**SUBLEASE**

This Sublease Agreement (“Sublease”) entered into as of the \_\_\_\_\_ day of\_\_\_\_\_, 201\_\_, by and between:

**The Buffalo Naval Park Committee, Inc.**

**DBA The Buffalo and Erie County Naval & Military Park**

**One Naval Park Cove Buffalo, NY 14202**

**(hereinafter referred to as “BNP”);**

**and**

**”Subtenant Name”**

**”Subtenant Address”**

**(hereinafter referred to collectively as “Subtenant”);**

**W I T N E S S E T H:**

**WHEREAS**, pursuant to a Lease and Operating Agreement dated \_\_\_\_\_\_\_\_\_\_\_\_\_ (the Lease and Operating Agreement is hereafter referred to as the “Lease”) between the City of Buffalo (“City”), a municipal corporation and the BNP, the BNP leased certain lands and improvements on the Buffalo Waterfront (“BNP Premises”), commonly known as the Buffalo Naval and Military Park, from the City and has agreed to assume the City’s duties, obligations and responsibilities under the Donation Contracts and under the two Aircraft “Static Display Loan Agreement” attached thereto; and

**WHEREAS**, the Lease requires that any subletting of BNP Premises shall be subject to the prior written consent of the City; and

**WHEREAS**, the BNP desires to maintain a restaurant operation on BNP grounds; and

**WHEREAS**, Subtenant desires to sublease a portion of the BNP Premises comprised of part of the first floor of the BNP’s Museum building (“Museum”) and adjacent exterior space commonly known as The Liberty Hound Restaurant (“LH Premises”); and

**WHEREAS**, BNP desires to sublease the LH Premises to Subtenant under the terms, conditions and provisions as set forth herein, based on Subtenant’s response to BNP’s Request for Proposals (“RFP”) released on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

**NOW THEREFORE**, and in consideration of the foregoing and such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by both the BNP and Subtenant, it is agreed as follows:

1. PREMISES:

The BNP hereby subleases to Subtenant the LH Premises comprised of approximately 1,464 square feet of interior restaurant/bar space and approximately 184 square feet of storage/back office space on the first floor of the Museum, and approximately 1,519 square feet of outdoor patio space, all as shown on Exhibit “A”, as well as 160 square feet of storage space in a shipping container located adjacent to the hangar building (“Hangar”), which sits across Commercial Street from the Museum and the equipment, furnishings, and fixtures (“FF&E”), as described in Exhibit “B” and subject to City Department of Public Works, Parks and Streets (“DPW”) approvals as set forth herein. Upon removal of the BNP’s admissions and gift shop from the first floor of the Museum, the LH Premises shall be modified as provided in Section 7 of this Sublease.

1. PURPOSE:

Subtenant shall use the LH Premises for all lawful purposes in connection with a restaurant/cafe with alcoholic beverage service.

1. TERM:

The term of this Sublease shall be for a period of five (5) years from the date of the commencement of this Sublease as defined herein. Subtenant shall have the right to extend this Sublease for one (1) additional period of five (5) years, or such term that shall coincide with expiration of the BNP’s current Lease (through 2028), by giving written notice of its exercise of such extension at least six months prior to expiration of the original term, subject to approval, in BNP’s sole discretion subject further however to the written consent of the City. All of the terms, covenants and conditions contained in the Sublease shall be applicable to such renewal term.

1. RESTAURANT IMPROVEMENTS:

The Subtenant shall be responsible for the plan, design and construction of any improvements to the LH Premises including any new appliances, equipment, furniture or fixtures, subject to any BNP and DPW requirements, and the written approval of the BNP and DPW for all plans and modifications at the BNP and DPW’s sole discretion. This includes any future improvements to the Expanded Area. If necessary, Subtenant must retain the services of a licensed Architect or Engineer, to prepare and file plans with the City and obtain a Certificate of Completion or letter of No Objection. Subtenant shall be responsible to obtain all required governmental and regulatory permits, licenses and other necessary approvals and shall oversee and manage the design and construction associated with the building, fitting, operation and maintenance of the LH Premises. Subtenant shall diligently pursue construction of the improvements or modifications and shall substantially complete construction in accordance with a schedule for completion to be agreed upon by the BNP and DPW.

