



**CITY OF NORTH WILDWOOD
OPEN PUBLIC RECORDS ACT REQUEST FORM**

901 Atlantic Avenue
North Wildwood, NJ 08260
Phone: 609-522-2030 FAX: 609-522-6180
W. Scott Jett, City Clerk
sjett@northwildwood.com



Important Notice

The last page of this form contains important information related to your rights concerning government records. Please read it carefully.

Requestor Information - Please Print

First Name Lizabeth MI M Last Name Bannon

E-mail Address lizlillo@gmail.com

Mailing Address 406 W Magnolia Ave.

City Wildwood State NJ Zip 08260

Telephone 609 780 3998 FAX _____

Preferred Delivery: Pick Up ☒ US Mail ☐ On-Site Inspect ☐ Fax ☐ E-mail ☐

If you are requesting records containing personal information, please circle one: Under penalty of N.J.S.A. 2C:28-3, I certify that I HAVE / HAVE NOT been convicted of any indictable offense under the laws of New Jersey, any other state, or the United States.

Signature Lizabeth Bannon Date 8/14/17

Payment Information

Maximum Authorization Cost \$ _____

Select Payment Method

Cash ☐ Check ☐ Money Order ☐

Fees: Letter size pages - \$0.05 per page
Legal size pages - \$0.07 per page
Other materials (CD, DVD, etc) - actual cost of material

Delivery: Delivery / postage fees additional depending upon delivery type.

Extras: Special service charge dependent upon request.

Record Request Information: Please be as specific as possible in describing the records being requested. Also, please note that your preferred method of delivery will only be accommodated if the custodian has the technological means and the integrity of the records will not be jeopardized by such method of delivery.

Merchable License - Hotdog Vendor 7th Street

AGENCY USE ONLY

Est. Document Cost _____
Est. Delivery Cost _____
Est. Extras Cost _____
Total Est. Cost _____
Deposit Amount _____
Estimated Balance _____
Deposit Date _____

AGENCY USE ONLY

Disposition Notes
Custodian: If any part of request cannot be delivered in seven business days, detail reasons here.

RECEIVED

AUG 14 2017

CITY CLERK

CITY OF NORTH WILDWOOD

In Progress _____
Denied _____
Filled _____
Partial _____
Open _____
Closed _____
Closed _____
Closed _____

AGENCY USE ONLY

Tracking Information

Tracking # 120.17
Rec'd Date _____
Ready Date _____
Total Pages _____

Final Cost

Total _____
Deposit _____
Balance Due _____
Balance Paid _____

Records Provided

emailed N/C

Jennifer Van Sant 8/17/17
Custodian Signature Date

120.17

DEPOSITS

The custodian may require a deposit against costs for reproducing documents sought through an anonymous request whenever the custodian anticipates that the documents requested will cost in excess of \$5 to reproduce.

Where a special service charge is warranted under OPRA, that amount will be communicated to you as required under the statute. You have the opportunity to review and object to the charge prior to it being incurred. If, however, you approve of the fact and amount of the special service charge, you may be required to pay a deposit or pay in full prior to reproduction of the documents.

YOUR REQUEST FOR RECORDS IS DENIED FOR THE FOLLOWING REASON(S):

(To be completed by the Custodian of Records – check the box of the numbered exemption(s) as they apply to the records requested. If multiple records are requested, be specific as to which exemption(s) apply to each record. **Response is due to requestor as soon as possible, but no later than seven business days.**)

