

**TOWN OF ORANGETOWN
ROCKLAND COUNTY, NEW YORK**

REQUEST FOR PROPOSALS

FOR

**A LICENSE TO CONDUCT
A BATTING CAGE OPERATION
AT VETERANS MEMORIAL PARK,
IN ORANGEBURG, NEW YORK**

Aric T. Gorton, Superintendent of Parks and Recreation

February, 2019



THIS REQUEST FOR PROPOSAL (“RFP”) CONSISTS OF 41 PAGES.

SUBMISSION OF A PROPOSAL WILL BE DEEMED ACKNOWLEDGEMENT

OF THE RECEIPT OF THE ENTIRE RFP PACKAGE. IF YOU FAIL TO

RECEIVE ANY PAGES, PLEASE CONTACT THE TOWN CLERK’S OFFICE

AT #(845) 359-5100, EXT. 2263, OR ARIC T. GORTON, SUPERINTENDENT

OF PARKS AND RECREATION AT (845) 359-6503

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LEGAL NOTICE

**NOTICE TO PROPOSERS
OF A REQUEST FOR PROPOSAL FOR
A LICENSE TO CONDUCT
A BATTING CAGE OPERATION
AT VETERANS MEMORIAL PARK,
IN ORANGEBURG, NEW YORK**

NOTICE IS HEREBY GIVEN that proposals for **A LICENSE TO CONDUCT A BATTING CAGE OPERATION AT VETERANS MEMORIAL PARK, LOCATED IN ORANGEBURG, NY**, will be received by the Town Clerk of the Town of Orangetown at the Orangetown Town Hall, 26 Orangeburg Road, Orangeburg, New York 10962, **until Thursday, March 7, 2019 at 10:30 AM**, to be read aloud at **11:00 A.M.**

The proposals shall be for **A LICENSE TO CONDUCT A BATTING CAGE OPERATION AT VETERANS MEMORIAL PARK** in accordance with specifications as contained in the proposal designated **A LICENSE TO CONDUCT A BATTING CAGE OPERATION AT VETERANS MEMORIAL PARK**.

The Town of Orangetown officially distributes bidding documents from the Town Clerk's Office. Copies of bidding documents obtained from any other source are not considered official copies. Only those Proposers who obtain bidding documents from the Town Clerk's Office are guaranteed to receive addendum information if such information is issued.

The Town reserves the right to waive any informalities or reject any or all proposals should the best interest of the Town thereby be promoted.

Consistent with federal mandates, Requests for Proposals are solicited from any and all parties, including, but not limited to, minority businesses and enterprises operated and conducted by women.

This Request for Proposal ("RFP") is for services requiring special or technical skill, training or expertise. The services requested are not "purchase contracts" or "contracts for public works," as those phrases are used in bidding statutes.

Proposals may be delivered to the Town Clerk at the above address by mail or in person. Proposals need not be delivered in sealed form. It is the intention of the Town not to disclose any proposal submitted prior to the opening date and time. However, the Town cannot guarantee unintended disclosure of any proposal submitted in other than a sealed envelope, directed to the Town Clerk, with "**A LICENSE TO CONDUCT A BATTING CAGE OPERATION AT VETERANS MEMORIAL PARK**" clearly marked on the outside of the envelope. Unintended disclosure will not prevent the Town from determining an award to a Proposer, including a Proposer whose proposal was so disclosed.

Proposals will be considered firm for at least forty-five (45) days after the opening date and time.

No Proposer may withdraw his/her/its proposal within forty-five (45) days after the date set for the opening therefor, but may withdraw his/her/its proposal at any time prior to the scheduled date for the opening of proposals.

BY ORDER OF THE TOWN BOARD OF THE TOWN OF ORANGETOWN, ROCKLAND COUNTY, NEW YORK

ROSANNA SFRAGA, Town Clerk
of the Town of Orangetown
26 Orangeburg Road
Orangeburg, NY 10962
Tel. (845) 359-5100, ext. 2263

PART I
**REQUEST FOR PROPOSAL
FOR
A LICENSE TO CONDUCT
A BATTING CAGE OPERATION
AT VETERANS MEMORIAL PARK**

1. NOTICE

NOTICE IS HEREBY GIVEN that proposals for **A LICENSE TO CONDUCT A BATTING CAGE OPERATION AT VETERANS MEMORIAL PARK** will be received by the Town Clerk's Office of the Town of Orangetown, at the Orangetown Town Hall, 26 Orangeburg Road, Orangeburg, New York 10962, **until Thursday, March 7, 2019, at 10:30 A.M.**, to be read aloud at **11:00 A.M.**

Proposals are solicited from any and all parties, including, but not limited to, minority businesses and enterprises operated and conducted by women.

2. NOT A COMPETITIVE BID

This Request for Proposal ("RFP") is for services requiring special or technical skill, training or expertise. The services requested are not "purchase contracts" or "contracts for public works", as those phrases are used in bidding statutes.

Therefore, the TOWN OF ORANGETOWN (hereinafter sometimes referred to as the "TOWN") is not subject to competitive bidding procedures in making this RFP or determining an award to a Proposer who responds to this RFP.

3. RECEIPT OF PROPOSALS

Proposals may be delivered to the Town Clerk's Office at the above address by mail or in person.

Proposals need not be delivered in sealed form. It is the intention of the TOWN not to disclose any proposal submitted prior to the opening date and time. However, the TOWN cannot guarantee unintended disclosure of any proposal submitted in other than a sealed envelope, directed to the Town Clerk, with "**LICENSE TO CONDUCT A BATTING CAGE OPERATION AT VETERANS MEMORIAL PARK**" clearly marked on the outside of the envelope. Unintended disclosure will not prevent the TOWN from determining an award to a Proposer, including a Proposer whose proposal was so disclosed.

Proposals will be considered firm for at least forty-five (45) days after the opening date and time.

4. PREPARATION OF PROPOSAL

- (a) Proposals must be submitted on the prescribed form in quadruplicate. All blank

spaces for proposed prices must be filled in, in ink, in both words and numerical figures, with the unit price for the item or the lump sum for which the proposal is made.

(b) Any proposals may be withdrawn prior to the above scheduled time for the opening of proposals or authorized postponement thereof. Any proposal received after the opening date and time specified will not be considered. No Proposer may withdraw a proposal within forty-five (45) days after the actual date of the opening thereof.

5. QUALIFICATIONS OF PROPOSER

(a) Only qualified Proposers, which term hereinafter may apply equally to persons providing a service, who have adequate experience, finances, equipment and personnel will be considered in determining the award.

(b) The TOWN may make such investigations as the TOWN deems necessary to determine the ability and qualifications of the Proposer to perform the work. The Proposer shall furnish to the TOWN all such information and data for this purpose as the TOWN may request. The TOWN reserves the right to reject any Proposal if the evidence submitted by, or investigation of, such Proposer fails to satisfy the TOWN that such Proposer is properly qualified to carry out the obligations of the Proposal and to complete the work required to be completed therein. Conditional Proposals will not be accepted.

6. ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the specifications shall be made to any Proposer orally. Each and every request for such interpretations shall be in writing, addressed to the Town Clerk, and shall be submitted by 10:00 AM on Monday, February 18, 2019. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the RFP, which, if issued, will be mailed to all prospective Proposers (at the respective addresses furnished for such purpose) not later than 5:00 PM on Tuesday, February 19, 2019. Failure of any Proposer to receive any such addendum or interpretation shall not relieve any Proposer from any obligation under his/her/its Proposal submitted. All addenda so issued shall become part of the License Agreement.

7. FEDERAL AND STATE LAWS AND REGULATIONS

All applicable federal, state and municipal laws and rules and regulations shall apply to the License Agreement, and they are deemed to be included herein, the same as though fully set forth herein.

8. AWARD OF LICENSE AGREEMENT

(a) An award will be made to the highest responsible and responsive Proposer. However, the TOWN reserves the right to waive technical non-compliance with a proposal if the deviation is minor or not substantial and if, in the opinion of the Town Attorney, it is in the best interests of the TOWN to do so. The TOWN reserves the right to reject any and all proposals.

(b) Any conditions set forth in a Proposer's proposal will be deemed a counter-offer and may render the proposal non-responsive.

(c) Only the Proposer who is awarded the License Agreement in response to this RFP will be notified in writing by the Town Clerk's Office.

(d) Acceptance of the TOWN of a proposal shall constitute a contract between the TOWN and the successful Proposer.

(e) A written License Agreement will be executed by the successful Proposer, in form and substance as annexed (Part IV) to this RFP.

9. OBLIGATION OF PROPOSER

At the time of the opening of Proposals, each Proposer will be presumed to have inspected, to have read and to be thoroughly familiar with the proposed License Agreement and these specifications (including all addenda). The failure or omission of any Proposer to receive or examine any form, instrument or document, shall, in no way relieve any Proposer from any obligation with respect to his/her/its Proposal.

10. CONVICTION OF A CRIME

If the LICENSEE, or any officer, director or any individual or entity holding a controlling interest of the LICENSEE (defined as five percent or more, or, in the case of a corporation, any stockholder owning five percent or more of the outstanding shares) is convicted of a crime, excluding Class B and Unclassified Misdemeanors (as defined under the New York State Penal Law and their equivalent in any sister state or under Federal Law), related to the subject matter of the License Agreement, or if a related or affiliated company, partnership or corporation is convicted of a crime, excluding Class B and Unclassified Misdemeanors (as defined under the New York State Penal Law and their equivalent in any sister state or under Federal Law) related to the subject matter of the License Agreement, after the License Agreement is fully executed, the TOWN shall have the right to terminate this License Agreement without penalty. An "affiliated company" as used herein means any affiliate which is a partnership, corporation, proprietorship, association or similar entity, an "affiliate" means any individual partnership, corporation, proprietorship, association or other entity (1) in which a 50% or greater ownership interest (as defined below) is directly or indirectly held by the LICENSEE or any of its management personnel (as defined below) or directors, (2) which directly or indirectly holds 50% or more of the ownership interest in the LICENSEE, (3) in which an aggregate 20% or greater ownership interest is directly or indirectly held by one or more shareholders (or partners or proprietors, in the case of a partnership or proprietorship) which or who in the aggregate hold a 20% or greater ownership interest in the LICENSEE, or (4) which, whether by contract or otherwise, directly or indirectly controls, is controlled by or is under common control with the LICENSEE. An "ownership interest" means the ownership, whether legally or beneficially, of the stock of or assets employed by a corporation, of a partnership interest in or assets employed by a partnership or of a similar interest in or assets employed by any other entity. "Management

personnel” means executive officers and all other persons, whether or not officers or employees, who perform policy-making functions similar to those of executive officers.

PART II

SPECIFICATIONS

GENERAL INFORMATION

The Town of Orangetown, through its Parks and Recreation Department, manages and operates Veterans Memorial Park, located at 81 Hunt Road (between Blaisdell Road and Veterans Memorial Drive/West Orangeburg Road), Orangeburg, New York 10962.