1. OWNERSHIP of IMPROVEMENTS:

Any and all improvements, modifications, or renovations to the LH Premises including any new appliances, equipment, furniture or fixtures are the sole responsibility of Subtenant and shall remain the property of the Subtenant upon placement at the LH Premises (“Subtenant Property”). Subtenant shall keep the LH Premises and all improvements thereon free of any labor, or material liens of any kind or nature for any work done, labor performed, or material furnished to the LH Premises. If any such lien is filed, the Subtenant shall, at its sole cost and expense, cause such lien to be removed from the LH Premises within thirty (30) calendar days of notice. Upon expiration or termination of this Sublease, Subtenant (at Subtenant’s cost) shall remove all of the Subtenant’s Property and restore the LH Premises to a condition as good as at the commencement of the Sublease, reasonable wear and tear excepted, to the BNP’s/City’s satisfaction, it being expressly understood and agreed however that the Subtenant shall not remove such items of Subtenant Property as are not readily movable without intrusive construction/deconstruction related measures, such Subtenant Property to become the property of the City upon expiration or termination of this Sublease.

1. RENT:

## Subtenant agrees to pay as rent to the BNP, for the use of said LH Premises on the first day of each month, the sum of Base Rent (defined below), plus, if applicable, Additional Rent (defined below), (the sum of Base Rent plus any Additional Rent is defined herein as “Rent”), as follows:

## A base rent (“Base Rent”) of $\_\_\_\_\_\_\_ per month, escalated annually by three percent (3%), plus the following additional rent (“Additional Rent”) of \_\_\_ percent (\_\_ %) of LH Gross Sales.

## Base Rent shall increase by an additional \_\_\_\_\_\_\_\_ percent (\_\_\_%) per month, and continue to escalate annually by three percent (3%), when the LH Premises shall be modified as provided in Section 7 of this Sublease.

## Additional Rent shall be determined within fifteen (15) calendar days of each month’s end and paid the first of the following month after such reporting.

## LH Gross Sales shall be calculated based on gross receipts by Subtenant from all categories of income associated with the LH Premises. LH Gross Sales shall exclude: (1) the amount of any Federal, State or City taxes which are paid by the Subtenant on their sales; and (2) revenues from off-premises catering. Subtenant shall be required, within fifteen (15) calendar days of each month’s end, to submit monthly statements of gross receipts by Subtenant from all categories of income in a format approved by both the BNP and the City, and at the end of each operating year, to submit detailed income and expense statements for the prior years. Subtenant shall be required to maintain revenue control systems to ensure the accurate and complete recording of all revenue in a form and manner acceptable to both the BNP and the City. The Subtenant shall be required to pay all taxes, excluding property taxes, applicable to the operation of the LH Premises.

1. EXPANDED AREA

A. Expanded Area shall mean the approximately 592 square feet of space identified on Exhibit A as “Gift Shop” and approximately 313 square feet of space identified on Exhibit A as “Gift Shop Storage/Office.”

B. Subtenant shall have the obligation to sublease the Expanded Area for Subtenant’s use and occupancy at such time as the BNP relocates the Gift Shop out of the Museum and makes the Expanded Area available to the Subtenant by providing written notice to Subtenant that the Expanded Area is available for sublease to Subtenant (“Expanded Area Notice”). However, if the Expanded Area Notice is issued within 24 months of the expiration of the term of this Sublease, Subtenant shall have the right to refuse to sublease the Expanded Area in which case the Expanded Area will not become part of the LH Premises. In order to exercise this right to refuse to sublease the Expanded Area, Subtenant must provide written notice of same to the BNP within fifteen (15) calendar days of receipt of the Expanded Area Notice.

C. Unless Subtenant has exercised its right to refuse to sublease the Expanded Area pursuant to Section 7(B) of this Sublease, within thirty (30) calendar days of receipt of the Expanded Area Notice, consistent with Subtenant’s response to the RFP and pursuant to Section 4 of this Sublease, Subtenant shall submit to the BNP its plans for improvements to the Expanded Area. The BNP shall not be obligated to perform any work or make any improvements to the Expanded Area.