N.J.S.A. 47:1A-1.1

- ☐ Inter-agency or intra-agency advisory, consultative or deliberative material
- ☐ Legislative records
- ☐ Law enforcement records:
 - ☐ Medical examiner photos
 - ☐ Criminal investigatory records (however, N.J.S.A. 47:1A-3.b. lists specific criminal investigatory information which must be disclosed)
 - ☐ Victims' records
- ☐ Trade secrets and proprietary commercial or financial information
- ☐ Any record within the attorney-client privilege
- ☐ Administrative or technical information regarding computer hardware, software and networks which, if disclosed would jeopardize computer security
- ☐ Emergency or security information or procedures for any buildings or facility which, if disclosed, would jeopardize security of the building or facility or persons therein
- ☐ Security measures and surveillance techniques which, if disclosed, would create a risk to the safety or persons, property, electronic data or software
- ☐ Information which, if disclosed, would give an advantage to competitors or bidders
- ☐ Information generated by or on behalf of public employers or public employees in connection with:
 - ☐ Any sexual harassment complaint filed with a public employer
 - ☐ Any grievance filed by or against an employee
 - ☐ Collective negotiations documents and statements of strategy or negotiating
- ☐ Information that is a communication between a public agency and its insurance carrier, administrative service organization or risk management office
- ☐ Information that is to be kept confidential pursuant to court order
- ☐ Certificate of honorable discharge issued by the United States government (Form DD-214) filed with a public agency
- ☐ Social security numbers
- ☐ Credit card numbers
- ☐ Unlisted telephone numbers
- ☐ Drivers' license numbers
- ☐ Certain records of higher education institutions:
 - ☐ Research records
 - ☐ Questions or scores for exam for employment or academics
 - ☐ Charitable contribution information
 - ☐ Rare book collections gifted for limited access
 - ☐ Admission applications
 - ☐ Student records, grievances or disciplinary proceedings revealing a students' identification
- ☐ Biotechnology trade secrets N.J.S.A. 47:1A-1.2
- ☐ Convicts requesting their victims' records N.J.S.A. 47:1A-2.2
- ☐ Ongoing investigations of non-law enforcement agencies (must prove disclosure is inimical to the public interest) N.J.S.A. 47:1A-3.a.
- ☐ Public defender records N.J.S.A. 47:1A-5.k.
- ☐ Upholds exemptions contained in other State or federal statutes and regulations, Executive Orders, Rules of Court, and privileges created by State Constitution, statute, court rule or judicial case law N.J.S.A. 47:1A-9
- ☐ Personnel and pension records (however, the following information must be disclosed:
 - An individual's name, title, position, salary, payroll record, length of service, date of separation and the reason for such separation, and the amount and type of any pension received
 - When required to be disclosed by another law, when disclosure is essential to the performance of official duties of a person duly authorized by this State or the US, or when authorized by an individual in interest
 - Data contained in information which disclose conformity with specific experiential, educational or medical qualifications required for government employment or for receipt of a public pension, but not including any detailed medical or psychological information N.J.S.A. 47:1A-10

N.J.S.A. 47:1A-1

- ☐ "a public agency has a responsibility and an obligation to safeguard from public access a citizen's personal information with which it has been entrusted when disclosure thereof would violate the citizen's reasonable expectation of privacy."

Burnett v. County of Bergen, 198 N.J. 408 (2009). Without ambiguity, the court held that the privacy provision "is neither a preface nor a preamble." Rather, "the very language expressed in the privacy clause reveals its substantive nature; it does not offer reasons why OPRA was adopted, as preambles typically do; instead, it focuses on the law's implementation." "Specifically, it imposes an obligation on public agencies to protect against disclosure of personal information which would run contrary to reasonable privacy interests."

Executive Order No. 21 (McGreevey 2002)

- ☐ Records where inspection, examination or copying would substantially interfere with the State's ability to protect and defend the State and its citizens against acts of sabotage or terrorism, or which, if disclosed, would materially increase the risk or consequences of potential acts of sabotage or terrorism.
- ☐ Records exempted from disclosure by State agencies' proposed rules.

Executive Order No. 26 (McGreevey 2002)

- ☐ Certain records maintained by the Office of the Governor
- ☐ Resumes, applications for employment or other information concerning job applicants while a recruitment search is ongoing
- ☐ Records of complaints and investigations undertaken pursuant to the Model Procedures for Internal Complaints Alleging Discrimination, Harassment or Hostile Environments
- ☐ Information relating to medical, psychiatric or psychological history, diagnosis, treatment or evaluation
- ☐ Information in a personal income or other tax return
- ☐ Information describing a natural person's finances, income, assets, liabilities, net worth, bank balances, financial history or activities, or creditworthiness, except as otherwise required by law to be disclosed
- ☐ Test questions, scoring keys and other examination data pertaining to the administration of an examination for public employment or licensing
- ☐ Records in the possession of another department (including NJ Office of Information Technology or State Archives) when those records are made confidential by regulation or EO 9.

