

**WESTERN TURNPIKE GOLF COURSE CLUBHOUSE  
LEASE AGREEMENT  
(5 YEAR OPTION)**

**THIS AGREEMENT**, made between **THE TOWN OF GUILDERLAND** (hereinafter the “Town”), with a principal address of 5209 Western Turnpike, P.O. Box 339, Guilderland, New York, 12084, as **D SQUARED MANAGEMENT, LLC, DBA THE HEDGE BISTRO**, 404 Sutton Place, Albany, NY, 12203 (hereinafter the “Tenant”).

For and in mutual consideration of the rent and the covenants and agreements set forth herein, the Town hereby leases to Tenant and Tenant hereby hires from Town the Premises described for the term, at the rent and subject to and upon all of the terms, covenants, and agreements hereinafter set forth.

**1. THE PREMISES**

The Town hereby leases to Tenant the banquet/restaurant clubhouse (the “Premises”) located at the Western Turnpike Golf Course with a street address at 400 Arthur’s Place in the Town of Guilderland for the conduct of the “Business” as stated in section 2.

**2. THE BUSINESS**

The Tenant shall operate all food and beverage services at the Premises, including banquet and restaurant services in the clubhouse and beverage cart concession on the golf course (collectively the “Business”), consistent with the Specifications for Concession Operation attached hereto as Exhibit A and made part of this Lease.

The Tenant shall provide the Town in writing of the trade name it intends to use for the Business. Tenant may only use a trade name with the prior written approval of the Town which approval shall not be unreasonably withheld.

**3. TERM**

The term of this Lease is for a period starting on January 19, 2023, and ending on November 30, 2027, unless sooner terminated pursuant to this Lease. If the Tenant is not in default in any of its obligations set forth herein, the Tenant shall have the right to extend the term of the Lease for an additional five (5) year term at a rental rate to be agreed upon by the Parties, payable in a like manner, and subject to all of the remaining terms contained in the lease. The Tenant shall exercise this option by giving the Town notice of its intention to do so by September 15, 2027.

#### **4. RENT**

Tenant shall pay the Town in monthly installments set forth in the schedule below:

\$4,000.00 per month on June 1, July 1, August 1, September 1, and October 1 in 2023.

\$3,000.00 per month on November 1 and December 1 in 2023; and also on January 1, February 1, and March 1 in 2024.

\$4,000.00 per month on April 1, May 1, June 1, July 1, August 1, September 1, and October 1 in 2024.

\$3,000.00 per month on November 1 and December 1 in 2024; and also on January 1, February 1 and March 1 in 2025.

\$4,500.00 per month on April 1, May 1, June 1, July 1, August 1, September 1, and October 1 in 2025.

\$3,000.00 per month on November 1 and December 1 in 2025; and also on January 1, February 1, and March 1 in 2026.

\$5,000.00 per month on April 1, May 1, June 1, July 1, August 1, September 1, and October 1 in 2026.

\$3,500.00 per month on November 1, and December 1 in 2026; and also on January 1, February 1, and March 1 in 2027.

\$5,000.00 per month on April 1, May 1, June 1, July 1, August 1, September 1, and October 1 in 2027.

\$3,500.00 per month on November 1, 2027.

The above monthly payment schedule will be due on the first of the month. Monthly rent shall be paid to the Town, without prior written notice or demand, and without deduction or offset, in lawful money of the United States of America at the Town's address as stated above, or to such other address as the Town may from time to time designate in writing.

#### **5. ADDITIONAL RENT**

Tenant shall also pay as additional rent in the amount of \$1,000.00 on the first day of each month to be applied against the monthly cost of utilities for the Premises,

including heat oil for general heating and gas for cooking, hot and cold water for ordinary cleanup, toilet, lavatory and drinking purposes; electricity for lighting, air conditioning and other office uses; and all water, sewer, and any applicable taxes and assessments.

## **6. OCCUPANCY**

A. Tenant shall use and occupy the Premises for the Business identified in section 2 and purposes incidental to that use, and for no other purpose. Tenant will use the Premises in a careful, safe and proper manner.

B. Tenant must designate a facility Manager who shall be the on-site contact (manager) for the Town. The on-site manager must be available to Pro Shop staff (Golf Operations) and to the Director of Parks and Recreation. Golf operations staff is to be considered the Town's first point of contact for all matters related to "Town". Tenant will not use or permit the Premises to be used or occupied for any purpose or in any manner prohibited by any applicable laws. Tenant will conduct its business and control its employees, clients, agents and invitees in such a manner as not to create any nuisance or interfere with, annoy, or disturb the operations of the Western Turnpike Golf Course.