1. SCOPE OF LICENSE

It is the intent of the TOWN to grant a license to operate the batting cages at Veterans Memorial Park, which license shall be limited to the exclusive right and privilege of operating batting cages at the existing facilities owned by the TOWN at Veterans Memorial Park, **as per, pursuant to and as prescribed in the License Agreement (Part IV of this RFP), which License Agreement sets forth all of the rights, privileges, responsibilities, obligations and duties of the TOWN and LICENSEE; and, if there is a conflict between any terms or provisions of the License Agreement and any other term or provision contained within Part I, Part II or Part III of the RFP, the License Agreement (Part IV) shall control, govern and dictate the mode and manner of performance under the License Agreement and the rights, privileges, responsibilities, obligations and duties of the parties.**

Included with all Proposals, the TOWN requires a statement of history, which must include a description of experience in the batting cage, amusement device, or interactive entertainment in the sports/recreation industries, and marketing of his/her/their business. Principals and corporate officers must be listed. The TOWN may conduct credit and criminal background checks on these individuals prior to final selection.

2. PRE-PROPOSAL INSPECTION

The TOWN’s Parks and Recreation Department will hold a pre-submittal meeting for all interested parties. This will include one Parks and Recreation staffed walk-through inspection of the batting cage at Veterans Memorial Park on **Friday, February 15, 2019, at 11:00 AM**. It is strongly recommended that all interested parties attend this scheduled walk-through inspection. If an interested party is unable to attend the inspection on said date and time, he/she may contact the Superintendent of Parks and Recreation, Aric T. Gorton, at the above-noted phone number, who will attempt to arrange for another walk-through inspection, if possible; however, such an accommodation by Superintendent Gorton is not guaranteed and may not occur. Oral questions may be asked at the time of the inspection; however, Proposers cannot rely upon the TOWN’s oral answers, nor shall the TOWN be responsible, liable or accountable for the TOWN’s oral answers. Except as provided herein, questions asked of the TOWN must be in writing, and

submitted in accordance with Part I, ¶6, set forth above.

3. TERM

The Term of the License Agreement shall be two years, and shall commence on the 15th day of April, 2019, and continue until the 31st day of December, 2024; with two separate renewal options, that may be exercised by the LICENSEE, to renew the License Agreement for additional 2-year Terms (equating to a total of nine years of optional renewal periods), which two separate 2-year renewal options shall only be exercised by LICENSEE, and shall only take effect, if consented to by the TOWN, which consent shall not be unreasonably withheld.

4. SCHEDULE OF OPERATIONS

The License Agreement shall remain in effect for twelve months during each and every year of the term, as described in the License Agreement herein. LICENSEE may, at its option, remain open and operate year-round; however, only one wall unit or one window unit air conditioner is allowed, and no heating devices, appliances or equipment may be installed or operated without the prior written approval and permission of the Superintendent of Parks and Recreation.

5. CUSTOMER SERVICE

The LICENSEE shall maintain customer service as a top priority, and must provide employees and staff who are professional, friendly, well dressed and courteous to all patrons and the general public. All employees and staff must maintain a neat and clean appearance, exercise good public relations skills, respond to customer complaints and questions, have good manners and conduct themselves in a high standard that is acceptable to the Parks and Recreation Department. The LICENSEE shall also maintain a good working relationship with the Parks and Recreation staff.

6. EQUIPMENT

The batting cage at Veterans Memorial Park is equipped with some TOWN-owned equipment, appliances, machinery, apparatus and fixtures (hereinafter "Town-Owned Equipment") for operation, which shall be maintained, replaced and/or repaired by the LICENSEE, solely at its own cost and expense. LICENSEE shall install and maintain, solely at its own cost and expense, any additional equipment, appliances, machinery, apparatus and fixtures, and only after approval of the TOWN, which, upon installation, shall become the property of the TOWN.

It should be noted that the batting cages have not been in use since 2014. Proposers should anticipate significant repairs/replacement of equipment will have to be completed prior to operating the facility. The Town estimates approximately \$30,000.00 in repairs will be required at the LICENCEES expense to reach an operational level.

The LICENSEE must obtain and keep current all licenses, certifications and permits that may be necessary to operate a batting cage. The LICENSEE must demonstrate a minimum of one year of experience in batting cage, amusement device, or interactive entertainment in the sports/recreation industries.

The LICENSEE shall be responsible for the maintenance, repair and/or replacement of all Town-Owned Equipment, and all such equipment shall be kept clean, fully operational and show no signs of visual or structural damage during the term of the License Agreement.

7. STAFFING

LICENSEE shall provide adequate staffing, who shall be recruited with Orangetown residents being given a preference in hiring. The adequacy of the staff shall be reviewed by the TOWN's Superintendent of Parks and Recreation, or his designee, whose judgment shall be binding upon LICENSEE. LICENSEE shall be required to terminate any staff that, in the opinion of TOWN's Superintendent of Parks and Recreation, or his designee, displays inappropriate behavior.

8. SELECTION PROCESS

Deadline for Proposals: All Proposals (in quadruplicate) must be received by the Town Clerk, no later than Thursday, March 7, at 10:30 A.M. Any Proposal received after that time will be rejected.

Review Process

The TOWN will review LICENSEE candidate qualifications and rank them using the following general factors, as well as other information contained in the respective Proposals:

A. All Proposals will be reviewed to determine compliance with the requirements as specified in the RFP. Only Proposals which, in the opinion of the Committee, meet the requirements of the RFP will be further evaluated.

B. Proposals, which pass preliminary review, will be evaluated on how well the Proposal meets the needs of the TOWN as described in the Proposer's response to the RFP. It is important that the responses be clear and complete so that the TOWN can adequately understand all aspects of the Proposal.

C. The TOWN will select those it deems to be the top Proposals for further review. The Proposer's submitting the top Proposals may be asked to make a personal presentation to the TOWN, which presentations will be evaluated as well. Further, as part of any such presentation, the TOWN reserves the right to request additional financial information from those Proposers making personal presentations.

D. A final decision to award the License Agreement will be made by the Town Board of the Town of Orangetown, who will authorize the Supervisor to execute the License Agreement, and any other instruments related thereto, with the final selected Proposer.

E. The award of a License Agreement by the Town Board to the successful Proposer will be Notice of Acceptance. The award of a License Agreement will bind the Proposer to operate the batting cage in accordance with the terms and provisions set forth herein,

the TOWN's written responses to Proposer's questions, the Proposer's Proposal, Addenda, and the License Agreement in its final, executed form.

PART III

LICENSEE'S PROPOSAL

Opening Date: _____ Time: _____

Location: TOWN OF ORANGETOWN
Town Hall
26 Orangeburg Road
Orangeburg, New York 10962

NOTICE: Proposals must be submitted on this form. In order to avoid "non-responsiveness", there must remain annexed hereto, upon submission, all of the attached Parts I - IV. In addition, one copy of each addendum received by Proposer must be annexed hereto upon the submission of this Proposal.

TO THE TOWN OF ORANGETOWN:

A. The undersigned * _____, acknowledging that he/she is an (officer) (member) (partner) (principal) of the Proposer and he/she has carefully examined the Request for Proposal, offers to furnish and deliver to the TOWN, in strict conformity with each and every provision of the Request for Proposal, all of the items awarded.

B. The Proposer is a (corporation) (limited liability company (partnership) (sole proprietorship) (other specify: _____). State where formed: _____.

C. The undersigned hereby designates the following address as the office for the purpose of receiving any written notice permitted or required to be served upon the Proposer by any provision of the Request for Proposal, including, without limitation, Notice of Award of the Proposal:

** _____

* Strike the three inapplicable capacities. If the Proposer is a foreign corporation, it must agree to accept service of process as provided herein (see paragraph 4).

** This information must be supplied by Proposers, corporate and otherwise, and shall include the Proposer's **telephone number**.

D. (Paragraphs "D" and "E" shall bind only those corporate Proposers that are not organized and existing under the laws of the State of New York). If the Proposer is a foreign corporation or limited liability company, Proposer must submit a certificate that it is authorized to do business in the State of New York and in the County of Rockland.

E. The undersigned, a foreign corporation or limited liability company, agrees: that personal service of process in any civil action, lawsuit or legal proceeding instituted by the TOWN against the undersigned arising out of this RFP or License Agreement may be made by certified mail return receipt requested ("CMRRR"), addressed to the undersigned at the address referred to in paragraph "C" of this Proposal, above, unless a different address within the State of New York be specified below, in which event, service of process, via CMRRR, as aforesaid, may be made only at the address specified below or at such other mailing address within the State of New York as is substituted therefor by the undersigned by notice in writing to the TOWN.

F. By submission of this proposal, the undersigned, and each person signing on behalf of the undersigned certify, under penalty of perjury, that:

(1). The License Fees and Electricity Fees in this proposal have been arrived at independently, without collusion, consultation, communication or agreement, for the purpose of restricting competition as to any matter relating to such License Fees and Electricity Fees with any other Proposer or with any competitor;

(2). Unless otherwise required by law, the License Fees and Electricity Fees which have been quoted in this proposal have not been knowingly disclosed by the undersigned, and will not knowingly be disclosed by the undersigned, prior to opening the Proposal by the TOWN, directly or indirectly, to any other Proposer or to any competitor;

(3). No attempt has been, or will be, made by the undersigned to induce any other person, partnership, limited liability company or corporation to submit or not submit a Proposal for the purpose of restricting competition.

(4). No officer, agent, owner, principal, Member or employee of the Proposer is personally interested, directly or indirectly, in the Request for Proposal or the compensation to be paid thereunder, and

(5). No representation, statement or statements, oral or in writing, has induced Proposer to enter into the Request for Proposal excepting only those contained in Parts I – IV hereof or made part hereof by its terms.

G. I hereby acknowledge receipt of the following addenda set forth below

Addendum No.	Date of Receipt
_____	_____
_____	_____
_____	_____
_____	_____

H. It is understood by the undersigned that the monetary figures set forth in paragraph "I" (License Fee and Electricity Fee Schedule) are for the purpose of facilitating the comparison and evaluation of Proposer proposals, and that the Committee shall also consider other factors in evaluation the Proposals (as described in Part III "Specifications") in determining the award of the License Agreement.

I. LICENSE FEE AND ELECTRICITY FEE SCHEDULE: Proposer must quote an annual License Fee, and a separate annual Electricity Fee, to be paid to the TOWN for use and operation of the facility for each and every year of the proposal. The proposed License Fee and proposed Electricity Fee are to be filled out both in words and numerical figures. In case of any discrepancy, the price in words will generally be taken as the proposed Fee.

THE MINIMUM ACCEPTABLE PROPOSAL SHALL BE \$0.00 PER YEAR FOR BOTH THE LICENSE FEE AND ELECTRICITY FEE COMBINED FOR THE FIRST THREE (3) YEARS.

THE MINIMUM ACCEPTABLE PROPOSAL SHALL BE \$3,000.00 PER YEAR FOR BOTH THE LICENSE FEE AND THE ELECTRICITY FEE BEGINNING IN YEAR FOR ONWARD.

FIRST THREE (3) YEARS

**PER YEAR
NUMERIC AMOUNT**

**PER YEAR
AMOUNT IN WORDS**

04/15/2019 – 12/31/2021 (License Fee): \$ _____

04/15/2019 – 12/31/2021 (Electricity Fee): \$ _____

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER ANUALLY.

FOURTH & FIFTH YEARS

**PER YEAR
NUMERIC AMOUNT**

**PER YEAR
AMOUNT IN WORDS**

01/01/2022 – 12/31/2023 (License Fee): \$ _____

01/01/2022 – 12/31/2023 (Electricity Fee): \$ _____

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER ANUALLY.