Other Exemption(s) contained in a State statute, resolution of either or both House of the Legislature, regulation, Executive Order, Rules of Court, any federal law, federal regulation or federal order pursuant to N.J.S.A. 47:1A-9.a.
(Please provide detailed information regarding the exemption from disclosure for which you are relying to deny access to government records. If multiple records are requested, be specific as to which exemption(s) apply to each record.)

REQUEST FOR RECORDS UNDER THE COMMON LAW

If, in addition to requesting records under OPRA, you are also requesting the government records under the common law, please check the box below.

A public record under the common law is one required by law to be kept, or necessary to be kept in the discharge of a duty imposed by law, or directed by law to serve as a memorial and evidence of something written, said, or done, or a written memorial made by a public officer authorized to perform that function, or a writing filed in a public office. The elements essential to constitute a public record are that it be a written memorial, that it be made by a public officer, and that the officer be authorized by law to make it.

☐ Yes, I am also requesting the documents under common law.

If the information requested is a "public record" under common law and the requestor has a legally recognized interest in the subject matter contained in the material, then the material must be disclosed if the individual's right of access outweighs the State's interest in preventing disclosure.

Please set forth your interest in the subject matter contained in the requested material:

Note that any challenge to a denial of a request for records under the common law cannot be made to the Government Records Council, as the Government Records Council only has jurisdiction to adjudicate challenges to denials of OPRA requests. A challenge to the denial of access under the common law can be made by filing an action in Superior Court.

1. All government records are subject to public access under the Open Public Records Act ("OPRA"), unless specifically exempt.
2. A request for access to a government record under OPRA must be in writing, hand-delivered, mailed, transmitted electronically, or otherwise conveyed to the appropriate custodian. N.J.S.A. 47:1A-5.g. The seven (7) business day response time does not commence until the records custodian receives the request form. If you submit the request form to any other officer or employee of the **City of North Wildwood**, that officer or employee must either forward the request to the appropriate custodian, or direct you to the appropriate custodian. N.J.S.A. 47:1A-5.h.
3. Requestors may submit requests anonymously. If you elect not to provide a name, address, or telephone number, or other means of contact, the custodian is not required to respond until you reappear before the custodian seeking a response to the original request.
4. The fees for duplication of a government record in printed form are listed on the front of this form. We will notify you of any special service charges or other additional charges authorized by State law or regulation before processing your request. Payment shall be made by cash, check or money order payable to the **City of North Wildwood**.
5. **You may be charged a 50% or other deposit when a request for copies exceeds \$25.** The **City of North Wildwood** custodian will contact you and advise you of any deposit requirements. You agree to pay the balance due upon delivery of the records. Anonymous requests in excess of \$5.00 require a deposit of 100% of estimated fees.
6. Under OPRA, a custodian must deny access to a person who has been convicted of an indictable offense in New Jersey, any other state, or the United States, and who is seeking government records containing personal information pertaining to the person's victim or the victim's family. This includes anonymous requests for said information.
7. By law, the **City of North Wildwood** must notify you that it grants or denies a request for access to government records within seven (7) business days after the agency custodian of records receives the request. If the record requested is not currently available or is in storage, the custodian will advise you within seven (7) business days after receipt of the request when the record can be made available and the estimated cost for reproduction.
8. You may be denied access to a government record if your request would substantially disrupt agency operations and the custodian is unable to reach a reasonable solution with you.
9. If the **City of North Wildwood** is unable to comply with your request for access to a government record, the custodian will indicate the reasons for denial on the request form or other written correspondence and send you a signed and dated copy.
10. Except as otherwise provided by law or by agreement with the requester, if the agency custodian of records fails to respond to you within seven (7) business days of receiving a request, the failure to respond is a deemed denial of your request.
11. If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by the **City of North Wildwood** to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at PO Box 819, Trenton, NJ, 08625, by e-mail at grc@dca.state.nj.us, or at their web site at www.state.nj.us/grc. The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.
12. Information provided on this form may be subject to disclosure under the Open Public Records Act.