## **7. EQUIPMENT**

The Town shall provide for Tenant's use in operating the Business the equipment which is presently located on the Premises. The Town warrants that such equipment is in good and working order at the commencement of this Lease. Tenant shall provide any additional equipment or supplies Tenant deems necessary for the operation of the Business at its own expense.

## **8. USES PROHIBITED**

A. Tenant shall not do or permit anything to be done in or about the Premises nor bring or keep anything therein which will in any way increase the existing rate or affect any fire or other insurance upon the Premises or any building of which the Premises may be a part or any of its contents (unless Tenant shall pay increased premium as a result of such use or acts), or cause a cancellation of any insurance policy covering the Premises or the building or any part thereof or any of its contents, nor shall Tenant sell or permit to be kept, used or sold in or about the Premises any articles which may be prohibited by a standard force policy of fire insurance.

B. Tenant shall not allow the Premises to be used for any unlawful or objectionable purpose, nor shall Tenant cause, maintain or permit any nuisance in, on or about the Premises. Tenant shall not commit or suffer to be committed any waste in or upon the Premises.

C. Tenant shall not use the Premises or permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rules or regulations or requirements now in force or which may hereafter be in force, and

with the requirements of any board of fire underwriters or other similar body now or hereafter constituted relating to or affecting the condition, use or occupancy of the Premises, excluding structural changes not relating to or affecting the condition, use or occupancy of the Premises, or not related or afforded by Tenant's improvements or acts. The judgment of any court of competent jurisdiction or the admission of Tenant in any action against Tenant, whether the Town be a party thereto or not, that Tenant has violated any law, statute, ordinance or governmental rule, regulation or requirement, shall be conclusive of the fact as between the Town and Tenant.

D. Tenant's obligations under this Section 8 shall survive the termination of this Agreement.

## **9. CARE OF PREMISES and MAINTENANCE OBLIGATIONS**

### **MAINTENANCE BY TENANT:**

In addition to the Rent, Tenant shall be liable for all the following at its sole cost and expense:

- A. Tenant shall be responsible for maintaining and emptying the grease trap for the protection of the sewer pump system;
- B. The costs of capital improvements, alterations, or additions approved by the Town in writing and satisfactorily performed by the Tenant may be available for rent reduction or other accommodation. All such improvements, alterations and additions which may be made on or to the Premises shall be the property of the Town and shall remain upon and be surrendered with the Premises at the expiration of this Agreement.
- C. Tenant shall be responsible for all ordinary and necessary repairs and maintenance to the Premises, except for those items for which the Town is specifically responsible.
- D. Tenant shall provide janitorial services on a daily basis. Tenant agrees to keep the Premises in good order and in a clean and presentable condition, including all interior carpeting, painting, glazing, telephone, electrical, and plumbing.
- E. Tenant shall pay all costs associated with storage areas and the disposal of its garbage, including but not limited to, costs of pick up, containers and deposits;
- F. Tenant shall be responsible for the cost of cable television, internet connections, all telephone charges and utilities;
- G. Tenant shall be responsible for the repair, replacement and maintenance of the sound, entertainment and PA systems currently at the Premises provided;

- H. Tenant agrees to maintain the daily and monthly maintenance of the HVAC systems, including a regular maintenance schedule;
- I. Tenant shall be responsible for all regular pest control for the Premises;
- J. Tenant shall be responsible for the maintenance and replacement, whenever necessary, of all plate and other glass on the Premises and shall have the option to insure against this risk.
- K. On the last day of the Term hereof, or on any sooner termination, Tenant shall surrender the Premises to the Town in the same condition as received at the commencement of the Term, with ordinary wear and tear excepted, and clean and free of debris and broom cleaned. Any damage or destruction of Premises shall not be deemed ordinary wear and tear if the same could have been prevented by good maintenance practice. Tenant shall repair any damage to the Premises caused by the installation or removal of Tenant's trade fixtures and alterations.

Notwithstanding the above, if Tenant is required to make repairs to the Premises because of the Town's wrongful or negligent act or omission to act, or because of any latent defect in the Premises, Tenant may charge the reasonable cost of such repairs to the Town and the Town shall have sixty (60) days from receipt of invoice(s) for such costs to make payment in full to Tenant. In the event that the Town fails to tender full payment within the said sixty (60) day period, Tenant may thereafter begin to offset all Rent due under this Lease until the entire cost has been recovered. If Tenant fails to maintain the Building as required hereunder, then sixty (60) days after written request (or such longer period as is necessary if the repair cannot reasonably be completed within the sixty (60) day period and Tenant promptly commences and diligently pursues the completion of such repair, The Town shall have the right to enter the Premises and to make such repairs at Tenant's expense, and upon completion thereof Tenant shall pay as Additional Rent The Town's reasonable costs for making such repairs. Such payment shall be due within sixty (60) days after Tenant's receipt of an invoice therefore.