D. Ten (10) calendar days from Subtenant receiving written approval of its plans for improvements to the Expanded Area from both the BNP and DPW, the Expanded Area shall be added to the LH Premises and shall be deemed to be part of the LH Premises for purposes of this Sublease. At the same time, the approximately 160 square feet of storage space in the shipping container located adjacent to the Hangar, which sits across Commercial Street from the Museum shall be removed from the LH Premises and shall no longer be considered to be part of the LH Premises for purposes of this Sublease (collectively, the addition of the Expanded Area and the removal of the storage container shall be referred to herein as the “LH Premises Modification Commencement Date”). Upon the LH Premises Modification Commencement Date, Subtenant shall be solely responsible for the Expanded Area in its operation of the LH Premises, including, but not limited to, any and all improvements, maintenance, and upkeep, as set forth in this Sublease.

E. On the first day of the month following the LH Premises Modification Commencement Date, Base Rent shall increase pursuant to Section 6(c) of this Sublease.

1. Security Deposit:

Subtenant is required to provide a $10,000.00 Security Deposit (“Security Deposit”). The Security Deposit shall be held in an interest bearing account and returned to Subtenant within thirty (30) calendar days of expiration of this Sublease or any extensions, provided Subtenant is in material compliance with the terms and conditions of this Sublease.

1. TAXES, LICENSES and PERMITS:

## The Subtenant shall pay all license fees, sales taxes on products or services that the Subtenant provides hereunder, including, but not limited to, all federal, state and local taxes, New York State Worker’s Compensation payments, unemployment insurance, payroll and other taxes with respect to services provided under this Sublease and all other taxes arising from the Subtenant’s operations hereunder.

## The Subtenant shall obtain and maintain in force during the term of operation, all necessary food, liquor, and other licenses and permits and renewals thereof and shall pay all fees and taxes which may be due and owing, from time to time, to federal, state or municipal authorities incidental to its operations. The Subtenant shall furnish the BNP with copies of all applicable licenses, permits, and renewals thereof.

## The Subtenant shall advise the BNP in writing of any pending or threatened actions against the Subtenant, whether by governmental authorities or otherwise, which seek, could result in, the suspension or revocation of any license or permit necessary for its performance of this Sublease. In the event of any suspension in excess of thirty (30) calendar days or revocation of the Subtenant’s license to serve alcoholic beverages, and if such suspension or revocation shall not be stayed or appealed in such a manner that will permit the Subtenant to continue to serve alcoholic beverages at the LH Premises, then the Subtenant shall be obligated, subject to written approval by the BNP, to secure an interim licensed bar manager at the LH Premises to enable or permit the serving of alcoholic beverages. If the Subtenant has not secured an interim licensed bar manager or made arrangements to the BNP’s reasonable satisfaction, then upon the effectiveness of the suspension or revocation of the Subtenant’s liquor license, the BNP, without waiving any rights which it may have otherwise hereunder, shall have the right, but not the obligation, to secure an interim bar manager.

## In such event, the Subtenant will make available to the interim licensed bar manager, to the extent permitted by applicable law, if any, all supplies of applicable beverages then in possession which were intended for sale or use at the LH Premises, and will afford to such interim licensed bar manager the benefit of supply arrangements for beverage, and will make applicable personnel, and equipment available to such interim licensed bar manager.

## If the BNP shall suffer any financial or economic loss as a result of such suspension or revocation, the Subtenant and the BNP, will negotiate in good faith to determine an equitable adjustment to the rents to be paid by the Subtenant to compensate the BNP for such loss.

1. MONTHLY AND ANNUAL REPORTS:

## In addition to monthly LH Gross Sales reports, Subtenant shall submit a monthly report, due within fifteen (15) calendar days of each month’s end, approved to form by both the BNP and the City including but not limited to the following: financial variance against budget - monthly / year to date, traffic volume - historical comparison, marketing promotions, routine maintenance expenses, non-routine expenses, authorized capital improvements, insurance claims, litigation, and safety and environmental incidents.

## Subtenant agrees to have an independent accounting firm, approved by both the BNP and the City, perform and report on agreed upon procedures. These procedures would include but are not limited to: Evaluation of internal controls including testing of the Point of Sale (POS) System and verification of revenues and expenses. The Subtenant will assume responsibility of this report not to exceed $10,000.00 every three (3) years.

