



TOWN OF WEST SENECA

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TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
JOHN M. RUSINSKI

TO: Honorable Town Board Members
FROM: Shawn P. Martin, Town Attorney
DATE: September 20, 2012
RE: Ice Rink Concession agreement

Kindly authorize the Supervisor to execute the attached concession Agreement for West Seneca ice rink. 7k Unlimited was the only bidder to the RFP that was published and provided to various entities and individuals.

SEP 24 2012
12.

**AGREEMENT FOR HOCKEY PRO SHOP
AND
CONCESSION STAND SERVICES
(Town of West Seneca, New York)**

THIS AGREEMENT (the "Agreement") is made and entered into as of _____, 2012, by and between **7k UNLIMITED, INC.**, a New York business corporation with an address at 3011 Cloverbank, Sawgrass Court #39, Hamburg, New York 14075 (the "Company") and the **TOWN OF WEST SENECA, NEW YORK**, a municipal corporation of the State of New York with offices at 1250 Union Road, West Seneca, New York 14224 (the "Town").

RECITALS:

A. The Company is in the business of operating hockey pro shops, concession stands and vending machines at municipal ice rinks and other recreational facilities.

B. The Company responded to the Town's request for proposals for concession stand and hockey pro shop services to be provided at the ice rink facility located at Veterans Memorial Park in the Town of West Seneca (the "Town Ice Rink"), and the Town has determined to award the contract for such services to the Company.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Town agree as follows:

1. Appointment of Operator. The Town hereby grants to the Company the exclusive right to operate a concession stand and pro shop at the Town Ice Rink. The Town further grants to the Company the right to use that portion of the Town Ice Rink designated as the pro shop and concession stand for the performance by the Company of its obligations under the terms and conditions set forth in this Agreement.

2. Operator Services. The Company agrees to operate a concession stand and pro shop during the period that the Town Ice Rink is open, generally from late September thru April. The pro shop operations will include a skate rental program. The Company shall maintain hours of operation that are consistent with the times that the Town Ice Rink is open and being utilized.

3. Term. The term of this Agreement shall commence on September 23, 2012 and continue in effect until April 30, 2015.

4. Rent Payments. During the months of October through March during the term of this Agreement, the Company will pay monthly rent to the Town in the amount of Six Hundred Fifty Dollars (\$650.00). The monthly rent amount for September and April will be pro-rated based on the date on which the Town Ice Rink opens and closes for the season. The Company shall pay each monthly rental payment on the first day of each month.

5. Compliance with Laws and Other Requirements. The Company agrees to comply with all vendor contracts in the Town relating to the operation of the concession stand and pro shop, including but not limited to beverage and pouring rights. The Company further agrees to

comply with all federal, state, county and local laws applicable to the Company's operation of the pro shop and concession stand.

6. Indemnification; Insurance. To the extent permitted by law, the Company shall indemnify and hold harmless the Town, its agents and employees from and against any and all claims, suits, causes of action, liability, damages, losses and expenses, including but not limited to attorney's fees, arising out of, resulting from, or in any way attributed to the Company's operation of the pro shop and concession stand. The Company shall list the Town as an additional insured on the Company's policy of insurance with limits equal to or greater than the Town's liability insurance.

7. No Minimum Purchase. Nothing in this Agreement shall be construed as requiring the Town to make any minimum purchase of any product or services offered by the Company at the Town Ice Rink.

8. General Provisions.

(a) The Company shall not assign, transfer, subcontract, or otherwise dispose of this Agreement, or any part thereof, or any right, title or interest hereunder without the prior written consent of the Town. Any assignment or attempted assignment contrary to the provisions hereof is void, any purported assignee shall acquire no rights hereunder, and the Town shall have no obligation to recognize any such assignment or attempted assignment.

(b) This Agreement shall be governed, construed and enforced under the laws of the State of New York.

(c) This Agreement supersedes any and all prior agreements and understandings, whether written or oral, between the parties with respect to the subject matter hereof and contains all the covenants and agreements between the parties in any manner whatsoever. No change, amendment or modification to this Agreement shall be effective unless in writing and signed by both parties to this Agreement.

(d) The failure in any one or more instances of a party to insist upon performance of any of the terms or conditions of this Agreement, to exercise any right or privilege in this Agreement conferred, or the waiver by said party of any breach of any of the terms or conditions of this Agreement, shall not be construed as a subsequent waiver of any such terms, conditions, rights or privileges, but the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred. No waiver shall be effective unless it is in writing and signed by an authorized representative of the waiving party.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

7k UNLIMITED, INC.

By: _____
Thomas W. Kaleta
President

TOWN OF WEST SENECA, NEW YORK

By: _____
Name: _____
Title: _____