**MAINTENANCE BY THE TOWN:**

The Town shall, at its sole cost and expense, be responsible for each of the following:

- A. The Town shall do all mowing and grounds maintenance at the Clubhouse including the snowplowing and maintenance of the front garden area;
- B. The Town shall maintain the driveway and parking lot in good repair.

- C. The Town shall be responsible for the HVAC systems (heating, ventilation and air conditioning) in the Clubhouse/Pavilion, including repairs and replacements thereto, not including routine maintenance;
- D. The Town shall be responsible for all structural repairs, capital improvements unless agreed upon in Maintenance by Tenant section (B), roof repairs and replacements, windows, doors and outside walls (but not broken glass in the Premises, hot water tanks or kitchen and restaurant equipment) in the Clubhouse/Pavilion;
- E. The Town shall be responsible for all plumbing from the point after the grease trap. All inside plumbing in the Leased Premises is Tenant's responsibility provided, however, the Town represents that all such plumbing shall be in good working order as of the commencement of this Lease.

If the Town fails to undertake and complete all necessary maintenance or repairs as required under this Lease then sixty (60) days after written request (or such longer period as is necessary if the repair cannot be reasonably completed within the sixty (60) day period and the Town promptly commences and is diligently pursuing completion of such repair), Tenant shall have the right, to undertake and complete such maintenance or repairs at the Town's cost and expense.

#### **10. REQUIREMENTS OF LAW**

Tenant shall promptly execute and comply with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and local governments applicable to the Premises. Tenant shall promptly comply with and execute all rules, orders and regulations of the New York Board of Fire Underwriters and any other similar body for the prevention of fires at Tenant's own cost and expense. The Town warrants the Premises are in compliance with all statutes, ordinances, rules, orders, regulations and requirements of the Federal, State, and local governments in its current condition prior to tenant taking occupancy. The Town is responsible for obtaining the Certificate of Occupancy prior to Tenant's possession of the Premises. In the event the Certificate of Occupancy cannot be obtained with reasonable effort, this Lease shall be cancelled and terminated and neither party shall have any obligation to the other under the terms of this Lease.

#### **11. ASSIGNMENT AND SUBLETTING**

The Tenant shall not assign this Lease, or sublet or sublease the Premises, or any part thereof, or make any alterations on the Premises, without the Town's consent in writing. The Tenant shall not assign, transfer, or subcontract any of Tenant's rights and obligations under this Lease without the Town's consent in writing.

#### **12. FIRE, ACCIDENT, DAMAGE, DEFECTIVE CONDITION**

A. Tenant must give the Town prompt notice of fire, accident, damage or dangerous or defective condition. If the cost of restoration, as reasonably estimated by the Town, will equal or exceed 30% of the replacement value of the Premises just prior to the occurrence of the damage, either party may, but is not obligated to, no later than the 30<sup>th</sup> day following the damage, give the other party a notice of its election to terminate this Lease. If the cost of restoration, as estimated by the Town, shall amount to less than 30% of the replacement value, the Town shall restore the Premises with reasonable promptness.

B. In any case in which the use of the Premises is affected by any damage, there shall be either an abatement or equitable reduction in rent, depending upon the period for which the Premises are not reasonably usable for the purposes for which they are leased hereunder.

C. The Town is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by the Town or present at the commencement of the Lease. The Town is not responsible for delays due to settling insurance claims, obtaining estimates, labor and supply problems or any other cause not fully under the Town's control.

### **13. DAMAGE TO PREMISES**

Damage and injury to the Premises, including broken glass, caused by the carelessness, negligence or improper conduct on the part of the Tenant or the Tenant's agents, employees, visitors and licensees, to the extent not covered by insurance, shall be repaired as speedily as possible by the Town at the Tenant's own cost and expense.

### **14. ACCESS TO PREMISES**

Tenant agrees that the Town and the Town's agents shall upon notice to Tenant (except in an emergency) have the right to enter into and upon the Premises, or any part thereof, at all reasonable business hours for the purpose of examining and maintaining the same, or for making such repairs, alteration, additions or improvements therein as may be necessary or deemed advisable by the Town. Within one hundred twenty (120) days preceding the expiration of the Lease, Tenant also agrees to permit the Town or the Town's agents to show the Premises to persons wishing to hire or purchase the same; and Tenant further agrees that the Town or the Town's agents shall have the right to place notices on the front of the Premises, or any part thereof, offering the Premises "To Let" or "For Sale", and Tenant hereby agrees to permit the same to remain thereon without hindrance or molestation. The Town's right of access shall be exercised so as to minimize the disruption of the Business.