## No later than December 1st of each year, Subtenant will provide the BNP with its business plan for the upcoming season setting forth the menu, portion size, branding and pricing schedule for the LH Premises.

## The BNP’s Board of Directors will assemble a panel to review all aspects of operations (including but not limited to the Subtenant’s annual business plan). The panel will make recommendations and present said information to the Subtenant. The Subtenant must respond in writing to all recommendations introduced by the panel. The BNP shall notify the Subtenant in writing within (10) calendar days following receipt of changes it desires and the reasons therefor which changes shall be implemented. The requested changes shall be subject to the Subtenant’s approval, which shall not be unreasonably withheld. The parties agree to review menus and operating plans informally on a quarterly basis.

1. UTILITIES:

The BNP is solely responsible for all water and sewer charges servicing the BNP Premises. The Subtenant will be responsible for at least fifty percent (50%) of the gas and electricity charges to the BNP Premises.

1. TRASH/ WASTE REMOVAL and RECYCLING:

## Subtenant shall be responsible, at its sole cost and expense, for clean-up and removal of all garbage, refuse, rubbish and litter from the LH Premises and the area within 50 feet of the LH Premises, and around any temporarily located freezer/refrigerators, or dry stores. The BNP and Subtenant shall share an outdoor location for the waste and recycling containers, adjacent to or in close proximity, to the LH Premises. Subtenant shall pay sixty (60%) of the costs of trash removal/disposal charges with the BNP being responsible for forty (40%). Subtenant shall comply with all City, State, and Federal regulations regarding recycling. Rubbish removal schedules are subject to the BNP’s prior written approval.

## In addition, the Subtenant shall keep all signs and structures in good condition and free from graffiti and be responsible for cleaning and snow removal of the finger pier area and Commercial Street entranceway. Subtenant will also regularly power wash outdoor areas of the LH Premises as needed to keep such outdoor areas clean. During the months of June, July, August and September, Subtenant shall power wash outdoor areas of the LH Premises no less than two (2) times per week.

1. BUILDING, OCCUPANCY and OPERATION PERMITS:

Subtenant shall operate and occupy the LH Premises in accordance with applicable law and shall obtain all licenses and permits that may be required to operate the LH Premises, including necessary Certificates of Occupancy and Certificates of Completion. Subtenant shall be required to obtain all necessary approvals from any agency having jurisdiction. Subtenant shall be required to comply with all national safety guidelines and Federal, State, and City laws, rules and regulations related to the renovation, operation and maintenance of the LH Premises during the term of this Sublease. Subtenant shall at all times display said appropriate permits.

1. LIQUOR LICENSE

Subtenant shall diligently pursue and obtain a license from the New York State Liquor Authority to sell liquor, beer and wine at the LH Premises; however the commencement of this Sublease shall not be conditioned upon the Subtenant’s obtaining said license. Alcoholic beverages shall only be served within and must be consumed within the LH Premises.

1. OPERATION:

## Subtenant shall have obtained all appropriate and/or necessary permits and authorizations required by the City, County of Erie, and/or State of New York.

## Subtenant shall be required to reasonably keep the LH Premises in an orderly and attractive condition at all times, furnish prompt courteous service, and to have sufficient employees available to properly serve the public.

## Subtenant shall use “The Liberty Hound” name for the LH Premises in keeping with the BNP’s nautical and military theme. Subtenant does not have the right to change the name of the LH Premises.

## Subtenant, subject to BNP’s reasonable review and approval, shall provide food and beverage items to the public consistent with comparable prices in the immediate area, which menu and price list shall be prominently displayed. Any material changes to said menu are subject to BNP’s prior approval.

## Subtenant shall be open and operating on a year-round basis. Subtenant shall prominently display the schedule of times of operation in a prominent place and manner with hours of operation set at the discretion of the Subtenant, subject to BNP’s reasonable approval.