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VENDING LOCATION LEASE AGREEMENT

THIS AGREEMENT is made on the 28th day of April, 2015 between the City of North Wildwood, a New Jersey municipality with offices located at 901 Atlantic Avenue, North Wildwood, New Jersey, 08260, hereinafter designated "North Wildwood" "Owner" or "Lessor" and David Bannon with a principal place of business located at 700 block JFK Drive hereinafter designated as "Vendor."

406 W. Magnolia

WITNESSETH:

WHEREAS, City Council has authorized the execution of a Vending Location Lease Agreement with Vendor pursuant to Resolution No. 120-15 adopted on the 28th day of April, 2015;

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual covenants contained herein and intending to be legally bound thereby, the parties hereto agree as follows:

1. **Definitions** – Whenever the words defined in this paragraph or pronouns used in their stead occur in this Agreement and the documents that are incorporated herein by reference, they shall have the following meanings:

a. The words "lease" and "agreement" may be used interchangeably and shall mean, collectively, all of the covenants, terms and stipulations in this lease and in the bidding documents which constitute essential parts of this agreement and hereby are made such parts thereof, to wit:

- Notice To Bidders
- General Information and Specifications
- Non-Collusion Affidavit

b. The words "premises," "property," "leased premises" and "leased property" may be used interchangeably and shall mean any municipally owned property, in particular such locations where North Wildwood, pursuant to this Agreement, authorized Vendor to place a "vending unit," as that term is defined in §330-9 of the Code of the City of North Wildwood, unless an alternate meaning clearly is ascertainable from the context wherein the term is used.

c. Wherever in this Agreement the words "directed," "required," "permitted," "ordered," "instructed," "designated," "considered necessary" or words of like import are used, it shall be understood that the direction, requirement, permission, order, instruction, designation or decision of North Wildwood is intended and, similarly, the words "approved," "acceptable" or "satisfactory" or words of like import shall mean

approved by or acceptable to North Wildwood unless another meaning plainly is intended.

2. **Lease of Property and Use of Leased Space** – Vendor is given the sole and exclusive privilege to utilize a space, approximately 9' x 18' in size, at parking meter number 134 located at 700 Block JFK Drive for vending purposes only. Utilization of the vending location shall be in strict adherence with the provisions of Chapter 330, Article II, Vendors and Vending, of the Code of the City of North Wildwood.

3. **Term** – The initial term of this Agreement shall be for the period commencing on May 1, 2015 and ending on April 30, 2018. Further, there shall be options for two (2) additional one (1) year terms at the same terms and conditions. These options automatically will take effect on May 1, 2018 and May 1, 2019, respectively, unless either party notifies the other party in writing of an intent not to exercise an option for the additional lease term. Said notice shall be given in the manner hereinafter specified at least 90 days prior to the end of the then existing term.

4. **Payment Rent** – Vendor agrees to pay North Wildwood rent in the sum of \$ 3,500 per annual license term as follows:

a. Rent for the initial 2015 term is \$ 3,500 payable as follows: 20% at the close of bidding; 40% on or before June 1, 2015; balance on or before August 1, 2015.

b. Rent for the 2016 term is identical to the initial 2015 and is payable as follows: 100% on or before April 30, 2016.

c. Rent for the 2017 term is identical to the initial 2015 and is payable as follows: 100% on or before April 30, 2017.

d. Rent for the 2018 optional term is identical to the initial 2015 and is payable as follows: 100% on or before April 30, 2018.

e. Rent for the 2019 optional term is identical to the initial 2015 and is payable as follows: 100% on or before April 30, 2019.

5. **Security Deposit** – North Wildwood shall not require Vendor to post a security deposit.

6. **Utilities** – North Wildwood shall not be required to provide Vendor with any utilities or with solid waste and recycling pick-up services at the vending location covered by this Agreement.

7. **Insurance and Indemnification** –

a. **Insurance Requirements.**

The Vendor shall not vend from the vending location that is the subject of this Agreement until he has obtained the insurance required under this

section. All coverage shall be with insurance carriers licensed and admitted to do business in New Jersey and acceptable to the municipality.