### **15. NO LIENS**

Tenant shall not permit any mechanics', material mans', contractors' or subcontractors' liens arising from any construction work, repair, restoration, or removal or any other claims or demands to be enforced against the Business or the Premises or

any part thereof. This Lease shall not be a lien against said Premises in respect to any mortgages that are now on or that hereafter may be placed against said Premises, and that the recording of such mortgage or mortgages shall have preference and precedence and be superior and prior in lien of this lease, irrespective of the date of recording and the Tenant agrees to execute without cost, any such instrument which may be deemed necessary or desirable to further effect the subordination of this lease to any such mortgage or mortgages, and a refusal to execute such instrument shall entitle the Town, or the Town's assigns and legal representatives to the option of canceling this lease without incurring any expense or damage and the term hereby granted is expressly limited accordingly.

## **16. DEFAULT**

Each of the following shall be deemed to be both a default by the Tenant and a breach of the Lease:

- A. Default in the payment of the rent, or any part thereof, for a period of fifteen (15) days after the Town gives to the Tenant written notice of such default.
- B. A default in the performance of any other covenant or condition of the Lease or the Specifications for Concession Operation annexed hereto by the Tenant for a period of thirty (30) days after the Town gives to the Tenant written notice of such default.
- C. The appointment of a receiver, custodian or trustee to take possession of all or substantially all of the assets of the Tenant.
- D. The general assignment by the Tenant for the benefit of creditors.
- E. The dissolution or the commencement of any action for the dissolution or liquidation of the Tenant.
- F. The inability of the Tenant to meet its obligations as they fall due, or any action taken or suffered by the Tenant under any insolvency or bankruptcy act.

## **16A. DEFAULT CLAUSE**

It is hereby acknowledged and agreed to between the parties that the liquor license is the property of the New York State Liquor Authority and in the event of default said license will be promptly returned to the Authority and all liquor inventory will be disposed of in accordance with the Alcoholic Beverage and Control Law.



## **17. PAYMENTS FOR TENANT**

If the Town pays any monies or incurs any expenses, including attorneys' fees, to correct a breach of this Lease by Tenant, or to do anything in this Lease required to be done by Tenant, all amounts so paid or incurred shall, on notice to Tenant, be considered additional rent payable by Tenant in accordance with section 5.

## **18. SERVICES**

As long as the Tenant is not in default under any of the covenants of this Lease, the Town shall provide utilities, which shall be paid by the Tenant as additional rent in accordance with section 5.

## **19. SIGNS**

The Tenant shall be required to place signage at the entrance to the Golf Course, and at the entrance to the Clubhouse. No sign, advertisement, notice or other letting shall be exhibited, inscribed, painted or affixed by Tenant on any part of the Premises or building without the prior written approval and consent of the Town which shall not be unreasonably withheld. Should the Town deem it necessary to remove the same in order to paint, alter, or remodel any part of the building, the Town may remove and replace same at the Town's expense.

## **20. LIABILITY**

The Town is exempt from any and all liability for any damage or injury to person or property caused by or resulting from steam electricity, gas, water, rain, ice or snow, or any leak or flow from or into any part of the Premises or the Building or from any damage or injury resulting or arising from any other cause or happening whatsoever arising out of or in any way connected with the Tenant's Business or occupancy of the premises unless caused or contributed by the negligence of the Town, its employees, agents, contractors or invitee.

## **21. SUBORDINATION**

A. At the Town's option, this Lease shall be subject and subordinate to all ground or underlying leases which now exist or may hereafter be executed affecting the Premises or the land upon which the Premises are situated or both, and to the lien of any mortgages or deeds of trust in any amount or amounts whatsoever now or hereafter placed on or against the land or improvements of either thereof, of which the Premises are a part, or on or against Town's interest or estate therein, or on or against any ground or underlying lease without the necessity of the execution and delivery of any further instruments on the part of Tenant to effectuate such subordination. If any mortgagee, trustee or ground lessor shall elect to have this Lease prior to the lien of its mortgage, deed of trust or ground lease, and shall give written notice thereof to Tenant, this Lease shall be deemed prior to such mortgage, deed of trust or ground lease, whether this Lease

is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease or the date of the recording thereof.

B. Tenant covenants and agrees to execute and deliver upon demand without charge therefore, such further instruments evidencing such subordination of this Lease to such ground or underlying leases and to the lien of any such mortgages or deeds of trust as may be required by the Town. Tenant hereby appoints the Town as Tenant's attorney-in-fact, irrevocably, to execute and deliver any such agreements, instruments, releases or other documents.

C. The Town shall have the lender deliver a non-disturbance agreement to the Tenant.

## **22. QUIET ENJOYMENT**

The Town covenants with Tenant that upon Tenant paying rent and other monetary sums due under the Lease, performing its covenants and conditions under the Lease, the Tenant shall and may peaceably and quietly have, hold and enjoy the Premises for the term, subject, however, to the terms of the Lease and of any of the aforesaid ground leases, mortgages, or deeds of trust described above.