SIXTH & SEVENTH YEARS (FIRST 2-YEAR RENEWAL OPTION PERIOD)

**PER YEAR
NUMERIC AMOUNT**

**PER YEAR
AMOUNT IN WORDS**

01/01/2024 – 12/31/2025 (License Fee): \$ _____

01/01/2024 – 12/31/2025 (Electricity Fee): \$ _____

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER ANUALLY.

EIGHTH & NINTH YEARS (SECOND 2-YEAR RENEWAL OPTION PERIOD)

**PER YEAR
NUMERIC AMOUNT**

**PER YEAR
AMOUNT IN WORDS**

01/01/2026 – 12/31/2027 (License Fee): \$ _____

01/01/2026 – 12/31/2027 (Electricity Fee): \$ _____

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER ANUALLY.

J. The proposal made by the foregoing shall be irrevocable for forty-five (45) days or such greater period after the date on which the TOWN opens the same as set forth in paragraph "1" of the RFP.

K. Proposer does hereby certify that no officer, partner, director, Member or any person holding an ownership interest (defined as owning five percent [5%] or more of the LLC, Member or corporate stock shares) has been convicted of a crime, excluding Class B and Unclassified Misdemeanors (as defined under the New York State Penal Law and their equivalent in any sister state or under Federal Law).

L. The attached Request for Proposal embodies the minimum requirements of the TOWN: Proposers are encouraged to offer additional or supplementary services or incentives to the TOWN.

IN WITNESS WHEREOF, the undersigned has caused this proposal to be signed and delivered as of the date first herein set forth and agrees to furnish the services, carry-out the License Agreement and perform the work in accordance with all the terms, provisions and conditions of the Request for Proposal.

DATE: _____
FEDERAL TIN/EIN# _____

(print the legal name of Corporation, Limited Liability Company, individual or firm, and any d/b/a name, above)

By: _____ (signature)

Sworn to before me this _____ day of _____, 2019

(print name and title/position beneath signature)

Notary Public

PART IV

LICENSE AGREEMENT

THIS AGREEMENT, made as of the _____ day of _____, 2019, between the TOWN OF ORANGETOWN, a Municipal Corporation with principal offices at Town Hall 26 Orangeburg Road, Orangeburg, New York 10962 (hereinafter referred to as “TOWN”) and _____, with its principal place of business at _____ (hereinafter referred to as “LICENSEE”).

WITNESSETH:

1. DESCRIPTION AND LOCATION

The TOWN hereby grants to the LICENSEE, and the LICENSEE hereby accepts from the TOWN, a license to operate the batting cage concession at the TOWN owned recreational area known as Veterans Memorial Park, located at 81 Hunt Road (between Blaisdell Road and Veterans Memorial Drive/West Orangeburg Road), Orangeburg, New York 10962. Said concession shall be limited to the exclusive right and privilege of operating the batting cages, at the existing batting cage facility and appurtenant adjacent area sited to the immediate west of the pond, at Veterans Memorial Park (hereinafter referred to as “the Licensed Premises,” “the Licensed Facilities” or “the Facilities”).

2. TERM

The term of this License Agreement shall commence on the 15th day of April, 2019, and continue until the 31ST day of December, 2023; with two separate options for the LICENSEE to renew this License Agreement for two additional 2-year terms, equating to a total of four years of optional renewal periods, at annual License Fees and Electricity Fees as set forth in ¶4(a) herein, which two separate 2-year renewal options shall only be exercised, and become effective, with the consent of the TOWN, which consent shall not be unreasonably withheld.

(a) During the term of this License Agreement, the performance of the LICENSEE shall be subject to review by the Town Board as to the operation of the concession and maintenance of the Licensed Facilities. In the event of a finding by the Town Board of uncured material breaches, defaults or violations by the LICENSEE, the Town Board shall have the right to revoke, terminate and/or cancel this License Agreement, subject to the provisions herein. LICENSEE shall be entitled to no less than ten (10) days notice of any breach, default or violation, with the right to cure within said ten (10) day period.

(b) Regardless of the title of this Agreement as a “License Agreement,” and the copious references to the “LICENSEE,” “License,” “Licensed Premises,” etc., the parties acknowledge, understand and agree that this is a license **AT WILL OR BY SUFFERANCE**, and not a license nor a lease, and that **NO TENANCY OR LANDLORD-TENANT RELATIONSHIP EXISTS** between the TOWN and the LICENSEE; and this License

Agreement is, therefore, revocable and/or terminable by the TOWN, at will, and the TOWN reserves the right to revoke, terminate and/or cancel this License Agreement whenever, in the discretion of the Town Board, the Town Board finds that the LICENSEE has failed to cure a breach, default or violation of the License Agreement.

(c) LICENSEE is prohibited from purveying any food or beverages.

3. HOURS OF OPERATION

LICENSEE agrees to operate the said concession for the accommodation of the general public and to keep same open at least five-days per week, for such hours of the day as the TOWN may reasonably prescribe, and in accordance with the Specifications herein. LICENSEE may, at its option, remain open and operate for twelve months during each and every year of the term of the License Agreement (i.e., “year-round”); however, only one wall unit or one window unit air conditioner is allowed, and no heating devices, appliances or equipment may be installed or operated without the prior written approval and permission of the Superintendent of Parks and Recreation.

4. PAYMENT

LICENSEE shall pay a License Fee and an Electricity Fee to the TOWN, as compensation to the TOWN for LICENSEE’s right and privilege of operating under this License, on the fifteenth day of each month, May through October, in advance, in consecutive equal installments commencing May 15, 2019, the following total sums for each respective yearly period:

FIRST THREE YEARS

	<u>PER YEAR NUMERIC AMOUNT</u>	<u>PER YEAR AMOUNT IN WORDS</u>
04/15/2019 – 01/31/2021 (License Fee):	\$ _____	_____
04/15/2019 – 01/31/2021 (Electricity Fee):	\$ _____	_____

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER AS FOLLOWS:

05/15/2019 – 06/14/2019:	\$ _____
06/15/2019 – 07/14/2019:	\$ _____
07/15/2019 – 08/14/2019:	\$ _____
08/15/2019 – 09/14/2019:	\$ _____
09/15/2019 – 10/14/2019:	\$ _____
10/15/2019 – 11/14/2019:	\$ _____
05/15/2020 – 06/14/2020:	\$ _____
06/15/2020 – 07/14/2020:	\$ _____
07/15/2020 – 08/14/2020:	\$ _____
08/15/2020 – 09/14/2020:	\$ _____

09/15/2020 – 10/14/2020: \$ _____
 10/15/2020 – 11/14/2020: \$ _____
 05/15/2021 – 06/14/2021: \$ _____
 06/15/2021 – 07/14/2021: \$ _____
 07/15/2021 – 08/14/2021: \$ _____
 08/15/2021 – 09/14/2021: \$ _____
 09/15/2021 – 10/14/2021: \$ _____
 10/15/2021 – 11/14/2021: \$ _____

FOURTH & FIFTH YEARS

<u>PER YEAR</u> <u>NUMERIC AMOUNT</u>	<u>PER YEAR</u> <u>AMOUNT IN WORDS</u>
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01/01/2022 – 12/31/2022 (License Fee):	\$ _____	_____
01/01/2022 – 12/31/2022 (Electricity Fee):	\$ _____	_____
01/01/2023 – 12/31/2023 (License Fee):	\$ _____	_____
01/01/2023 – 12/31/2023 (Electricity Fee):	\$ _____	_____

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER AS FOLLOWS:

05/15/2022 – 06/14/2022: \$ _____
 06/15/2022 – 07/14/2022: \$ _____
 07/15/2022 – 08/14/2022: \$ _____
 08/15/2022 – 09/14/2022: \$ _____
 09/15/2022 – 10/14/2022: \$ _____
 10/15/2022 – 11/14/2022: \$ _____
 05/15/2023 – 06/14/2023: \$ _____
 06/15/2023 – 07/14/2023: \$ _____
 07/15/2023 – 08/14/2023: \$ _____
 08/15/2023 – 09/14/2023: \$ _____
 09/15/2023 – 10/14/2023: \$ _____
 10/15/2023 – 11/14/2023: \$ _____

SIXTH & SEVENTH YEARS (FIRST 2-YEAR RENEWAL OPTION PERIOD)

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER AS FOLLOWS:

	<u>PER YEAR NUMERIC AMOUNT</u>	<u>PER YEAR AMOUNT IN WORDS</u>
01/01/2024 – 12/31/2024 (License Fee):	\$ _____	_____
01/01/2024 – 12/31/2024 (Electricity Fee):	\$ _____	_____
01/01/2025 – 12/31/2025 (License Fee):	\$ _____	_____
01/01/2025 – 12/31/2025 (Electricity Fee):	\$ _____	_____
05/15/2024 – 06/14/2024:	\$ _____	_____
06/15/2024 – 07/14/2024:	\$ _____	_____
07/15/2024 – 08/14/2024:	\$ _____	_____
08/15/2024 – 09/14/2024:	\$ _____	_____
09/15/2024 – 10/14/2024:	\$ _____	_____
10/15/2024 – 11/14/2024:	\$ _____	_____
05/15/2025 – 06/14/2025:	\$ _____	_____
06/15/2025 – 07/14/2025:	\$ _____	_____
07/15/2025 – 08/14/2025:	\$ _____	_____
08/15/2025 – 09/14/2025:	\$ _____	_____
09/15/2025 – 10/14/2025:	\$ _____	_____
10/15/2025 – 11/14/2025:	\$ _____	_____

EIGHTH & NINTH YEARS (SECOND 2-YEAR RENEWAL OPTION PERIOD)

BOTH ABOVE YEARLY FEES COMBINED TO BE PAID MONTHLY MAY THROUGH OCTOBER AS FOLLOWS:

	<u>PER YEAR NUMERIC AMOUNT</u>	<u>PER YEAR AMOUNT IN WORDS</u>
01/01/2026 – 12/31/2026 (License Fee):	\$ _____	_____
01/01/2026 – 12/31/2026 (Electricity Fee):	\$ _____	_____
01/01/2027 – 12/31/2027 (License Fee):	\$ _____	_____
01/01/2027 – 12/31/2027 (Electricity Fee):	\$ _____	_____
05/15/2026 – 06/14/2026:	\$ _____	_____
06/15/2026 – 07/14/2026:	\$ _____	_____
07/15/2026 – 08/14/2026:	\$ _____	_____
08/15/2026 – 09/14/2026:	\$ _____	_____

09/15/2026 – 10/14/2026:	\$ _____
10/15/2026 – 11/14/2026:	\$ _____
05/15/2027 – 06/14/2027:	\$ _____
06/15/2027 – 07/14/2027:	\$ _____
07/15/2027 – 08/14/2027:	\$ _____
08/15/2027 – 09/14/2027:	\$ _____
09/15/2027 – 10/14/2027:	\$ _____
10/15/2027 – 11/14/2027:	\$ _____

5. LOCATION AND FACILITY

The TOWN will provide, for the use of the LICENSEE, such portion of Veterans Memorial Park that is commonly referred to as the “batting cages,” which is the existing batting cage facility and appurtenant adjacent area sited to the immediate west of the pond (i.e., the Licensed Premises). Any additions, renovations or alterations to the Licensed Premises must be approved by the TOWN. If approved by the TOWN, such additions, renovations or alterations shall be at the cost and expense of solely the LICENSEE. TOWN approval shall not be unreasonably withheld, conditioned or delayed.