## Subtenant shall, to the best of its ability, have a sufficient number of staff available at the LH Premises during regular operating hours to ensure proper operation of the restaurant. The Subtenant shall hire, train, supervise, discipline, and if need be, dismiss any and all persons necessary to operate its operation hereunder and will use reasonable efforts to assure that its employees continually practice high standards of cleanliness, safety, courtesy, and service customarily followed in the conduct of a first-class restaurant operation. The BNP reserves the right to require that all staff wear uniforms that have been approved by the BNP, such approval not to be unreasonably withheld. Any staff assigned to the restaurant operations to sell food and beverages to the public, must possess all required government authorizations. The Subtenant shall comply with all applicable wage practices and laws of all applicable jurisdictions and shall also comply with all laws governing employment and conditions of employment including without limitation, to the extent applicable, the Worker’s Compensation Act of the State of New York, City of Buffalo Living Wage Law, City of Buffalo MWBE utilization requirements and any amendments thereto. Further, Subtenant shall utilize good faith efforts to attain a 25% (hours worked as distinguished from head count) minority workforce goal. Subtenant shall be required to submit quarterly workforce utilization reports to the Sublessor and to the City.

## Subtenant shall, to the best of its ability, ensure that deliveries are made before 10AM and that no trucks or vehicles of any kind remain on BNP pathways or promenades, staying behind the traffic bollards at all times. Subtenant employees must be on-site to accept deliveries.

## Up to twenty (20) parking spaces are available for visitors to the Naval Park, including Liberty Hound customers, at the Marine Drive Parking lot as part of the BNP’s parking agreement with the Buffalo Municipal Housing Authority (“BHMA”), which BMHA has agreed to designate “Naval Park/Liberty Hound Visitor Parking”.

## At locations specified in Exhibit “A” as patio area, subject to BNP’s and DPW’s prior written approval, Subtenant shall place attractive tables and chairs for use by its patrons so that pedestrian traffic on the pathway is not inhibited. Subtenant must keep a clear path available for Naval Park visitors accessing the U.S.S. Little Rock lift which is located within the patio area.

## Subtenant shall be required to nightly maintain and secure the LH Premises, including all outdoor tables, chairs, stools, bar equipment, inventory, umbrellas, and any other equipment utilized for the operation of the outdoor areas.

## Subtenant shall not place any advertisements on the LH Premises without the prior written approval of the BNP and DPW, and shall not display any tobacco advertising. Any such display of prohibited material shall be immediately removed by the Subtenant upon notice from the BNP. Subtenant shall be allowed to maintain a sign on the Commercial Slip side of the Museum Building and to hang banners upon the three Commercial Street light poles, so long as the BNP’s logo shall always be no less than equal size to The Liberty Hound’s logo. Any changes to said signs or banners are subject to prior BNP approval. Subtenant shall, at its sole cost and expense pay all costs for the sign and banners, including installation and maintenance.

## Subtenant shall, at its sole cost and expense, ensure the security of the LH Premises, personnel and equipment and shall coordinate with the BNP’s security in accordance with plans approved by the BNP, which approval shall not be unreasonably withheld. If the LH Premises is open at any time past 11:30 p.m., the Subtenant will hire security personnel necessary to maintain safe and secure operations in and around the Museum. All security personnel must be New York State certified.

## Subtenant shall prohibit, adhere and enforce no smoking within the LH Premises.

1. REPAIRS:

Subtenant, at its sole cost and expense, shall keep in good repair any and all LH Premises including FF&E. Subtenant shall not suffer or permit any waste, or neglect of any building or other property, and will repair, replace, and renovate such property and equipment as often as necessary to keep the LH Premises and FF&E in good repair.

1. MAINTENANCE:

## Subtenant shall, at its sole cost and expense, maintain and operate the LH Premises, and all equipment and improvements, in accordance with industry standards. Subtenant shall comply with all national safety guidelines and Federal, State, and City laws, rules and regulations related to the renovation, operation and maintenance of the facility during the lease term. Subtenant shall be prohibited from removing any furniture, fixtures or improvements on the LH Premises without prior written approval of BNP, which approval shall not be unreasonably withheld. At the end of the Lease Term, the Subtenant shall return the LH Premises to a condition as good as the condition at the commencement of the term, reasonable wear and tear excepted.

## Except as otherwise provided, Subtenant shall, at its sole cost and expense, maintain the onsite restrooms for its restaurant patrons and Museum visitors.

## Subtenant shall keep all signs and structures in good condition and free of graffiti and be responsible for cleaning all approach paths and adjacent planting beds, as well as trash removal and recycling. Where applicable, Subtenant shall be responsible for the removal of snow and ice from the LH Premises and be required to provide regular cleaning and maintenance schedules, subject to BNP’s approval, which approval shall not be unreasonably withheld.