## **23. ATTORNMENT**

In the event any proceedings are brought for default under any ground or underlying lease or in the event of foreclosure or the exercise of power of sale under any mortgage or deed of trust made by the Town covering the Premises, the Tenant shall attorn to the purchaser upon any such foreclosure or sale and recognize such purchaser as the Town under this Lease, provided the purchaser expressly agrees in writing to be bound by the terms of the Lease.

## **24. WAIVER OF SUBROGATION:**

In the event either the Town or Tenant sustains a loss by a reason of fire or other casualty which is or could have been covered by a fire and extended coverage insurance policy, and such fire or other casualty is caused in whole or in part by acts or omissions of the other party or his or its agents, servants, employees, or invitees then the party incurring such loss agrees to look solely to its fire and extended coverage insurance proceeds (if any), and such party shall have no right of action against the other party to this Lease or the agents, servants, employees or invitees or such other party, and no third party shall have any such right by way of assignment, subrogation or otherwise. If the inclusion in this Lease of the "Waiver of Subrogation" results in an increase in the fire insurance premium of either party, then the other party, within ten (10) days after written request, will either pay the amount of such increase or be deemed to have waived the benefits of this provision. Notwithstanding the foregoing, this provision will operate only if both insurance carriers agree and endorse the policies accordingly.

## 25. INSURANCE

A. Tenant shall, at Tenant's sole cost and expenses, during the entire term hereof or during any period Tenant occupies the Premises under a tenancy at sufferance or otherwise, including any extensions or renewals hereof, keep in full force and effect policies of insurance as follows:

1. Commercial General Liability Insurance Policy with One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate limit.
2. Comprehensive Bodily Injury Property Damage, Liability, including bodily injury and property damage and cover fire and water damage and damage or loss caused by independent contractors or by agents of Tenant, caused by automobiles, trucks or other vehicles, with limits of \$1,000,000 for injury or death of one person and \$1,000,000 for injury or death per accident; and \$500,000 of property damage in any one accident or \$1,000,000 combined single limit.
3. Dram Shop Act Coverage in minimum limits of \$1,000,000 per occurrence, with \$2,000,000 aggregate limit or in such amounts as may be required by the laws of the State of New York.
4. Workers' Compensation Insurance of all of Tenant's employees consistent with laws of the State of New York.

The policy or policies shall name the Town, any person, firms, or corporations designated by the Town, and Tenant as insured, and shall contain a clause that the insurer will not cancel or change the insurance without first giving the Town thirty (30) days' prior written notice. All such policies shall be primary, not contributory with and not in excess of the coverage which the Town may carry. The insurance shall be in an insurance company which shall be subject to the approval of the Town with such approval not to be unreasonably withheld.

Copies of the policies or certificate of insurance shall be delivered to the Town upon the commencement of this Lease and annually thereafter without the request of the Town.

A. Tenant shall not, nor shall Tenant permit assignees or subtenants or any other persons to, do anything in the Premises, or bring anything into the Premises, or permit anything to be brought into the Premises or to be kept therein, which will in any way adversely affect the cost of fire insurance on the Premises, nor use the Premises or any part thereof, nor suffer or permit their use for any business or purpose which would cause an increase in the rate of fire insurance on the Premises, and Tenant agrees to pay on demand any such increase as additional rent.

B. In the event that Tenant fails to secure and maintain any of the insurance policies required by this Section 25, the Town may, but shall not be obligated to, secure and maintain such insurance policies. Upon demand and presentation of a bill therefore, Tenant shall pay, within five (5) business days of presentation, the cost of such policies to the Town. Alternatively, the Town may terminate this Agreement upon ten (10) days written notice to Tenant if Tenant has not cured the failure to maintain insurance.

## **26. INDEMNIFICATION**

A. To the extent not covered by insurance, the Tenant agrees to protect, indemnify, defend and hold the Town harmless from and against any and all liability, damages, costs and expenses from causes of action, suits, claims, demands and judgments of any nature whatsoever arising out of or in any way connected with the Tenant's Business or occupancy of the Premises unless caused or contributed to by the negligence of the Town, its employees, agents, contractors or invitees. Tenant shall also pay costs, expenses and reasonable attorney fees that may be incurred or paid by the Town in enforcing the covenants and agreements in this Lease.

B. To the extent not covered by insurance, the Town will indemnify Tenant and save it harmless from and against any and all claims, actions, damages, liability, and expense in connection with loss of life, personal injury, and/or damage to property arising from or out of any occurrence in, around, or at the building, or occasioned wholly or in part by any act or omission of Town, its agents, contractors, employees, servants, lessees, or concessionaires.