COMMERCIAL GENERAL LIABILITY INSURANCE

During the life of this contract the Vendor shall procure and maintain Commercial General Liability Insurance on an "Occurrence Basis" with limits of liability not less than \$1,000,000.00 per occurrence and/or aggregate combined single limit, personal Injury, Bodily Injury and Property Damage. Coverage shall include the following: (A) Contractual Liability; (B) Products and Completed Operations; (C) Independent Contractors Coverage; (D) Broad Form General Liability Extensions or equivalent; (E) Deletion of all Explosion, Collapse, and Underground (XCU) Exclusions; (F) \$2,000,000.00 Per contract aggregate.

MOTOR VEHICLE LIABILITY INSURANCE

During the life of this contract the Vendor shall procure and maintain Motor Vehicle Liability Insurance, including applicable No-Fault coverage, with limits of liability not less than \$1,000,000.00 per accident combined single limit Bodily Injury and Property Damage. Coverage shall include all owned vehicles, all non-owned vehicles, and all hired vehicles.

WORKER'S COMPENSATION

If required by New Jersey law, during the life of this Agreement the Vendor shall procure and maintain Worker's Compensation insurance, including Employers' Liability Coverage in accordance with the statutes of the State of New Jersey.

ADDITIONAL INSURED

The following shall be Additional Insured: The City of North Wildwood, including all elected and appointed officials, all employees and volunteers, all boards, commissions and/or authorities and their board members, employees, and volunteers.

This coverage shall be primary to the Additional Insured, and shall not be contributing with any other insurance or similar protection available to the Additional Insured, whether other available insurance be primary, contributing or excess.

NOTICE OF CANCELLATION

Commercial General Liability Insurance, Motor Vehicle Liability Insurance, and Worker's Compensation Insurance, as described above, shall include an endorsement stating the following:

Sixty (60) days advance written notice of cancellation, non-renewal, reduction and/or material change shall be sent to:

Kevin Yecco, City Administrator
City of North Wildwood
901 Atlantic Avenue
North Wildwood, New Jersey 08260

CONTINUATION OF COVERAGE

If any of the above coverages expire during the term of this Agreement, the Vendor shall deliver renewal Certificates and/or policies to the municipality at least ten (10) days prior to the expiration date.

b. Certificates of the Required Insurance.

Certificates as listed above shall be submitted along with the Agreement as evidence of Comprehensive General Liability, Comprehensive Automobile Liability, and where applicable, necessary Worker's Compensation and Employer's Liability Insurance. Such coverage shall be with acceptable companies operating on an admitted basis in the State of New Jersey and shall name North Wildwood as, an additional insured.

c. Indemnification.

Vendor shall indemnify and hold harmless North Wildwood from all claims, suits or actions and damages or costs of every name and description to which North Wildwood may be subjected or put by reason of injury to the person or property of another, or the property of North Wildwood, resulting from negligent acts or omissions on the part of the Vendor, the Vendor's agents, servants or subcontractors in the delivery of materials and supplies, or in the performance of any activity or services under this Agreement.

8. **Default** – It shall be considered default by Vendor whenever Vendor shall disregard or violate or fail to fully execute or perform any provision of this Agreement according to the terms of this Agreement.

In the event that there is a default by Vendor, North Wildwood shall give Vendor written notice of such default. After receipt of such written notice, Vendor shall have five (5) days in which to cure any monetary default and ten (10) days in which to cure any non-monetary default, provided that Vendor shall have such extended period as may be required beyond the ten (10) days if the nature of the cure is such that it reasonably requires more than ten (10) days and Vendor commences the cure within the ten (10) day period and thereafter continuously and diligently pursues the cure to completion. North

Wildwood may not maintain any action or effect any remedies for default against Vendor unless and until Vendor has failed to cure the default within the time periods provided in this paragraph.

9. **North Wildwood's Rights Upon Vendor's Default** – Should an event of default without cure as heretofore provided occur then North Wildwood at its option may, and notwithstanding the fact that North Wildwood may have other remedies at law or in equity, terminate this Agreement by providing written notice of termination to Vendor.