LICENSEE shall keep the Licensed Premises open on the days, and during the hours, set forth above, for the purpose of servicing the general public and those using Veterans Memorial Park and other recreational facilities in the Veterans Memorial Park area. The LICENSEE represents that LICENSEE shall install, provide and maintain sufficient and proper equipment to operate The Licensed Premises; and to clean and maintain, in a sanitary, neat and attractive condition, the entire Licensed Premises.

6. MAINTENANCE OF LICENSED PREMISES

(a) At LICENSEE’s sole cost and expense, LICENSEE shall maintain and repair, and replace if necessary, all of the equipment, appliances, machinery, apparatus and fixtures, including all of the Town-Owned Equipment set forth in “Appendix 1” hereto, in full and complete repair to the reasonable satisfaction of the TOWN during the term of this License Agreement, including structural repairs; and shall clean and maintain the Licensed Premises in a sanitary, neat and attractive condition.

(b) LICENSEE agrees to remove and dispose of litter and refuse upon the Licensed Premises, and store same in containers properly screened from view from the grounds surrounding the Licensed Premises, so that the Licensed Premises shall, at all times, be in a clean, neat, attractive, orderly and sightly condition. LICENSEE further agrees to broom sweep all walkways appurtenant to the Licensed Premises, and to keep same in a clean, neat, attractive, orderly and sightly condition. All refuse, garbage, waste and litter of all kinds shall be properly stored before disposal, as aforesaid, and which refuse, garbage, waste and litter, arising out of the operation of the License Agreement, may be disposed of by LICENSEE in TOWN-owned garbage dumpsters located within Veterans Memorial Park.

(c) TOWN agrees that it will use its best efforts in the removal of snow and ice, only during the period beginning on November 15 and ending on April 15 of each year, and only from the walkways, roads and driveways leading, but not immediately adjacent, to the Licensed Premises, so as to permit access from other areas of the park to the Licensed Premises. However, LICENSEE is solely obligated and responsible for the removal of snow and ice from the Licensed Premises and from all sidewalks and walkways that are located at, or appurtenant and immediately adjacent to, the Licensed Premises, and to apply, as necessary, salt and/or sand to all said areas. Except as otherwise prescribed herein, the TOWN shall not be expected, obligated or responsible to remove snow or ice from anywhere within Veterans Memorial Park, nor shall the TOWN be liable for any damages caused by its inability or failure to remove snow or ice from anywhere within Veterans Memorial Park, including the Licensed Premises.

(d) The LICENSEE, upon the expiration, revocation or termination of the License Agreement, or upon LICENSEE's surrendering or vacating of possession/occupancy, shall return the Licensed Premises, and all of the TOWN-owned equipment, appliances, machinery, apparatus and fixtures set forth in "Appendix 1" annexed hereto and made a part hereof (hereinafter referred to as "Town-Owned Equipment"), in the same or better condition as when LICENSEE first entered into occupancy, except for normal wear and tear and any renovations or alterations made to the Licensed Premises with the TOWN's approval. LICENSEE shall be solely responsible for maintaining, servicing, and keeping in good repair and condition, all of the Town-Owned Equipment, and replacing same, in like kind and quality, if irreparably damaged, lost or stolen.

(e) **LICENSEE agrees and acknowledges that LICENSEE was given ample and full opportunity to inspect the Licensed Premises, and agrees and acknowledges that all buildings, structures, land, improvements and appurtenances of the Licensed Premises, and all Town-Owned Equipment, are licensed by LICENSEE, and accepts all of same, in an "AS IS" condition, without warranty or representation by the TOWN, express or implied. LICENSEE further agrees and acknowledges that the TOWN hereby expressly disclaims any and all warranties, whether express or implied, with respect to the Licensed Premises, including all buildings, structures, land, improvements and appurtenances of the Licensed Premises, and all Town-Owned Equipment, including, without limitation, any warranty of habitability, warranty of merchantability, or warranty of fitness for a particular use. LICENSEE hereby waives, gives up and relinquishes all rights to assert any claim, demand, or lawsuit of any kind with respect to the condition of the Licensed Premises, including all buildings, structures, land, improvements and appurtenances of the Licensed Premises, and all Town-Owned Equipment. The TOWN is not required, obligated or responsible to make any repairs, install or replace any Town-Owned Equipment, perform any maintenance, or pay any costs or expenses, concerning the Licensed Premises, including all buildings, structures, land, improvements and appurtenances of the Licensed Premises, and all Town-Owned Equipment.**

7. EQUIPMENT

(a) The LICENSEE shall, at its sole cost and expense, furnish, provide and maintain in good usable condition, a sufficient amount of moveable equipment as may be necessary to

properly furnish and provide the services herein provided for in a manner reasonably acceptable to the TOWN. LICENSEE may enjoy the use of the Town-Owned Equipment, on the site of the Licensed Premises and during the Term of this License Agreement, and shall be solely and exclusively responsible for maintaining, servicing, and keeping same in good repair and condition, and replacing same, in like kind and quality, if irreparable, destroyed, lost or stolen. To the extent permitted by a secured party, the LICENSEE shall provide, in any security agreement covering equipment, machinery, appliances or fixtures in the Licensed Premises, for the right of the TOWN to have the option, within thirty (30) days of notice of a default under said security agreement to remit the payments thereunder. Any such payments remitted by the TOWN relating to a security agreement shall be reimbursed by LICENSEE to the TOWN within fourteen (14) days of the TOWN's written demand of LICENSEE to remit same.

(b) LICENSEE shall not purchase any large equipment, machinery, appliances or fixtures, nor commence any work in connection with changing the color scheme, decorations and/or motif of the Licensed Premises prior to obtaining the consent of the TOWN, which consent shall not be unreasonably withheld.

(c) It shall be LICENSEE's sole responsibility and obligation to provide all necessary equipment, fixtures, materials, supplies, tools, machinery, appliances and services to operate the business herein contemplated to be conducted upon the Licensed Premises; however, without detracting from the foregoing, LICENSEE may enjoy the use of the Town-Owned Equipment, on the site of the Licensed Premises and during the Term of this License Agreement, and shall be solely and exclusively responsible for maintaining, servicing, and keeping same in good repair and condition, and replacing same, in like kind and quality, if irreparable, destroyed, lost or stolen. Prior to installation of any fixtures, machinery, appliances or equipment, the LICENSEE shall provide the description of fixtures, machinery, appliances or equipment to be installed. Upon receipt of written approval from the TOWN, which shall not be unreasonably withheld, work may proceed. The personal property now located on the Licensed Premises, the Town-Owned Equipment (or TOWN-approved replacements thereof), and all fixtures, machinery, appliances and equipment subsequently installed by the LICENSEE (except for moveable trade fixtures and leased equipment not part of the Town-Owned Equipment or replacements thereof), shall be and become the property of and owned by the TOWN; and, upon termination, revocation and/or cancelation of the License Agreement, shall be returned to the TOWN in their present, or better, condition, or in the condition when installed, reasonable wear and tear excepted.

8. CLEANING PREMISES

(a) The LICENSEE shall furnish, at the cost and expense of solely the LICENSEE, all labor, services, materials, tools, supplies and equipment necessary to maintain, in a clean, orderly, attractive, sightly and inviting condition, reasonably satisfactory to the TOWN, the Licensed Premises, together with the appurtenant area surrounding the Licensed Premises, including the daily cleaning of the exterior and garbage disposal areas.

(b) The LICENSEE shall take good care of the Licensed Premises and shall, at the cost and expense of solely the LICENSEE, make all repairs, replacements and perform all maintenance, at the end or other expiration, revocation and/or cancellation of the term, shall

deliver the Licensed Premises in good order and condition, damages by the elements and normal wear and tear excepted.

9. EMPLOYEES

(a) The LICENSEE shall, at the cost and expense of solely the LICENSEE, provide a sufficient number of staff and employees to serve the general public promptly and efficiently. All such employees shall be clad in neat, sightly and clean uniforms.

(b) The LICENSEE, and its officers, staff and employees, shall not use the Licensed Premises herein as a dwelling, abode or residence, in any manner whatsoever; and no animals shall be kept or harbored on the Licensed Premises.

10. NON-DISCRIMINATION PROVISION

The LICENSEE agrees to and accepts the provisions of §296 of the Executive Law of the State of New York.

11. QUALITY AND PRICE

LICENSEE agrees and warrants that all merchandise, supplies, machinery, appliances, equipment or fixtures used by, or offered for use by the patrons of, the LICENSEE, and any items purveyed by LICENSEE, shall be of good and sound quality. The prices to be charged by LICENSEE for any such items for sale, or for rental, to patrons of LICENSEE, shall be printed, framed and displayed, at the cost and expense of LICENSEE, in a place and manner reasonably designated by the TOWN.

12. MANAGER, PERSONNEL

LICENSEE shall provide the TOWN's Superintendant of Parks and Recreation, the names and addresses of the LICENSEE's owners, partners, Members, principals, or controlling stockholders. During the term of this License Agreement, at least one of the LICENSEE's current controlling principals, owners, partners, Members or stockholders shall maintain a controlling interest in LICENSEE, which current principals, etc., are: _____ . In addition, any change in the ownership, or any other corporate or LLC change, shall be reported to the TOWN, and any failure to do so on the part of the LICENSEE shall be grounds for immediate revocation, termination and/or cancelation of this License Agreement, after the expiration of the applicable cure period.

13. PERMITS

LICENSEE, solely at its cost and expense, shall obtain, and keep in effect, all licenses and permits which shall be required by Federal, State, County and/or Local Law to operate the batting cage service facilities and operations addressed in this License Agreement. Copies of all such licenses and permits shall be submitted to the TOWN's Superintendent of Parks and Recreation.

14. LICENSE AT WILL OR BY SUFFERANCE

(a) Regardless of the title of this Agreement as a "License Agreement," and the copious references to the "LICENSEE," "License," "Licensed Premises," etc., the parties acknowledge, understand and agree that this is a license **AT WILL OR BY SUFFERANCE**, and not a license nor a lease, and that **NO TENANCY OR LANDLORD-TENANT RELATIONSHIP EXISTS** between the TOWN and the LICENSEE; and this License Agreement is, therefore, revocable and/or terminable by the TOWN, at will, and the TOWN reserves the right to revoke, terminate and/or cancel this License Agreement whenever, in the discretion of the Town Board, the Town Board finds that the LICENSEE has failed to cure a breach, default or violation of the License Agreement. During the term of this License Agreement, LICENSEE shall have use of the Licensed Premises, except as herein provided; and LICENSEE has the privilege to occupy the Licensed Premises, and to operate the License hereby granted to it, and to continue in possession thereof, only so long as each and every provision, term and condition set forth in this License Agreement is strictly, fully and properly complied with. In the event the LICENSEE defaults in the strict, timely and prompt performance of, or breaches or violates, any provision, term or condition of the License Agreement, after expiration of the applicable notice and cure period, the TOWN may shut-down, close-up, take possession and/or remove LICENSEE from occupancy of, the Licensed Premises, and the TOWN may use "self-help" without the necessity or requirement of a Warrant of Eviction or court order or judgment, as if LICENSEE were a squatter; and the License to the LICENSEE shall thereby be forfeited and this License Agreement shall be automatically revoked, cancelled and terminated.