## Subtenant shall provide regular pest control inspections and extermination as needed. To the extent that the Subtenant applies pesticides to LH Premises, Subtenant or any subcontractor so hired, shall comply with and state or local laws regarding pesticide use.

## Should the Subtenant fail to provide the cleaning, maintenance, and operational services required by this Sublease, the BNP shall notify the Subtenant in writing, and the Subtenant shall be required to correct such conditions within forty-eight hours of receipt of such notice, or commence a diligent effort to correct such conditions in a reasonable time period. In the event that the Subtenant fails to cure the violation, the BNP will send the Subtenant a second written notice. If the Subtenant fails to cure the violation within forty-eight hours of receipt of the second notice, or commence a diligent effort to correct such conditions in a reasonable time period, the BNP may, in addition to any other remedies available to it, require the Subtenant to pay as liquidated damages, $200.00 per day from the date of the second notice, until the conditions have been corrected. Liquidated damages, if not paid promptly, shall be deducted from the Subtenant’s security deposit.

## Should the Subtenant continue in its failure, after the above two notices, to provide the repairs, cleaning, maintenance, and operational services required by this Sublease, or otherwise fail to reasonably keep the LH Premises in an orderly and attractive condition at all times, furnish prompt courteous service, and have sufficient employees available to properly serve the public, the BNP, upon 60 day notice to the Subtenant, may seek a judicial order to terminate this Sublease. In the event rents due under this Sublease are not paid, then both the BNP and the City shall each have the right, after a 60 day notice and cure period afforded to the Subtenant, to seek and obtain a judicial order evicting the Subtenant and terminating this Sublease. The Subtenant shall not have any right to claim a set-off for any purpose against the BNP for Sublease rents owed to the BNP.

1. CAPITAL EXPENSES:

Any improvement which is assigned a useful life under New York State local finance law and is a bondable expenditure shall be deemed a Capital Expense. Capital Expenses shall be the responsibility of the BNP, or City. Notwithstanding the forgoing, neither the BNP or the City are obligated to make any capital improvements at any time.

1. COMPLIANCE with LAWS, POLICIES, and PROGRAMS:

## In connection with its operations hereunder, the Subtenant shall insist upon compliance and faithful observance of all laws (including without limitation fire, building, health, sanitation and environmental codes and regulations and liquor control laws and regulations).

## The BNP specifically grants to Subtenant: (1) The right to enforce all New York State Laws, rules, regulations or orders relating to premises licensed pursuant to and to enforce all rules, regulations or orders of New York State Liquor Authority or other regulatory agencies relating to the Licenses; and (2) the full right, power and authority to take any and all actions necessary to enable and to ensure compliance with all laws, rules, regulations and orders concerning the sale and consumption of alcohol at the LH Premises.

1. INDEMNIFICATION:

## The Subtenant shall indemnify, defend and save harmless the BNP, City, and their officers, agents, servants, and employees from and against any and all claims, demands, suits, proceedings, liabilities, judgments, losses, costs, or damages, including but not limited to attorney’s fees, in any way arising out of, relating to or in connection with the performance of or failure to perform under this Sublease by the Subtenant. This provision shall include all losses, costs, and damages that the BNP and or City, may suffer by reason of injury to the person or property of another resulting from the negligence or carelessness, active or passive, of the Subtenant and/or those under the direction and or control of the Subtenant. Subtenant shall also defend, indemnify, and hold harmless the BNP, City, their agents, officers, servants, and/or employees against all claims or losses for personal injury resulting from negligence, active or passive, of employees of Subtenant or persons working for Subtenant.

## The provisions of this section shall survive the expiration or termination of the Sublease; shall not be limited by reason of any insurance coverage provided hereunder or the limits of any insurance requirements; and shall be separate and independent of any other requirement of this Sublease.