## **27. NO WAIVER**

The failure of the Town to insist upon a strict performance of any of the terms, conditions and covenants herein, shall not be deemed a waiver of any rights or remedies that Town may have, and shall not be deemed a waiver of any subsequent breach or default in the terms, conditions and covenants herein contained. This Lease may not be changed, modified or discharged orally.

## **28. CONDEMNATION**

If the Premises or any part thereof or any estate therein be condemned for public use or taken by virtue of eminent domain, then this Lease, at the option of the Town, shall become null and void, and the term cease and come to an end upon the date when the same shall be taken and the rent shall be apportioned as of the date. No part of any award shall belong to Tenant.

## **29. REDEMPTION**

The Tenant waives all right to redeem under any law of the State of New York.

### **30. FIXTURES**

If after default in payment of rent or violation of any other provision of this Lease or upon the expiration of this Lease, Tenant moves out or is dispossessed and fails to remove any trade fixtures or other property within 10 days after receipt of notice from the Town indicating that the Town will treat such property as abandoned if not removed within such 10 day period, , then and in that event, the fixtures and property shall be deemed abandoned by Tenant and shall become the property of Town.

### **31. INABILITY TO PERFORM**

This Lease and obligation of Tenant to pay rent hereunder and perform all of the other covenants and agreements hereunder on part of Tenant to be performed shall in no way be affected, impaired or excused because the Town is unable to supply or is delayed in supplying any service expressly or impliedly to be supplied or is unable to make, or is delayed in making any repairs, additions, alterations or decorations or is unable to supply or is delayed in supplying, any equipment or fixtures; if the Town is prevented or delayed from so doing by reason of governmental preemption, including, but not limited to, any National Emergency declared by the president of the United States or in connection with any rule, order or regulation of any department or subdivision thereof of any governmental agency or by reason of the condition of supply and demand which have been or are affected by war or other emergency.

### **32. NO DIMINUTION OF RENT**

No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Premises, the Building or to its appliances, nor for any space taken to comply with any law, ordinance or order of a governmental authority. In respect to the various "services", if any, herein expressly or impliedly agreed to be furnished by the Town to Tenant, it is agreed that there shall be no diminution or abatement of the rent or any other compensation, for interruption or curtailment of such "service" when such interruption or curtailment shall be due to accident, alterations or repairs desirable or necessary to be made or to inability or difficulty in securing supplies or labor for the maintenance of such "service" or to some other cause, not gross negligence on the part of the Town. No such interruption or curtailment of any such "service" shall be deemed a constructive eviction. The Town shall not be required to furnish, and Tenant shall not be entitled to receive, any of such "services" during any period wherein Tenant shall be in default in respect to the payment of rent. As long as Tenant can still conduct business at the Premises, there shall not be any abatement or diminution of rent because of making of repairs or improvements to the Premises after the date above fixed for the commencement of the term, it being understood that rent shall, in any event, commence

to run at such date so above fixed. The making of repairs or improvements to the Premises shall be conducted in such a manner as to minimize interference with Tenant's Business.

### **33. WINDOW CLEANING**

Tenant will not clean, nor require, permit, suffer or allow any window in the Premises to be cleaned, from the outside in violation of §202 of the New York State Labor Law or of the rules of the Board of Standards and Appeals, or of any other board or body having or asserting jurisdiction.

### **34. ENVIRONMENTAL COMPLIANCE:**

Tenant covenants and agrees to comply strictly and in all respects with the applicable laws, statutes, ordinances, permits, order, decrees, guidelines, rules, regulations and orders pertaining to health or the environmental ("Applicable Environmental Laws"), including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA") and the Resource Conservation and Recovery Act ("RCRA"), as each of the foregoing may be amended from time to time. Tenant shall not cause or permit any Hazardous Materials (defined below) to be generated, treated, stored, used, installed, or disposed in, on, under or about the Premises. Tenant shall not install or place (or permit to be installed or placed) upon the Premises or the building any Underground Storage Tank (defined below) or any aboveground storage tank utilized in storing petroleum products or substances, hazardous substances or Hazardous Materials. Tenant represents, warrants, covenants and agrees that Tenant is not and will not become involved in operations at the Premises or the building or at other locations which could lead to the imposition on the Town of liability under any of the Applicable Environmental laws. Tenant does hereby, for itself and its heirs, legal representatives, successors and assigns agree to and hereby does indemnify, defend and hold harmless the Town, and its heirs, legal representative, successors and assigns agree from any and all liabilities, assessments, suits, damages, costs and expenses, attorneys' fees and judgments relating to or arising out of (a) the breach of any of the agreements of Tenant under this section, (b) the handling, installation, storage, use, generation, treatment or disposal of Hazardous Materials, including any cleanup, remedial, removal or restoration work required by the Applicable Environmental Laws, or (c) the assertion of any lien or claim upon the Premises, the building or Town pursuant to the Applicable Environmental laws. The covenants and agreements of Tenant under this section shall survive the expiration or termination of this Lease. As used in this Lease, the term "Hazardous Materials" means any flammable, explosives, radioactive materials, asbestos-containing materials, petroleum products, the group of organic compounds known as polychlorinated biphenyls and other hazardous waste, toxic substances or related materials, including, without limitation, substances defined as hazardous substances, hazardous materials, toxic substances or solid waste in CERCLA, the Hazardous Materials Transportation Act and RCRA, as each of the foregoing may be