(b) LICENSEE shall have no right, authority or power to sell, mortgage, assign or parcel out this License Agreement, or the batting cage service concession hereby granted, or any interest therein, nor any right, power or authority to allow or permit any other persons or parties to have any interest or use any part of the Licensed Premises for any purpose whatsoever, without the express prior written consent of the TOWN, which shall not be unreasonably withheld, it being the purpose of this License Agreement to grant such concession and privilege solely to the LICENSEE and, neither directly or indirectly, to any other person or party.

15. ALTERATIONS

(a) If any alterations, renovations, decorations, additions or improvements of the Licensed Premises are desired by LICENSEE, LICENSEE shall first submit plans and specifications to the TOWN for the TOWN's review and approval. No alterations, renovations, decorations, additions and improvements shall be made, or any such work commenced, without the LICENSEE first obtaining the TOWN's written approval and consent, which consent shall not be unreasonably withheld. Any such alterations, renovations, decorations, additions or improvements shall be made solely at the cost and expense of LICENSEE and shall become the property of, and owned by, the TOWN immediately upon their installation or annexation to the Licensed Premises, unless the same are moveable trade fixtures, or leased equipment that were not installed or annexed in replacement of any Town-Owned Equipment.

(b) The LICENSEE shall not permit any liens to be filed or recorded against the Licensed Premises for any labor or materials furnished to the LICENSEE, or performed at the

Licensed Premises, in connection with any work, construction, alterations, renovations or improvements performed by, or at the direction of, the LICENSEE. LICENSEE covenants and agrees that if, because of any act or omission (or alleged act or omission) of LICENSEE, any mechanic's or other lien, charge or order for the payment of money or other encumbrance, shall be filed or recorded against TOWN, LICENSEE shall, solely at its cost and expense, cause the same to be satisfied or discharged of record or bonded within thirty (30) days after notice to LICENSEE of the filing or recording thereof.

(c) The LICENSEE agrees that it will make no changes or additions to the utility service and systems, such as water, electricity, oil heat, natural gas and associated plumbing and wiring, nor changes in present fixtures or equipment, nor will LICENSEE install any type of electrical motor or electrical heating device in and upon the Licensed Premises, without prior written consent of the TOWN, which consent shall not be unreasonably withheld. LICENSEE shall not change the decorations of the premises, either as to color or type of materials, without prior written consent of the TOWN, which consent shall not be unreasonably withheld.

(d) LICENSEE shall, before making any alterations, renovations additions, installations or improvements, solely at LICENSEE's cost and expense, obtain all permits, approvals, licenses and certificates required by any governmental or administrative agency. LICENSEE shall carry, and shall cause LICENSEE's contractors and subcontractors to carry, such Workers' Compensation, general liability, personal and property damage insurance, as the TOWN, State, County and/or Local Law may require. LICENSEE shall obtain and deliver to the TOWN written and unconditional waivers of mechanic's liens regarding the real property at which the Licensed Premises are located for all work, labor and services to be performed, and materials to be furnished, in connection with any work, construction, renovations or alterations performed at the Licensed Premises, signed by all contractors, material men, suppliers and laborers who are involved in such work. Notwithstanding the foregoing, if any mechanic's lien is filed against any real property of which the Licensed Premises forms a part, for any such work claimed to have been done or materials furnished to LICENSEE, the same shall be discharged by LICENSEE within ten (10) days thereafter, by payment or by LICENSEE, at its expense, filing a bond as may be permitted by law.

16. FIXTURES

All fixtures and all paneling, partitions, railings and like installations, installed or affixed in the Licensed Premises at any time, either by LICENSEE or the TOWN, shall, upon installation, become the property of, and owned by, the TOWN, and shall remain installed or affixed and be surrendered by LICENSEE upon the expiration or other termination of this License Agreement. Nothing in this paragraph shall be construed to give the TOWN title to, or to prevent LICENSEE'S removal of, moveable trade fixtures and leased equipment that are not Town-Owned Equipment (or TOWN-approved replacements thereof), but, upon removal of any such moveable items from the Licensed Premises, or, upon removal of other installations or fixtures as may be permitted or required by the TOWN, LICENSEE shall immediately, solely at LICENSEE's cost and expense, repair and restore the Licensed Premises to the condition existing prior to installation, and repair any damage to the Licensed Premises caused or created by such removal. All installations or fixtures or personalty permitted or required to be removed by

LICENSEE, at the termination, revocation or expiration of the Term, remaining in the Licensed Premises, after LICENSEE's vacating of the Licensed Premises, shall be deemed abandoned and may, at the TOWN's election, either be retained and kept as TOWN owned property, or may be removed from the Licensed Premises and/or disposed of by the TOWN solely at LICENSEE's cost and expense.

The LICENSEE shall maintain the interior and exterior of the Licensed Premises and shall be responsible for all repairs, including structural.

17. DESTRUCTION OF PREMISES

LICENSEE agrees that should any building or structure upon the Licensed Premises be fifty percent (50%) or more, or totally, destroyed by fire, hazard or casualty (i.e., an "act of God"), or any other cause whatsoever, so as to prevent the operation of this License Agreement to the satisfaction of the TOWN, the TOWN shall be under no obligation to repair or restore the building or structure. Should less than fifty percent (50%) of the building or structure be destroyed by fire, hazard or casualty (i.e., an "act of God"), except if any such fire, hazard or casualty is caused by or a consequence of LICENSEE's negligence, carelessness, recklessness or intentional act or omission, so as to prevent the operation of this License Agreement, the TOWN shall restore and shall repair, solely at the TOWN's cost and expense, the building or structure so damaged, or terminate this License Agreement. In the event the TOWN elects to repair or restore the damage, the repaired, rebuilt or newly constructed buildings or structures shall be at least equal in stability, permanency of construction, usefulness and value to the buildings or structures in existence immediately prior to the damage or destruction. Further, should the TOWN elect to make such repairs or rebuilding, LICENSEE shall be obligated to repair or restore, solely at the LICENSEE's cost and expense, the interior and fixtures at least equal in stability, permanency of construction, usefulness and value to the buildings or structures in existence immediately prior to the damage or destruction. Upon the failure of LICENSEE to make any such restorations and repairs, the TOWN may, as agent of the LICENSEE, repair such damage or perform such restorations, at the cost and expense solely of LICENSEE, first utilizing the proceeds of LICENSEE's fire, casualty or hazard insurance policy.

18. INFLAMMABLES

LICENSEE shall not use, or permit the storage of, any illuminating oils, lubricating oils or other oils, oil lamps, turpentine, benzene, naphtha or other similar flammable substances or explosives of any kind, or any substance or materials prohibited in the standard policies of fire, casualty or hazard insurance companies in the State of New York. LICENSEE shall not permit any persons to do anything in the Licensed Premises, or bring anything into the Licensed Premises, or permit anything to be brought into the Licensed Premises or to be kept therein, which will, in any way, increase the rate of fire, casualty or hazard insurance on the Licensed Premises, nor use the Licensed Premises or any part thereof, nor suffer or permit its use for any business activity or purpose which would cause or result in an increase in the rate of fire, casualty or hazard insurance on the Licensed Premises, and the LICENSEE agrees to pay, on demand by the TOWN, any such insurance premium increase.

19. SANITATION

LICENSEE shall keep the Licensed Premises clean, sanitary and neat at all times, including the fumigating, disinfecting and deodorizing of same, and all refuse and garbage shall be kept in closed containers. LICENSEE further agrees to broom sweep all the steps, entrance ways, sidewalks and walkways, appurtenant to the Licensed Premises, in a clean, neat, orderly, unobstructed and safe condition. All refuse, garbage, water and litter of all kinds shall be properly stored before disposal; and which refuse, garbage, waste and litter, arising out of the operation of the License Agreement, may be disposed of by LICENSEE in TOWN-owned garbage dumpsters located within Veterans Memorial Park.

20. INSPECTION

LICENSEE agrees that, during normal business hours, unimpeded access will be given to representatives of the TOWN, the County and/or State Departments of Health, and any other TOWN, Federal, State or County officials having jurisdiction for inspection purposes. LICENSEE further agrees that, if notified by TOWN, or its representatives, in writing, that any part of the Licensed Premises, or the facilities thereof, is unsatisfactory pursuant to the terms of this License Agreement, LICENSEE will remedy the same within a reasonable length of time.

The LICENSEE agrees that the TOWN, and the TOWN's officers, officials or agents and other TOWN representatives, shall have the right to enter into and upon the Licensed Premises, or any part thereof, at all reasonable hours for the purpose of inspecting or examining the same, or making such repairs, restorations, renovations or alterations therein, as may be necessary for the safety, conservation or preservation thereof.

21. WAIVER OF DAMAGE

LICENSEE hereby waives and relinquishes any and all claims, demands or entitlements for compensation or reimbursement for any and all expenses, costs, losses or damages sustained or incurred by reason of any defect, deficiency or impairment of the Town-Owned Equipment, or electrical, plumbing, heating, air-conditioning or HVAC apparatus, systems, equipment, fixtures, machinery, appliances or wiring furnished for, or existing at, the Licensed Premises, or by reason of any loss of any natural gas or heating oil supply, water supply, air-conditioning, heat or electric current, which may occur, from time to time, from any cause, or for any loss resulting from fire, water, hazard, tornado, explosion, civil commotion or riot, or any act of God. The TOWN is exempt and excused from any and all liability, culpability or responsibility for any damage, loss or injury to person or property caused by, or resulting from, steam, electricity, natural gas, heating oil, water or any leak or flow from, or into, any part of the Licensed Premises or from any damage, loss or injury resulting or arising from any other cause or happening whatsoever, unless said damage, loss or injury is caused by or as a result of the negligence of the TOWN. LICENSEE hereby releases and discharges the TOWN, its agents, officers, officials and employees, from any and all demands, claims, suits, actions and causes of action arising from any of the causes aforesaid, and LICENSEE agrees to indemnify, defend and hold the TOWN harmless therefor, including attorney's fees, if any.

22. COMPLIANCE WITH LAW

LICENSEE agrees to comply with all Federal, State, County and Local Laws, rules and regulations, and orders of the TOWN, affecting the Licensed Premises in regard to all matters.

23. INSURANCE

The LICENSEE shall not enter into or upon, or take possession or occupancy of, the Licensed Premises, until it has obtained all insurance policies and endorsements required under this paragraph, and until such policies of insurance have been approved by the TOWN, which consent shall not be unreasonably withheld.

(a) **Workers' Compensation Insurance** - The LICENSEE shall procure and maintain, during the Term of this License Agreement, Workers' Compensation Insurance for its entire staff and employees, in coverage amounts and containing such endorsements in compliance with New York State laws, rules and regulations and naming the TOWN as an additional insured thereunder.

(b) **General Liability and Property Damage Insurance** - The LICENSEE shall procure and maintain during the Term of this License Agreement such general liability and property damage insurance as shall protect LICENSEE and the Licensed Premises from claims for damages for personal injury, including accidental death, as well as from claims for property damage, which may arise from activities, performance or operations, or lack or failure thereof under this License Agreement. The coverage amounts of such insurance shall be as follows: General Liability Insurance in a general aggregate amount of not less than one million dollars (\$1,000,000.00), and not less than one million dollars (\$1,000,000.00) on account of any one occurrence.

The LICENSEE shall furnish the above insurance to the TOWN and shall also name the TOWN as an additional insured in said policies.