1. INSURANCE:

## Subtenant agrees that at all times during the term of this Sublease, to keep in effect a policy of public general liability and property damage insurance with the BNP and City as named insured, or as additional insureds or applicable, insuring the demised LH Premises against any loss and also insuring against any and all claims of bodily injury per person or property damage in amounts not less than One Million ($1,000,000) Dollars per accident, and not less than Three Million Dollars ($3,000,000.00) multiple bodily injury (aggregate), Liquor Liability coverage in amounts not less than Three Million Dollars ($3,000,000) , and with respect to any owned, non-owned, or hired vehicles the Subtenant shall carry Automobile Liability Insurance, providing for a minimum limit of one Million Dollars ($1,000,000.00) per accident for bodily injury and property damage. Such insurance policies shall be in the form commonly known as “Commercial General Liability” to cover liability arising out of LH Premises operations, independent contractors, products-completed operations, broad form property damage including completed operations, personal and advertising injury, cross-liability coverage, liability assumed in a contract including the tort liability of another; Subtenant further agrees to defend, indemnify and save the BNP and City harmless from and against any and all claims, actions, damages, liabilities and expense, including attorney’s fees, in connection with any accident, personal injury or damage to personal property arising from or out of any occurrence in, upon or at the demised LH Premises unless, and only to the extent, that same shall result on account of any gross negligence on the part of BNP or City. BNP and City shall also be named as additional insured on any excess umbrella liability insurance carried by the Subtenant.

## Subtenant further covenants and agrees to maintain all necessary Employers Liability policy in amounts not less than One Million ($1,000,000.00) Dollars and all Worker’s Compensation and Disability Insurance covering all of Subtenant’s employees at the LH Premises in the statutory amounts. All such insurance shall be obtained from a company licensed in the State of New York and submitted in the State of New York, and a certificate evidencing the issuance of such policy or policies, together with evidence of the payment of premiums, shall be delivered to BNP and City before the commencement of the term of this Sublease, or before any use, occupancy or possession of the demised LH Premises prior to the commencement of the term of this Sublease, whichever is sooner. All policies of insurance required shall be provided and maintained at no cost or expense to the BNP and City, shall name the BNP, City, as an Additional Insured and Certificate Holder with respect to the Subtenant’s activities. Notwithstanding the foregoing, Workers Compensation Insurance and Disability Insurance Certificates shall name the BNP and City, Certificate Holders and shall be evidenced on the New York forms.

## Not less than thirty (30) calendar days prior to the expiration of any such policy or policies, evidence of the renewal of such policy or policies, or a new certificate, together with evidence of the payment of premiums for the renewal period or new policy, as the case may be, shall be delivered to BNP and City. All such insurance shall contain an agreement by the insurance company that the policy or policies will not be canceled, or the coverage changed, without ten (10) calendar day prior written notice to BNP and City.

1. MISCELLANEOUS:

## A. Environmental Considerations. The BNP is deeply committed to respecting the environment and requires that all proposed operational plans include a detailed description of environmentally friendly practices planned for the LH Premises to include the installation of Energy Star appliances, the employment of energy efficient and water conservation measures, the use of eco-friendly products, and the training of staff members about the importance of incorporating environmentally friendly measures into daily operations,

## B. The BNP will endeavor to keep adjacent areas of the Naval Park not under the control of Subtenant clean and free of debris and trash. Except as contained in Paragraph 15 above, the BNP shall continue security that exists prior to commencement of this Sublease not relying on Subtenant to substitute for any such security services.

C. The Subtenant shall use all reasonable efforts to enhance, maintain and improve profitability of the LH Premises and to perform such acts as may be reasonably necessary to promote sales.

D. The Subtenant shall keep a website and Twitter account providing basic information and promoting LH Premises operations.

1. NO BROKERAGE:

The BNP shall not be obligated to pay any fee, cost or expense for brokerage commissions or finder’s fees with respect to the execution of the Sublease. Subtenant shall pay the commission or other compensation due to any broker or finder in connection with this transaction, and to indemnify and hold the BNP harmless from any obligation, liability, cost or expense incurred by it as a result of any claim for commission or compensation brought by any broker or finder by reason of this lease transaction.

1. ASSIGNMENT:

Subtenant shall have no right to assign this Sublease or sublet any portion or portions of the LH Premises without the prior written consent of the BNP and City, except BNP and City hereby consent to the assignment of this Sublease to a newly formed limited liability company (“LLC”) organized by Subtenant solely for purposes of operating the LH Premises. Subtenant shall notify BNP and City of the formation and assignment of this Sublease to such new LLC.