amended from time to time. "Underground Storage Tank" shall have the meaning specified in RCRA.

### **35. CONSTRUCTIVE EVICTION**

Tenant shall not be entitled to claim a constructive eviction from the Premises unless Tenant shall have first notified the Town in writing of the condition or conditions giving use thereto, and, if the complaints be justified, unless the Town shall have failed within a reasonable period of time after receipt of the notice to remedy such conditions.

### **36. NON-SMOKING POLICY**

Tenant recognizes that the Premises as a non-smoking facility, including any variation of smoking to include electronic cigarettes. Smoking is restricted to the designated areas located outside, and at the exterior front and rear areas of the building.

### **37. HEADINGS**

The headings are inserted only as a matter of convenience and in no way define the scope of the Lease or the intent of any provision thereof.

### **38. ESTOPPEL CERTIFICATES**

Provided all statements are true, Tenant shall, upon written request by Town, execute and deliver to the Town a written declaration in recordable form: (a) ratifying this Lease; (b) expressing the commencement and termination dates thereof; (c) certifying that this Lease is in full force and effect and has not been assigned, modified, supplemented, or amended (except by such writings as shall be stated); (d) that all conditions under this Lease to be performed by the Town have been satisfied; (e) that there are no defenses or offsets against the enforcement of this Lease by the Town, or stating those claimed by Tenant; (f) the amount of advance rental, if any, (or none if such is the case) paid by the Tenant; (g) the date to which rental has been paid. Such declaration shall be executed and delivered by Tenant from time to time as may be requested by the Town. If the Town's mortgage lender(s) or purchaser(s) require a specific form be used as an estoppel certificate, Tenant will execute such form. The estoppel certificate shall be executed and delivered to the Town or its designee within ten (10) business days of receipt by Tenant.

### **39. HOLDING OVER**

In the event Tenant remains in possession of all or any part of the Premises after the expiration of the original term of this Lease or any extension thereof, such tenancy shall be from month to month only, and not a renewal hereof or an extension of any further term, and in such case, each month's rent shall be 150% of the monthly rental rate in effect during the last month of the expired term and governed in all other things, except as to the duration of the term, by the provisions of this Lease. Either party may

terminate such tenancy by giving to the other thirty (30) days' prior written notice of such termination.

**40. ENTIRE AGREEMENT**

This Agreement and the exhibits attached hereto set for all the covenants, promises, agreements, conditions and understandings between the Town and Tenant concerning the Premises, and there are no covenants, promises, agreements, condition or understandings, either oral or written, between them, other than those expressly stated herein. All negotiation, oral agreements, and any statements in the Request for Proposals are superseded by this Agreement.

**41. CUMULATIVE REMEDIES**

No remedy or election of remedy by the Town under this Agreement shall be deemed exclusive but shall, whenever possible, be cumulative with all other remedies at law or in equity.

**42. BINDING EFFECT**

This Agreement shall bind the parties, their personal representatives, successors and assigns.

**43. CHOICE OF LAW, JURISDICTION & VENUE**

This Agreement shall be governed by the law of the State of New York. Tenant and the Town agree and consent that the venue for any legal or equitable proceeding concerning this Agreement shall be a court of competent jurisdiction in the County of Albany, State of New York.

**44. SEVERABILITY**

If any term or provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remainder of the Agreement shall not be affected.

**45. INTERPRETATION**

The parties agree and acknowledge that the provisions of this Agreement have been arrived at through negotiations and that each party has had a full and fair opportunity to discuss provisions of this Agreement and to have such provisions reviewed by legal counsel. The parties further agree and acknowledge that any ambiguity in this Agreement shall not be resolved against either party.