(c) **Insurance Covering Special Hazards:** The following special hazards shall be covered by a rider and/or riders to the policy and/or policies herein elsewhere required to be furnished by the LICENSEE, or by separate policies of insurance, in amounts as follows: Automobiles and Automobile Trucks – limits shall be the same as required under General Liability Insurance as hereinbefore specified.

(d) **Defense of Action or Suits:** Neither the TOWN, nor any of its officers, officials, employees or agents, shall, in any manner, be answerable, liable or responsible for any loss or damages that may happen to the Licensed Premises, or to any part or parts thereof, or to any materials, equipment or other property that may be used therein, or placed upon the ground, during the performance or operation of the License Agreement, except as a result of the TOWN's negligence, or its acts or omissions. Neither the TOWN, nor any of its officers, officials, employees or agents, shall be in any manner answerable, liable or responsible for any injury or damages or compensation required to be paid under any present or future law, to any person or persons whatsoever, whether staff or employees of the LICENSEE or otherwise, or for damages

to any property, whether belonging to the employees of the LICENSEE or otherwise, or for loss or damages to any property, whether belonging to the LICENSEE or others, occurring during, or resulting from, the performance or operation of the License Agreement. The LICENSEE shall properly guard against all injuries, loss and property damages. The LICENSEE shall indemnify, defend and save harmless the TOWN, its officers, officials, employees and agents against all such injuries, losses damages and compensation arising out of or resulting from LICENSEE's performance, operation, carrying out, execution or conducting any aspect of this License Agreement, or associated activities or business, whether by violation of statute, law, ordinance, regulation, order or decree or common law liability. The LICENSEE shall, from the commencement of the term of the License Agreement until completion, termination, revocation, cancellation or expiration thereof, maintain General Liability Insurance in the amounts hereinbefore stated for the protection of the LICENSEE and the TOWN, and shall furnish duplicates of the insurance policies to the TOWN, stamped by the insurer "Premium Paid." These policies shall be written by an insurance company or companies reasonably approved by the TOWN.

(e) The LICENSEE shall furnish the TOWN with satisfactory proof of coverage of the required insurance policies.

Each insurance policy and certificate shall have endorsed thereon:

"No cancellation of or change in the policy shall become effective until after ten (10) days' written notice to the Town Attorney, Town of Orangetown, 26 Orangeburg Road, Orangeburg, New York 10962."

(f) If, at any time, any of the said insurance policies shall, in the reasonable judgment of the TOWN, be or become unsatisfactory to the TOWN as to form or substance, or if a company issuing any such policies shall become unsatisfactory to the TOWN, and notification is given to LICENSEE in writing of same, LICENSEE shall promptly procure a new insurance policy, submit the same to the TOWN for approval, and submit a certificate thereof as hereinabove provided. Upon failure of LICENSEE to procure, furnish, deliver and maintain such insurance policies as above provided, this License Agreement may, if such policy or policies are not secured within ten (10) days after written notice to cure is given to LICENSEE, at the election of the TOWN, be forthwith declared cancelled, revoked or terminate, and the security deposit, letter of credit, bond or other monetary undertaking made by LICENSEE to the TOWN, securing the faithful performance of the LICENSEE under, and its compliance with, this License Agreement, shall thereupon be retained by the TOWN as liquidated damages. Failure of LICENSEE to procure and/or maintain any required insurance policies shall not relieve LICENSEE from any responsibility or liability under the License Agreement, nor shall the insurance requirements be construed to conflict with the obligations of LICENSEE concerning defense and indemnification. All required insurance policies must be in full force and effect and continued so during the Term of the License Agreement.

(g) The total amount of insurance coverage set forth in ¶23(b)(1) herein may be increased by the TOWN during the term of this License Agreement, or any renewal option Term hereof, if reasonably deemed in the best interest of the TOWN.

(h) The TOWN may replace, at the cost and expense solely of LICENSEE, any and all broken glass in and about the Licensed Premises. LICENSEE shall insure, and keep insured, all glass in the Licensed Premises for and in the name of the TOWN. Damage and injury to the Licensed Premises, caused by the carelessness, recklessness, negligence or improper conduct on the part of LICENSEE or the LICENSEE's staff, agents and/or employees shall be repaired, restored or replaced as speedily as possible by the LICENSEE, solely at the LICENSEE's cost and expense.

24. HOLD HARMLESS

The LICENSEE, in addition to any policies of insurance procured and maintained pursuant to this License Agreement, agrees to defend, save, indemnify and hold harmless the TOWN, and all of its agents, officials, officers, servants and employees, by reason of any claim, suit, action or causes of action, lawsuit or legal proceeding, regardless of origin or nature, arising out of the LICENSEE's performance, operation, carrying-out, execution or conducting of any aspect of this License Agreement, or associated activities or business, whether by violation of statute, law, ordinance, regulation, order or decree or common law liability, and whether or not a negligent act or omission is claimed, and the LICENSEE agrees to pay the TOWN for defending such suit, all costs, expenses and reasonable attorney's fees incurred therein, or, at the option of the TOWN, shall, solely at LICENSEE's own expense, defend any and all such actions.

25. VIOLATIONS, BREACHES AND DEFAULTS

(a) Should LICENSEE or any of its owners, partners, Members, principals, or controlling stockholders, be convicted of a felony crime, the TOWN may terminate, revoke and/or cancel this License Agreement by notice, in writing, immediately effective on mailing, as though it were the time provided for the expiration of the Term hereof.

(b) Should the TOWN, in the discretion of the Town Board, determine that LICENSEE is not operating, carrying-out or performing the License Agreement in compliance with any the terms and provisions hereof, the Town Board shall give the LICENSEE ten (10) days' notice to cure, in writing, specifying in what manner the LICENSEE is not operating, carrying-out or performing, and/or the problems or conditions to be cured or corrected, which notice shall be delivered and/or sent to the LICENSEE, either via hand-delivery at (by any practical means) and/or U.S.P.S. First Class Mail to the LICENSEE's principal place of business (set forth in the first paragraph of this License Agreement) and the Licensed Premises. In the event the LICENSEE's deficiency, inadequacy, lack of and/or failure in operating, carrying-out or performing under the License Agreement, and/or the problems or conditions, are/is not corrected or cured within said ten (10) day cure period, the Town Board may adopt a Resolution to revoke, terminate and/or cancel the License Agreement. In the event said Resolution is adopted by the Board, a certified copy of the Resolution shall be delivered and/or sent to the LICENSEE, either via hand-delivery at (by any practical means) and/or U.S.P.S. First Class Mail

to the LICENSEE's principal place of business (set forth in the first paragraph of this License Agreement) and the Licensed Premises and the License Agreement shall thereupon be revoked, cancelled and/or terminated, without further notice, as though it were the time provided for the expiration of the Term hereof. In the event this License Agreement is revoked, cancelled and/or terminated as aforesaid, all rights and privileges of the LICENSEE herein shall be forfeited without any claims for damages, compensation, refund of its investment, expenses or costs of improvements, if any, or any other claim whatsoever against the TOWN.

(c) In the event this License Agreement is revoked, cancelled and/or terminated as aforesaid, any property rightfully owned by LICENSEE within the Licensed Premises may be retained, held and used by the TOWN so as to operate the batting cage services during the balance of the Term, and may be held, retained and used thereafter until all indebtedness of LICENSEE hereunder, at the time of revocation, termination or cancellation of this License Agreement, is paid in full.

(d) Anything hereinabove to the contrary notwithstanding, in the event LICENSEE violates any Federal, County, State or Local law, statute, code, rule, regulation or ordinance affecting the License Agreement or the Licensed Premises, in regard to any and all matters, the TOWN may, in writing, notify (in the manner described in ¶25[b] herein) LICENSEE to remedy, cure, correct, clear-up or repair such violation, and, in the event the LICENSEE fails to cure, repair, correct, remedy, clear-up or comply, or has not diligently commenced compliance, with same, within ten (10) days after the TOWN's said delivery of said notice, the TOWN may enter the Licensed Premises and correct, repair, remedy, clear-up or cure the violative conditions, and the LICENSEE shall repay and reimburse the TOWN for all sums expended therefor. The TOWN shall have the absolute right to deduct said sums expended; including all labor costs, from the security deposit/bond provided for in ¶34(b) herein, and the LICENSEE shall have ten (10) days to replace said moneys deducted from the security deposit/bond. If said moneys for the security deposit/bond are not replaced within ten (10) days, same shall be a breach of, default under, or failure to comply with this License Agreement after the expiration of the ten (10) notice to cure period as per ¶25(b) herein.

(e) It is expressly understood and agreed that, in case the Licensed Premises shall be abandoned, deserted or vacated, or if default is made in the payment of the annual License Fee and/or Electricity Fee, or any part thereof as herein specified, or if, without the consent of the TOWN, the LICENSEE shall sell, assign, or mortgage this License Agreement, or if Licensee defaults, violates or breaches any of the covenants, provisions or terms of this License Agreement, on the part of the LICENSEE to be kept, complied with, followed, adhered to and/or performed, or if the LICENSEE shall violate any Federal, State, County or Local laws, statutes, ordinances, rules, orders, codes, regulations or requirements applicable to the Licensed Premises, or if the LICENSEE shall file, or there is filed against the LICENSEE, a petition in bankruptcy or receivership arrangement, or LICENSEE is adjudicated a bankrupt or makes an assignment for the benefit of creditors or takes advantage of any insolvency act, the TOWN may terminate, revoke and/or cancel this License Agreement and the Term hereof, on giving to the LICENSEE ten (10) days' notice to cure (as per ¶25[b] herein) of the TOWN's intention so to do, and setting forth in such notice the nature of the default, violation or breach and the opportunity for the LICENSEE to cure such default, violation or breach within such ten (10) day period. If the

LICENSEE cures the default, violation or breach, as set forth in the notice within such ten (10) day period, then this License Agreement shall remain in full force and effect.

26. NOTICE

Where provision is made herein for notice to be given in writing, unless otherwise prescribed herein, the same shall be delivered and/or sent to the LICENSEE, either via hand-delivery at (by any practical means) and/or U.S.P.S. First Class Mail to the LICENSEE's principal place of business (set forth in the first paragraph of this License Agreement) and the Licensed Premises; and delivered and/or sent to the TOWN via the same manner at or to TOWN Hall at the address set forth in the first paragraph of this License Agreement.

The failure of the TOWN to insist upon strict performance of any of the terms, provisions, agreements, conditions or covenants herein shall not be deemed a waiver of any rights, privileges or remedies that the TOWN may have, and shall not be deemed a waiver of any subsequent breach, violation or default in the terms, provisions, agreements, conditions and covenants herein contained. This Licensed Agreement may not be changed, modified, revised, cancelled or terminated orally.

The obligation and responsibility of LICENSEE to pay and remit the monthly installments of the annual License Fee and Electricity Fee hereunder, and to perform and comply with all of the other provisions, covenants, promises and agreements hereunder on part of LICENSEE to be performed or complied with, shall in no way be affected, impaired, waived, relieved or excused because the TOWN is unable to supply, or is delayed in supplying, any service expressly or impliedly to be supplied by the TOWN, or because the TOWN is unable to make, or is delayed in making, any repairs, restorations, additions, alterations or decorations, or because the TOWN is unable to supply, or is delayed in supplying, any machinery, appliances, equipment or fixtures, if the TOWN is prevented, hindered or delayed from so doing by reason of governmental preemption in connection with a national emergency or in connection with any rule, law, statute, code, order or regulation of any municipal department of any governmental or administrative agency, or by reason of the condition of supply and demand which have been, or are, affected by war or other emergency.