1. NOTICES:

All notices under this Sublease shall be in writing forwarded by registered mail directed to BNP and Subtenant as above listed or addressed as either party may from time to time designate by notice given in the like manner. Subtenant’s contact person for compliance and approvals shall be the BNP’s Executive Director.

1. CONDEMNATION:

If the whole or substantially all of the demised LH Premises shall be taken by any public authority, under the power of eminent domain or threat thereof, then this Sublease shall be terminated as of the day of possession by such public authority and the rent shall be paid up to that day of possession. For purposes of this paragraph, “substantially all” of the demised LH Premises shall be deemed to have been taken if the remaining property cannot be practically used by Subtenant for its stated purposes.

1. COMMENCEMENT DATE:

This Sublease shall commence upon the date the Sublease is entered into by the parties as reflected on the cover page of this Sublease, or the date this Sublease is approved by the Common Council of the City, whichever occurs later.

1. ACCESS:

No Subtenant access to the LH Premises for restaurant build-out purposes shall be deemed granted until after DPW issues a written notice to proceed upon DPW’s review and approval of restaurant build-out plans and specifications and approvals as set forth in paragraph 15 herein (with respect to approvals of name, seating, signage and advertising), and is satisfied that the contractor’s indemnity of the City and the contractor’s insurance coverage appropriately addresses the City’s interests.

1. CITY OBLIGATION:

The City has no direct obligation to Subtenant under this Sublease and may at its option, at any time after the BNP’s Lease with the City shall terminate, provided Subtenant is, and remains, in default and fails to cure, or commence a diligent effort to cure, such default after sixty (60) calendar days’ notice from City, seek judicial termination of this Sublease. Notwithstanding the foregoing, upon and at any time after the expiration of the BNP’s Lease with the City, the City shall have the unilateral right to terminate the Subtenant’s tenancy (and this Sublease) upon two calendar month’s prior written notice to the Subtenant.

1. CONSTRUCTION OF SUBLEASE:

Any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Sublease. The paragraph headings are inserted only as a matter of convenience and for reference and in no way are intended to be part of this Sublease or to define, limit or describe the scope or intent of this Sublease or the particular paragraphs hereof to which they refer.

1. ENTIRETY:

This Sublease sets forth the entire agreement between the parties concerning the demised LH Premises and equipment and no other promises, agreements or understandings between them shall be binding unless set forth in writing and signed by both parties. The parties agree that the covenants, conditions and agreements of this Sublease shall be binding upon and inure to the benefit of the parties, their heirs, executors, administrators, successors and assigns. The parties further agree that this Sublease shall be construed and governed in accordance with the laws of the State of New York without regard to principles of conflicts of laws. Any action or proceeding in connection with this Sublease shall be brought in the Supreme Court of the State of New York, Erie County, or the United States District Court, in the Western District of New York. The parties each waive the right to make a claim for forum non conveniens. If any one or more of the provisions of this Sublease are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Sublease will be unimpaired and will remain in full force and effect, and the invalid, illegal or unenforceable provision will be replaced by a valid, legal or enforceable provision that comes closest to the intent of the parties underlying the invalid, illegal or unenforceable provision.

1. COUNTERPART SIGNATURES:

This Sublease may be signed in any number of counterparts, each of which shall be an original and all of which, when taken together, shall constitute one and the same Sublease.

**IN WITNESS WHEREOF**, the parties have executed this Sublease as of the day and year first above written.

**THE BUFFALO NAVAL PARK COMMITTEE, INC.**

**dba The Buffalo and Erie County Naval & Military Park**

By

Its Chairman

STATE OF NEW YORK ): SS.

COUNTY OF ERIE )

On the \_\_\_\_\_ day of\_\_\_\_\_\_\_\_\_, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

”Subtenant Information”

STATE OF NEW YORK ): SS.

COUNTY OF ERIE )

On the \_\_\_\_ day of\_\_\_\_\_\_\_\_, in the year 2018, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity(ies), and that by his signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

Notary Public

Doc #01-3156239.6

**EXHIBIT**

**A**

**(See, RFP Exhibit B)**

**EXHIBIT**

**B**

**(See, RFP Exhibit C)**