**46. NOTICES**



All notices, requests, demand or other communications with respect to this Lease, whether or not herein expressly provided for, shall be in writing and shall be deemed to have been duly given when mailed by United States first-class, certified or registered mail, postage prepaid, return request requested, or by overnight mail, or personal delivery to the Town and Tenant at their respective addresses as first above as follows:

If to the Tenant:

D SQUARED MANAGEMENT, LLC, DBA THE HEDGE BISTRO  
404 Sutton Place  
Albany, NY 12203

If to the Town:

Hon. Peter. G Barber  
Supervisor  
Town of Guilderland  
P.O. Box 339  
Guilderland, NY 12084-0339

With a copy to:

Town Attorney  
Town of Guilderland  
P.O. Box 339  
Guilderland, NY 12084

By notice given pursuant to this paragraph, any party may designate any further or different address to which subsequent notices or other communications to it shall be sent. Any such addresses for the giving of notice may be changed by either party by giving notice thereof in writing to the other party.

**IN WITNESS WHEREOF**, the undersigned have set their hands and seals this \_\_\_ day of January, 2023

THE TOWN OF GUILDERLAND

By \_\_\_\_\_

Peter G. Barber  
Supervisor

D SQUARED MANAGEMENT, LLC, DBA THE HEDGE  
BISTRO

By \_\_\_\_\_

Donovan S. Kenney  
Member

\_\_\_\_\_  
William Michael Snyder  
Member

STATE OF NEW YORK

ss.

COUNTY OF ALBANY

On this \_\_\_ day of January 2023, before me, the undersigned, a notary public, in and for the State of New York, personally appeared Peter G. Barber, Supervisor, Town of Guilderland, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Lease, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the Lease.

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Notary Public, State of New York

STATE OF NEW YORK

ss.

COUNTY OF ALBANY

On this \_\_ day of January 2023, before me, the undersigned, a notary public, in and for the State of New York, personally appeared Donovan S. Kenney, member of D Squared Management, LLC, DBA The Hedge Bistro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Lease, and acknowledged to me that she executed the same in her capacity, and that by her signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the Lease.

---

Notary Public, State of New York

STATE OF NEW YORK

ss.

COUNTY OF ALBANY

On this \_\_ day of January 2023, before me, the undersigned, a notary public, in and for the State of New York, personally appeared William Michael Snyder, member of D Squared Management, LLC, DBA The Hedge Bistro, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within Lease, and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the Lease.

---

Notary Public, State of New York

**EXHIBIT A**  
**(SPECIFICATIONS FOR CONCESSION OPERATION)**

A. Food, Beverages and Other Refreshments:

1. The Tenant agrees at a minimum to have available and offer for sale and public consumption, various food, beverages (both alcoholic and non-alcoholic) and refreshments. The prices, quantity and quality of food, beverages, and refreshments shall be subject to approval in writing by the Town. Any changes in food, beverages and refreshments offered for sale and consumption and prices shall require written prior approval by the Town.
2. It is agreed by the Town and the Tenant that the prices to be charged shall be fair and reasonable and commensurate with the prices charged for similar quality food, beverages and refreshments in the Capital District area.
3. Preference shall be given in the purchase by the Tenant of the food, beverages and refreshments, to products raised within New York State, prices and quality being equal.
4. The Tenant agrees that at the beginning of each month the Town, or its designee may inspect the restaurant, bar and kitchen areas to be assured that all facilities are kept in a neat, clean and orderly manner.

B. Hours of Operation:

1. The Town and the Tenant agree that the Town's restaurant/banquet facility will remain open during every day and hour whenever the golf course is open, both for a half hour before and a period of time thereafter to afford sufficient time for patrons to use the restrooms, bar and dining facilities.

C. Employees:

1. The Tenant shall be responsible for providing all employees required for its restaurant/banquet operation.
2. It shall be the responsibility of the Tenant to provide the employees with a suitable uniform.

3. The Town reserves the right to disqualify prospective employees whose employment may not be in the best interest of the Town.
4. The Tenant shall furnish periodically, as requested by the Town a complete list of proposed and/or current employees assigned to work at the concession. Such a list shall include the employee's name, address and job description.
5. The Town also reserves the right to require the Tenant to employ additional persons should its restaurant/banquet operation appear to require the same.
6. The Tenant shall formulate its own personnel policies and be responsible to their implementation; however, such policies shall be subject to the approval of the Town.
7. The Tenant shall comply with all Federal and New York State Laws applicable to employees.

D. Licenses and Permits:

1. The Tenant shall obtain all necessary permits, licenses and approvals required by any duly constituted governmental entity for its restaurant/banquet operation.
2. In the event any license, permit or approval necessary for the operation of its restaurant/banquet operation is denied, revoked or conditioned, the Tenant shall immediately notify the Town of the same in writing and the operation of the Concession shall be immediately brought into compliance.
3. The Tenant shall pay all license fees and taxes that may be imposed by any Federal, State or Local authority.

E. Security and Emergency Procedures:

1. The Tenant shall comply with the guidelines established by the Town for securing the restaurant/banquet facility and for emergency situations.