No diminution or abatement of the annual License Fee or Electricity Fee, or other compensation or reimbursement to LICENSEE, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs, restorations, alterations or improvements to the Licensed Premises, or to its appliances, machinery, appliances, equipment or fixtures, nor for any space taken to comply with any law, statute, rule, regulation, code, ordinance or order of a governmental or municipal agency, department or authority. In respect to the various "services," if any, herein expressly or impliedly agreed to be furnished or supplied by the TOWN to the LICENSEE, it is agreed that there shall be no diminution or abatement of the annual License Fee or Electricity Fee, or any other compensation or reimbursement to LICENSEE, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations, restorations, construction or repairs desirable, or necessary, to be made, or to inability or difficulty in securing materials, supplies or labor for the maintenance of such "service," or to some other cause, not constituting gross negligence on the part of the TOWN. No such

interruption or curtailment of any such "service" shall be deemed to be a breach, violation or default of this License Agreement by the TOWN. The TOWN shall not be required to furnish or supply, and the LICENSEE shall not be entitled to receive, any of such "services" during any period wherein the LICENSEE shall be in default, violation or breach in respect to the payment of any portion of the annual License Fee or Electricity Fee. Neither shall there be any abatement or diminution of the annual License Fee or Electricity Fee because of making of repairs, restorations, alterations, construction improvements or decorations to the Licensed Premises after the date above fixed for the commencement of the Term, it being understood that the annual License Fee and Electricity Fee shall, in any event, commence to run at such date so above fixed.

27. SURRENDER

(a) LICENSEE, at the expiration, or sooner termination, revocation or cancellation, of this License Agreement, shall quit and surrender possession and occupancy of the Licensed Premises, and all property thereon belonging to or owned by the TOWN, in as good condition as when taking possession thereof, reasonable wear and tear excepted.

(b) The TOWN shall have the option to purchase, at fair market value, all of LICENSEE's personal property purchased by LICENSEE since the commencement date of this License Agreement including, but not limited to, LICENSEE's furniture, moveable trade fixtures, furnishings, equipment, tools, machinery, appliances and apparatus situated on the Licensed Premises and but not affixed to the Licensed Premises, at a price to be mutually agreed upon at the time of LICENSEE's surrender of the Licensed Premises.

28. FIXTURES, FURNITURE AND EQUIPMENT

(a) The LICENSEE acknowledges and agrees that the TOWN is the owner of all furniture, furnishings, fixtures, equipment, machinery, appliances, tools, apparatus and personal property (i.e., the Town-Owned Equipment) presently at the Licensed Premises, including, but not necessarily limited to, all those items shown on the inventory sheet annexed hereto as "Appendix 1", and LICENSEE shall repair and maintain in satisfactory working condition, and be responsible for, all items listed on the annexed Appendix 1 (i.e., the Town-Owned Equipment), and shall surrender same to the TOWN in the same condition as they were at the commencement date of this License Agreement, reasonable wear and tear excepted, at the termination, revocation and/or cancellation of this License Agreement.

(b) In the event LICENSEE defaults on any security agreement relating to any furniture, fixture, tool, furnishing, apparatus, tools, machinery, appliance and/or equipment (hereinafter sometimes referred to as "personal property") on the Licensed Premises, the LICENSEE shall pay to the TOWN the difference between the amount of the security agreement remaining unpaid and the value of said personal property. The TOWN shall have the right to assume the balance of the term of any existing lease or financing agreement for any such personal property.

(c) In the event that the option to purchase any of LICENSEE's own personal property herein is exercised by the TOWN pursuant to ¶27(b) herein, the aggregate sum of the mutually agreed upon value of the personal property shall be paid by the TOWN to the

LICENSEE within ninety (90) days from the date of the termination, revocation or cancellation of the License Agreement. Title to said personal property shall immediately vest in the TOWN. In the event that there are taxes, liens, security agreements or other encumbrances attached to said personal property at the date of termination, revocation or cancellation of this License Agreement, at the election of the TOWN, either the total amount thereof shall be deducted from any payments due LICENSEE from the TOWN, or the LICENSEE shall pay all such claims, liens, encumbrances or judgments and furnish satisfactory evidence thereof to the TOWN Attorney.

29. SIGNS

(a) The LICENSEE, at all locations now existing or hereafter used for the purpose of providing the LICENSEE's services specified in this License Agreement, shall erect suitable signs, approved by the TOWN, informing the public of the nature of the services provided at each such location and the name of the LICENSEE furnishing the service. The TOWN shall not unreasonably withhold, condition or delay approval of such signs.

(b) The LICENSEE shall place no sign or advertisement upon any property of the TOWN, or upon any vehicle operated by the LICENSEE under the provisions hereof, except such as shall have first been approved, in writing, by the TOWN; and the TOWN shall have the right, after ten (10) days notice, in writing, to the LICENSEE, to remove, at the sole cost and expense of the LICENSEE, any sign or signs that may be erected without the TOWN's consent.

(c) The LICENSEE shall have the right to install or erect such off-premises signs as the LICENSEE deems necessary, subject to the approval of the TOWN, and provided same is in conformity with all applicable Federal, State, County and Local Laws. The TOWN shall not unreasonably withhold, condition or delay approval of such signs.

30. ORDINANCES, LAWS & REGULATIONS

The LICENSEE shall not permit, allow or suffer any gambling, nor improper or immoral conduct on the part of its officers, owners, principals, Members, controlling stockholders, staff or employees, at any time, upon the Licensed Premises; and shall not permit or allow hawking, or any other noises or disturbances designed to attract attention or to solicit trade, and shall abide by the code of the TOWN, the Charter of the County of Rockland and the laws, statutes, rules and regulations of the State of New York and of the United States, and the rules and regulations promulgated by the TOWN.

31. PERFORMANCE

The LICENSEE agrees well and truly to perform and faithfully observe and comply with any and all covenants, conditions, agreements, terms, promises and provisions prescribed herein. The LICENSEE further agrees to defend and indemnify, and save and keep harmless, the TOWN, and its officers, officials, agents and employees, from and against all liability, liens, judgments, costs, claims, damages, costs and expenses of whatsoever kind, which may in any way be suffered by the TOWN, or its officers, officials, agents or employees, or which may accrue against or be

charged to, or recovered from, the TOWN or its officers, officials, agents or employees, by reason or in consequence of the performance, execution or operation of, or as a result or in consequence of the privileges granted under, the License Agreement, or for or on account of any act or thing done or suffered or omitted to be done under the authority, or supposed authority, of such grant. Notwithstanding any other provision to the contrary, LICENSEE shall not be responsible for the acts or omissions of the TOWN, its agents, officials, officers and/or employees.

32. NO LIABILITY TO THE TOWN

The TOWN shall not be liable or responsible for any damage or injury to persons or property in the Licensed Premises other than in connection with the acts or omissions of the TOWN, its agents, officials, officers and/or employees. The LICENSEE agrees that all personal property upon the Licensed Premises shall be kept, stored, used and utilized at the risk of the LICENSEE, and the TOWN shall not be liable or responsible for any damage or casualty thereto or loss or theft thereof. The TOWN shall not be liable or responsible for any damages or losses incurred by the LICENSEE in connection with the operation of the Licensed Premises from theft, vandalism or otherwise.

33. RELATIONSHIP TO THE TOWN

The LICENSEE shall be legally considered an independent contractor and neither it, nor its staff or employees, shall, under any circumstances, be considered employees, servants or agents of the TOWN, and the TOWN shall, at no time, be legally liable or responsible for any negligence, carelessness or recklessness on the part of said LICENSEE, or its servants, employees or agents, resulting in either personal injury or property damage to any individual, business entity or firm or corporation.

34. INVESTMENT

(a) It is agreed between the parties that, as a condition precedent to operating this License Agreement, the LICENSEE agrees to invest a sufficient amount in furnishings, equipment, appliances, machinery, tools, apparatus and fixtures, so as to properly operate and perform under the License Agreement.

(b) The LICENSEE shall procure and furnish to the TOWN a letter of credit or bond, with a surety company authorized to do business in the State of New York, in the amount of six thousand dollars (\$6,000.00), or cash, or similar security acceptable to the Director of the TOWN Finance Department ("security deposit" or "bond"), to insure the faithful performance of all terms, provisions, promises, covenants and conditions of this License Agreement, including LICENSEE's obligation to remit the License Fee and Electricity Fee. Said security deposit or bond shall be delivered to the TOWN with full premium paid before commencement of this License Agreement or any operations by the LICENSEE, and shall be maintained in full force and effect for a period of six (6) months after the date of termination, revocation or cancellation of this License Agreement, and shall provide for a thirty (30) day prior written notice to the TOWN in the event of cancellation.

(c) Said security deposit or bond is to be retained by the TOWN to insure LICENSEE's total compliance with, and full and complete adherence to, this License Agreement. Should the LICENSEE fail to comply with each and every term, covenant, provision, promise, agreement and condition herein contained, said LICENSEE agrees, and hereby authorizes the TOWN, to use such security deposit or bond, or any part thereof, and apply same toward the payment of any breach, violation or default, including but not limited to, the liquidated damages described in ¶35 herein, and utility bills. LICENSEE's liability to the TOWN shall not be limited to, or restricted by, the amount of the security deposit.

35. LIQUIDATED DAMAGES

In the event of a breach, violation or default of this License Agreement that remains uncured, after any notice to cure period required by the License Agreement, it is hereby stipulated and agreed, by and between the parties, that this License Agreement shall be deemed cancelled, revoked and terminated, and the TOWN shall be entitled to the sum of three thousand dollars (\$3,000.00) as and for liquidated damages, which shall be in addition to any and all other pecuniary or actual damages suffered by the TOWN, including, but not limited to, outstanding License Fee and/or Electricity Fee arrears, which liquidated damages shall be funded by the security deposit referenced in ¶34 above. The TOWN and LICENSEE agree, consent and acknowledge that the \$3,000.00 liquidated damages sum **IS NOT A PENALTY**, but, rather, intended to compensate the TOWN for the lost License Fee and/or Electricity Fee payments, the TOWN may lose and be deprived of if LICENSEE breaches, violates or defaults, and this License Agreement is terminated, revoked or cancelled, which precise monetary losses or deprivation to the TOWN cannot be ascertained with certainty.

36. MISCELLANEOUS PROVISIONS

(a) LICENSEE agrees to abide by and comply with all reasonable rules and regulations that the TOWN may, from time to time, issue or adopt for the care, protection, general welfare, health safety and comfort of the occupants and visitors of the TOWN's parks or playgrounds.

(b) The failure of the TOWN to insist upon the strict performance of any of the provisions, terms, promises, conditions and covenants herein shall not be deemed a waiver of any rights, privileges or remedies that the TOWN may have, and shall not be deemed a waiver of any subsequent breach, violation or default of any such provisions, terms, promises, conditions or covenants herein contained.

(c) If any term, provision, covenant, promise or condition of this License Agreement, or the application thereof to any person or circumstance, shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement shall not be affected thereby, and each remaining term, provision, covenant, promise and condition of this License Agreement shall be valid and remain in full force and effect.