If this Agreement shall be terminated as heretofore provided, North Wildwood (or North Wildwood's agents) shall have the right to do any or all of the following:

- a. Re-enter the property, by any suitable action or proceeding at law or in equity, and repossess the same and may remove any persons therefrom so that North Wildwood may have, hold and enjoy the premises;
- b. As agent for Vendor, take possession of any property or equipment of Vendor found upon the premises after taking possession thereof and to store the same at Vendor's expense or to sell the same at private or public sale and apply the proceeds to any amount due North Wildwood. Vendor waives any right to notice of execution or levy in connection therewith;
- c. Carry out and perform such conditions and covenants not carried out or performed by Vendor and the costs and expenses, including attorney's fees, that are incurred by North Wildwood in carrying out and performing any such conditions, covenants or obligations shall be payable as additional rent;
- d. Retain all monies paid by Vendor to North Wildwood under this Agreement, but such monies shall be credited by North Wildwood against any rent due or against any damages payable by Vendor as hereinafter provided or pursuant to any law or the entry of any judgment;
- e. To the extent permissible by applicable law, obtain injunctive relief or specific performance; and
- f. Collect damages from Vendor.

10. **Additional Rent** – If Vendor shall default in the performance of Vendor's obligations under this Agreement then North Wildwood, without thereby waiving such default may (but shall not be obligated to) perform the same for the account and at the expense of Vendor, without notice in case of emergency, and in any other case only if such default continues after the expiration of the time within which Vendor has to cure said default. Bills for any expenses incurred by North Wildwood in connection with any such performance by it for the account of Vendor and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's fees and expenses, involved in collecting or endeavoring to collect rent or any part thereof or enforcing or endeavoring to enforce any rights against Vendor for Vendor's obligations

hereunder, or in connection with this Agreement or pursuant to law, including any such costs, expenses and disbursements involved in instituting and prosecuting legal proceedings or in recovering possession of the premises after default by Vendor or upon the expiration of the term or sooner termination of this Agreement along with the costs of cleaning and repairing the premises, if necessary, and interest on all sums advanced by North Wildwood under this paragraph at the maximum rate permitted by law may be sent by North Wildwood to Vendor monthly, or immediately, at North Wildwood's option and such amounts shall be due and payable as additional rent in accordance with the terms of such bills, but in no case later than one month.

No right or remedy reserved to North Wildwood in this Agreement shall be exclusive of any other right or remedy and any other right or remedy shall be cumulative and in addition to any other right or remedy hereunder or now or hereafter existing at law or equity.

11. **Damages** – Suit or suits for the recovery of any damages resulting from Vendor's breach of any obligation or covenant under this Agreement may be brought by North Wildwood at any time and from time to time at its election and nothing contained herein shall be deemed to require North Wildwood to postpone suit until the date when the term would have expired if it had not been so terminated as heretofore provided or under any provision of law or had North Wildwood not reentered the property.

12. **Compliance with Laws, Rules and Regulations** – Vendor promptly shall comply with all laws, ordinances, rules, regulations, requirements and directives of the federal, state and municipal governments or other public authorities and all of their departments, bureaus and subdivisions applicable to and affecting the said premises, their use and occupancy, for the correction, prevention and abatement of nuisances, violations or other grievances in, upon or connected with the said premises and, during the term hereof, promptly shall comply with all orders, regulations, requirements and directives of any insurance company which has issued or is about to issue a policy of insurance covering the said premises for the prevention of casualty, damage or injury at Vendor's own cost and expense.

13. **Removal of Vendor's Property** – Any equipment, fixtures, goods or other property of Vendor not removed by Vendor upon the termination of this Agreement or upon any quitting, vacating or abandonment of the premises by Vendor or upon Vendor's eviction shall be considered as abandoned and North Wildwood may keep the same as its own and shall have the right, without any notice to Vendor to sell or otherwise dispose of the same, at the expense of Vendor, and shall not be accountable to Vendor for any part of the proceeds of such sale, if any.

