 |
|--------------------------------------|--|--------------------------------------|---------------------------|--|
| Year 1: Jan. 1, 2017 – Dec. 31, 2017 | \$8,500.00<br>- \$1,700.00 (Dep)<br>= \$6,800.00 | \$8,500.00                           | \$17,000.00               | 3.0% above \$100,000 gross sales.  |
| Year 2: Jan. 1, 2018 – Dec. 31, 2018 | \$8,929.50                                       | \$8,929.50                           | \$17,859.00               | 3.0% above \$100,000 gross sales.  |
| Year 3: Jan. 1, 2019 – Dec. 31, 2019 | \$9,371.50                                       | \$9,371.50                           | \$18,743.00               | 3.0% above \$100,000 gross sales.  |
| Year 4: Jan. 1, 2020 – Dec. 31, 2020 | \$9,840.00                                       | \$9,840.00                           | \$19,680.00               | 3.0% above \$100,000 gross sales.  |
| Year 5: Jan. 1, 2021 – Dec. 31, 2021 | \$10,332.00                                      | \$10,332.00                          | \$20,664.00               | 3.0% above \$100,000 gross sales.  |
| TOTAL AMOUNT FOR 5 YEAR LEASE:       |  |                                      | \$93,946.00               |  |

c. Reimbursable Expenses (if any): None.

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## LEASE AGREEMENT EXHIBIT C

### 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:

\_\_\_\_\_  
Rebecca Chapa, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
FEIN:

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## CERTIFICATE OF NON-COLLUSION

The undersigned certifies under penalties of perjury that this bid or proposal has been made and submitted in good faith and without collusion or fraud with any person. As used in this certification, the word "person" shall mean any natural person, business, partnership, corporation, union, committee, club, or other organization, entity, or group of individuals.

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Rebecca Chapa

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Ambergris

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## LEASE AGREEMENT EXHIBIT D

### Children’s Beach Restroom Facility Weekly Maintenance Log

**Must be displayed on the wall in each restroom facility**

|             | Date | Time | Toilets & Sinks |         | Mirrors |         | Paper Towels, Toilet Paper, Soap |        | Floors  |         | Trash Cans |         | Initials |
|-------------|------|------|-----------------|---------|---------|---------|----------------------------------|--------|---------|---------|------------|---------|----------|
|             |      |      | Checked         | Cleaned | Checked | Cleaned | Checked                          | Filled | Checked | Cleaned | Checked    | Emptied |          |
|             |      |      | Sunday 1        |         |         |         |                                  |        |         |         |            |         |          |
| Sunday 2    |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Monday 1    |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Monday 2    |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Tuesday 1   |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Tuesday 2   |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Wednesday 1 |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Wednesday 2 |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Thursday 1  |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Thursday 2  |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Friday 1    |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Friday 2    |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Saturday 1  |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |
| Saturday 2  |      |      |                 |         |         |         |                                  |        |         |         |            |         |          |

Reviewed and approved by: \_\_\_\_\_ Date: \_\_\_\_\_  
 Signed Maintenance Logs must but be retained by Concessionaire for records and submitted to the Town upon demand

# TOWN OF NANTUCKET

## LEASE AGREEMENT EXHIBIT E

### LEASED PREMISES AREA



# TOWN OF NANTUCKET

## LEASE AGREEMENT EXHIBIT F

### MAINTENANCE REQUIREMENTS

All Concessions:

General Maintenance: All equipment is cleaned and oiled as needed.  
Concessionaire responsible for maintaining screen doors and windows

End of Each Season:

Hoods and fan are cleaned; Hood fan wrapped for winter, Grease traps emptied walls and floors scrubbed to remove any and all grease; all equipment shall be cleaned and oiled, i.e. fryolator and/or grill.

Concessionaire meets with the Department of Public Works (Facilities) to go over premises and repairs needed prior to next season

Specific to

Jetties: Nothing is to be stored under buildings; Ice Machine and bin are to be moved inside.

Children's: Nothing is to be stored under building

Surfside: Nothing is to be left outside.



# TOWN OF NANTUCKET

None of the person(s) is an official elected to public office in the Commonwealth of Massachusetts, except as listed below"

| Name |  | Title or Position |
|------|--|-------------------|
|      |  |                   |
|      |  |                   |
|      |  |                   |
|      |  |                   |

6. This section must be signed by the individual(s) or organization(s) entering into this real property transaction with the public agency named in item 1. If this form is signed on behalf of a corporation, it must be signed by a duly authorized officer of that corporation.

The undersigned acknowledges that any changes or additions to item 4 of this form during the term of any lease or rental will require filing a new disclosure with the Division of Capital Planning and Operations within 30 days following the change or addition.

The undersigned swears under the pains of penalties of perjury that this form is complete and accurate in all respects.

Signature

Date:

Printed Name  
Title