(d) Six months prior to the expiration of the term of this License Agreement,

LICENSEE shall provide a list of supplies and inventory, and all LICENSEE procured personal property, to the Superintendent of Parks and Recreation. The TOWN reserves the right to purchase said items at fair market value by notifying LICENSEE in writing no later than sixty (60) days after receipt of said list. All equipment, machinery, appliances, accoutrements, appurtenances and/or fixtures, attached or affixed to the Licensed Premises, shall become the property of the TOWN automatically upon such attachment or affixation of such items.

(e) Nothing herein contained shall be deemed or construed so as to create an automatic renewal of the Term of this License Agreement.

(f) The TOWN agrees that the TOWN will not operate, or permit the operation of, another batting cage at any TOWN-owned park or playground during the Term of this License Agreement.

(g) Subject to rules and regulations of the TOWN, the TOWN grants to the LICENSEE the privilege of using the existing parking areas at Veterans Memorial Park, for customers of the LICENSEE, in conjunction with the use of said parking facilities by persons using Veterans Memorial Park.

(h) If the TOWN, in the discretion of the Town Board, determines that the LICENSEE is not operating, carrying-out or performing the License Agreement in compliance with any the terms and provisions hereof, then the TOWN may issue Requests for Proposals (“RFPs”) to the general public, for the purpose of inviting proposals, bids or offers to operate the batting cage concession at the Licensed Premises, which concession is the subject of this License Agreement.

(i) This License Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

37. MODIFICATION

This License Agreement contains the complete and entire agreement made between the TOWN and LICENSEE, and may not be modified, changed or revised orally or in any other manner other than by an agreement, in writing, signed by all of the parties or their respective successors in interest.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be signed by their authorized officers and have caused their corporate or business entity seals to be affixed hereto.

Dated: Orangeburg, New York
_____, 2019

_____, LICENSEE

Sworn to before me this ____
day of _____, 2019

By: _____

[PRINT NAME & TITLE OF SIGNATORY BENEATH SIGNATURE]

Notary Public

TOWN OF ORANGETOWN

Sworn to before me this ____
day of _____, 2019

By: _____
Christopher Day, Supervisor

Notary Public

GOOD GUY GUARANTY

Whereas, Guarantor is the _____ of LICENSEE; and

Whereas, the TOWN is unwilling to enter into this License Agreement unless it receives a guaranty by the Guarantor of the obligations of LICENSEE under the License Agreement, as provided in this Guaranty;

Now, therefore, for One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by Guarantor, and to induce the TOWN to enter into the License Agreement, Guarantor hereby covenants, promises and agrees as follows:

(A). As limited by the provisions of §“b” of this Guaranty, Guarantor hereby unconditionally, absolutely and irrevocably guarantees to the TOWN (i) the prompt payment when due of the License Fee and Electricity Fee (as defined in the License Agreement) and all other sums due in connection with or under the License Agreement, and (ii) to pay, on demand, any and all costs and expenses (including, without limitation, attorney’s fees and disbursements) incurred by the TOWN in enforcing any rights under this Guaranty (collectively, the “Obligations”). This Guaranty is an absolute and unconditional guaranty of payment (and not of collection). Without limiting the generality of the foregoing, the TOWN shall not be required to resort to any security deposit or bond it may be holding under the License Agreement, or make any demand on the LICENSEE under the License Agreement and/or any other party, or otherwise pursue or exhaust its remedies against LICENSEE, or any other party, before, simultaneously with, or after, enforcing its rights and remedies hereunder against Guarantor.

(B). Provided that the TOWN has received no less than sixty (60) days prior written notice specifying the Surrender Date (as hereinafter defined), and upon receipt by the TOWN of a duly executed and acknowledged Surrender Declaration (the “Surrender Declaration”), in the form set forth below, together with all License Fees and Electricity Fees and any other monies due from the LICENSEE through the Surrender Date, all keys to the Licensed Premises, and the LICENSEE having left the Licensed Premises in broom-clean, vacant condition (except for all Town-Owned Equipment, and fixtures attached or annexed to the Licensed Premises), free of sub-LICENSEEs, occupants or any claims to possession or occupancy by third parties, and otherwise in the condition required by the License Agreement (the date all of the foregoing are fully satisfied and complied with being the “Surrender Date”), then Guarantor shall be released from all individual liability with respect to any Obligations arising or accruing after the Surrender Date, but Guarantor shall continue to remain liable for (i) all Obligations which arose or accrued on or prior to the Surrender Date, (ii) all reasonable expenses (including, without limitation, attorney’s fees and disbursements) incurred by the TOWN in enforcing any rights under this Guaranty or the Obligations, and (iii) all breaches of warranties and representations in the Surrender Declaration. LICENSEE’s obligations under the License Agreement shall not be affected by the Surrender Declaration.

(C). Guarantor hereby waives to the full extent permitted by law (i) notice of acceptance of this Guaranty and of any change in the financial condition of LICENSEE, (ii) promptness, diligence, and presentment and demand for payment, performance or observance of any of the Obligations, and (iii) protest, notice of dishonor, notice of default and any other notice with respect to any of the Obligations and/or this Guaranty.

(D). In order to charge Guarantor under this Guaranty, no demand on Guarantor shall be required, nor shall there be required any notice to the Guarantor of default under any of the

terms of the License Agreement on the part of LICENSEE to be paid, performed or observed or of the same as affected by any agreement or stipulation extending the time of payment, performance or observance of or modifying the terms of the License Agreement, Guarantor hereby expressly waiving any such demand or notice.

(E). Any and all amounts required to be paid by Guarantor hereunder shall be paid in lawful money of the United States of America and in immediately available funds to the TOWN. All payments by Guarantor shall be made for the benefit of the TOWN in accordance with the terms herein set forth without setoff or counterclaim.

(F). No amendment or waiver of any provision of this Guaranty, nor consent to any departure by Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the TOWN, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No delay on the part of the TOWN in exercising any rights hereunder, or failure to exercise the same, shall operate as a waiver of such rights, and no notice to or demand on Guarantor shall be deemed to be a waiver of the obligations of Guarantor, or of the right of the TOWN to take further action without notice or demand. Guarantor shall not assign any rights under this Guaranty, or delegate any duties under this Guaranty, without, in each instance, the TOWN's prior written consent.

(G). All rights and remedies of the TOWN under this Guaranty shall be cumulative and may be exercised singly or concurrently.

(H). All notices and other communications which may be, or are desired to be, given hereunder shall be in writing, and shall be delivered and/or sent to the LICENSEE, either via hand-delivery at (by any practical means) and/or U.S.P.S. First Class Mail to the LICENSEE's principal place of business (set forth in the first paragraph of this License Agreement) and the Licensed Premises; and delivered and/or sent to the TOWN via the same manner at or to TOWN Hall at the address set forth in the first paragraph of this License Agreement.

(I). This Guaranty is a continuing guaranty and shall (i) remain in full force and effect until the payment, performance and/or observance in full of the Obligations and all other amounts payable under this Guaranty, as limited by §"b" of this Guaranty (ii) be binding upon the Guarantor, his heirs, legal representatives, successors and assigns (however, this provision shall not be deemed to permit Guarantor to assign his rights or delegate his duties hereunder), and (iii) inure to the benefit of and be enforceable by the TOWN and its successors and assigns or by any person to whom the TOWN's interest in the License Agreement, or any part thereof, including the License Fee and Electricity Fee, may be assigned, whether by way of mortgage or otherwise. Wherever in this Guaranty reference is made to TOWN or LICENSEE, the same shall be deemed to refer also to the then heir, legal representative, successor or assign of the TOWN or LICENSEE, respectively.

_____ Sworn to before me this
[PRINT NAME OF SIGNATORY BENEATH SIGNATURE] _____ day of _____,

Notary Public

SAMPLE ONLY:
DO NOT SIGN UNLESS, AND UNTIL, LICENSEE SURRENDERS POSSESSION/ OCCUPANCY

SURRENDER DECLARATION

State of New York)
) ss:
County of Rockland)

The undersigned, being duly sworn, hereby deposes and says: I am the _____ of _____ [LICENSEE'S NAME] ("LICENSEE"), the LICENSEE under a certain License Agreement, dated _____ [date of License Agreement], entered into by and between the TOWN and the LICENSEE.

(i). I make this declaration to induce the TOWN to release me from continuing obligations under that certain Good Guy Guaranty of License Agreement dated _____ (the "Guaranty"), executed by me, a true copy of which is annexed hereto and incorporated herein by reference, to the extent, and under the terms and conditions, contained therein.

(ii). I hereby represent and warrant to the TOWN that: as of the date of the TOWN's receipt of this Surrender Declaration (the "Surrender Date"), all License Fees and Electricity Fees and any other monies due from LICENSEE through the Surrender Date have been paid in full, and LICENSEE has tendered exclusive possession and occupancy of the Licensed Premises to the TOWN; and the Licensed Premises are in broom-clean, vacant condition (except for all Town-Owned Equipment, and fixtures attached or annexed to the Licensed Premises), free of sub-LICENSEEs, occupants or any claims to possession or occupancy by third parties, and otherwise in the condition required by the License Agreement.

(iii). I further acknowledge that the TOWN is relying on the representations set forth hereinabove in releasing me from continuing obligations under the Guaranty, and I hereby agree to be responsible for all losses, claims, damages, costs and expenses arising out of, or in connection with, any inaccuracies in the representations set forth above.

(iv). Enclosed herewith are all keys to the Licensed Premises.

_____ Sworn to before me this
[PRINT NAME OF SIGNATORY BENEATH SIGNATURE] _____ day of _____, _____

Notary Public

APPENDIX 1

**TOWN-OWNED EQUIPMENT, APPLIANCES, MACHINERY,
APPARATUS AND FIXTURES**

<u>QUANTITY</u>	<u>MODEL #</u>	<u>MANUFACTURER</u>	<u>DESCRIPTION</u>
8	MA-4	Master Pitching Machine	“Iron Mike”
1	MA-5	Master Pitching Machine	“Iron Mike”
1	Unknown	Master Pitching Machine	“Grand Central Station”
1	EL-1	Master Pitching Machine	Ball return elevator
1	-----	Master Pitching Machine	Netting
8	Unknown	Master Pitching Machine	Token boxes
1	-----	-----	Chain-link fencing
24	-----	Foley Signs	Aluminum signs
1	Unknown	Carrier	Window/wall a/c unit
1	Wood Shed	Unknown	10’ X 12’ wooden shed

NON-COLLUSIVE BIDDING CERTIFICATE

STATEMENT ATTACHED TO AND FORMING A PART OF ALL BIDS RECEIVED BY THE TOWN OF ORANGETOWN.

- (A) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:
- (1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;
 - (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to the opening, directly or indirectly, to any other bidder or to any competitor; and,
 - (3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit a bid for the purpose of restricting competition.
- (b) A bid shall not be considered for award nor shall any award be made where (a), (1), (2) and (3) above have not been complied with; provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and furnish with the bid a signed statement which sets forth in details the reasons therefore. Where (a), (1), (2), and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to customers at the same price being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

(c) Any bid hereafter made to any political subdivision of the State or any public department, agency or official thereof by a corporate bidder for work or service performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

This statement is subscribed by the bidder or person signing on behalf of the bidder and affirmed as true under penalties of perjury.

DATED: _____

BY: _____

FOR: _____