14. **Non-Waiver by North Wildwood** – The various rights, remedies, options and elections of North Wildwood expressed herein are cumulative and the failure of North Wildwood to enforce strict compliance or strict performance by Vendor of the conditions and covenants of this Agreement or to exercise any election or option, or to resort to or have recourse to any remedy herein conferred or the acceptance by North Wildwood of any installment of rent after any breach by Vendor, in any one or more instances, shall not be construed or deemed to be a waiver or a relinquishment for the

future by North Wildwood of any such conditions and covenants, options, elections or remedies, but the same shall continue in full force and effect.

15. **Non-Performance by North Wildwood** – This Agreement and the obligations of Vendor to pay rent hereunder and to comply with the covenants and conditions hereof shall not be affected, curtailed, impaired or excused because of North Wildwood's inability to make available to Vendor the leased premises called for herein by reason of any rule, order, regulation or preemption by any governmental entity, authority, department, agency or subdivision or for any delay which may arise by reason of the negotiations for the adjustment of any fire or other casualty loss or because of strikes or other labor disputes, inclement weather conditions or for any cause beyond the control of North Wildwood. If, by reason of the occurrence of any of the foregoing, the leased premises become permanently unavailable for use by Vendor then rent shall be prorated to the date that the premises became permanently unavailable whereupon this Agreement shall come to an end and the parties shall have no further obligation to one another.

16. **Partial Invalidity of Terms** – The terms, conditions, covenants and provisions of this Agreement shall be deemed severable. If any clause or condition herein contained shall be adjudged to be invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law it shall in no way affect the validity of any other clause or provision and such other clause or provision shall remain in full force and effect.

17. **Waiver of Subrogation Rights** – Vendor waives all right of recovery against the North Wildwood and its agents, employees or other representatives for any loss, damages or injury of any nature whatsoever to property or persons for which Vendor is insured.

18. **Oral Agreements** – It is agreed and understood that no oral order, objection, claim or notice by any party to the other shall affect or modify any of the terms or obligations contained in this Agreement and none of the provisions of this Agreement shall be held to be waived or modified by reason of any act whatsoever other than by a specifically agreed to waiver or modification thereof in writing and, in the absence thereof, no evidence shall be introduced in any proceeding of any other waiver or modification.

19. **Governing Law** – This Agreement and the performance thereof shall be governed, interpreted, construed and regulated by the laws of the State of New Jersey and all actions, suits and litigation arising under the terms of this Agreement to which North Wildwood is made a party shall be litigated in the Superior Court of New Jersey, Cape May County.

20. **No Assignment or Subletting** – This Agreement may not be sold, assigned, transferred or sublet.

21. **Legal Address and Written Notices** – All notices shall be given in writing and shall be delivered personally or by regular first class mail and by certified mail, return-receipt requested as follows:

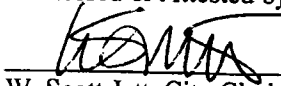
- a. If to North Wildwood, address to City of North Wildwood, 901 Atlantic Avenue, North Wildwood, New Jersey, 08260, Attention: City Administrator;
- b. If to Vendor, address as listed upon the first page of this license.
- c. Email is not an acceptable method of delivery of notices.

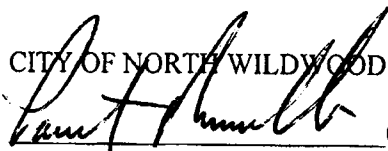
22. **Miscellaneous** -

- a. The headings contained in this Agreement are reference purposes only and shall not affect the meaning or interpretation of this Agreement.
- b. North Wildwood and Vendor acknowledge that they have had adequate opportunity to review the contents of this Agreement with their respective legal counsel and have executed this Agreement with full and complete understanding of its terms. North Wildwood and Vendor further agree that no inference concerning the meaning or interpretation of this Agreement shall be drawn based upon the fact that it has been drafted by North Wildwood's legal counsel.

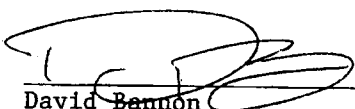
IN WITNESS WHEREOF the parties have set their hands and seals the day and year first above written.

Witnessed or Attested by:


W. Scott Jett, City Clerk

CITY OF NORTH WILDWOOD
 (L.S.)
Patrick Rosenello, Mayor


Witness

 (L.S.)
David Bannon