

Attachment 1

CITY OF EL PASO DE ROBLES

OCCUPANCY LICENSE FOR CONCESSION SALES AREA

Term: August 7, 2023 through August 1, 2025

Effective Date: August 7, 2023

License Holder:

NCI Affiliates
1434 Chestnut St.
Paso Robles, CA 93446

Attachment 1

CITY OF EL PASO DE ROBLES

Occupancy License for Concession Cafe in the Centennial Park Recreation Center

This Occupancy License for Concession Teen Center Cafe ("Concession License Agreement" or "Concession License" or "License") is made and entered into this _____ day of _____, 2023, by and between the CITY OF EL PASO DE ROBLES ("City") and NCI AFFILIATES, Inc. a California corporation ("Licensee"), for the purpose of awarding an occupancy license for operation and maintenance of concession cafe at City's Centennial Park Recreation Center located at 600 Nickerson Drive, Paso Robles, California.

RECITALS

- A. City desires to engage the services of a qualified vendor to operate a cafe in a designated space in the Centennial Park Recreation Center.
- B. Licensee represents and warrants that it possesses the qualifications, experience, and expertise to operate a café concession in accordance with the highest standards in the industry relative to quality of the product, cleanliness, service, and business operations.

NOW, THEREFORE, in consideration of the foregoing, the parties do hereby agree as follows:

1. Location. The area to be governed by this Concession License Agreement is that portion of the Centennial Park Recreation Center designated as a concession cafe ("Concession Premises"). The area is approximately 109 interior square feet, and its general location is outlined on the Centennial Park Recreation Center floor plan, which is attached hereto and incorporated as "Attachment A." Licensee shall also have access to and be entitled to use the Centennial Park Recreation Center kitchen area, also designated on Exhibit A, pursuant to the terms and conditions of this Agreement.

2. Use of Concession Premises. At all times the Licensee shall operate the Concession Premises as a café for the purpose of selling food and drinks. The menu and pricing shall be subject to the advance written approval of City. The City reserves the right to prohibit the sale of any item which it deems objectionable or beyond the scope of merchandise deemed necessary for proper service to the public.

The Concession Premises shall not be used by Licensee for any other purpose than those described herein:

- Provide café food services at the Centennial Park Teen Center in a businesslike manner to the satisfaction of the Recreation Services Manager
- Work with the Recreation Services Manager to reserve the Centennial Park Kitchen for the purposes of preparing the food that will be provided at the Teen Center Café.
- Working with the Recreation Services Manager, Contractor may also reserve the Centennial Park kitchen facilities for preparing and catering food for either public or private events, at Centennial Park or off site.
- Licensee shall post rates and prices of all items in such places as designated by the City.

Attachment 1

Notwithstanding the foregoing, City retains the right to rent to third parties or use the Centennial Park kitchen, Teen Center Café and all City owned appliances and equipment within the kitchen area when it is not reserved by Licensee.

3. Concession Premises. The Concession Premises will be delivered to the Licensee in turn-key condition. Licensee shall have use of City-provided furniture, fixtures, and equipment (“FF&E”) during the term of the License, but all such FF&E shall remain owned by the City. A list of City-provided FF&E is attached hereto as Exhibit B. Licensee accepts the FF&E in the condition they are in at the time of delivery of the Concession Premises and shall thereafter maintain them in good condition and repair. Any alterations to the interior space of the Concession Premises shall be at Licensee’s expense and shall be subject to the prior written approval of City. Licensee shall be responsible for providing any FF&E above and beyond that provided by City (with City’s prior written approval) and all other equipment, interior and exterior signs, merchandise, and labor necessary to operate the Concession Premises. Exterior signs shall be subject to City approval.

The Recreation Services Manager may allow storage of Licensee’s equipment, tools, and instrumentalities in the Concession Premises if there is available space. Contractor may only store its equipment, tools, and instrumentalities in an area approved by the Recreation Services Manager (or designee). The City is not responsible for damage to, theft of, or loss of any equipment, tools, and/or instrumentalities owned and/or rented by Licensee. •

Licensee is responsible for returning all equipment, tools, and instrumentalities to their proper place after catering events and performing services under this Agreement. Neither the City nor city staff are responsible for items left out after an event.

4. Term of License. This License is awarded for a period from August 7, 2023 until August 1, 2025 (the “Concession License Term”). Licensee shall commence operations not later than August 19, 2023. Licensee may occupy the Concession Premises for the purpose of moving its equipment into the Concession Premises and constructing any improvements approved by City upon notice from City. This Concession License may be renewed for two additional two year terms upon its expiration, if the parties mutually agree in writing. City reserves the right to alter the terms of the License upon extension.

5. Minimum Operating Hours. Licensee must maintain a fully staffed and fully operational cafe for a minimum of 12 hours per week during the regular school year with the exception of holidays. Licensee agrees the concession premises will be open during the following hours during the Paso Robles Joint Unified School District school year, additional service hours including summer and scheduled school breaks will be agreed to by the Parties:

Monday: 2pm-5pm
Tuesday: 3pm-5pm
Wednesday: 3pm-5pm
Thursday: 3pm-5pm

Attachment 1

6. License Fee. (a) In exchange for an exclusive license for the Concession Premises for the use defined herein, Licensee shall pay City a fee of Two Hundred Dollars (\$200) per month plus five percent (5%) of gross sales per quarter ("License Fee").

(b) The term "gross sales" as used herein shall include all receipts of every kind and nature from sales of goods, wares, merchandise, services (including delivery charges), food and/or beverages, made in, upon or from the Premises (whether by Licensee or a subtenants or whether in person, by telephone or otherwise), whether on credit or for cash (including, without limitation, gift and merchandise certificates), excepting therefrom any rebates and/or refunds to customers and the amount of all sales taxes or similar tax receipts which have to be accounted for to any governmental authority or agency. Sales on credit shall be deemed cash sales and shall be included in gross sales for the month during which the sale occurred. Sales made at or from the Premises but fulfilled from another location shall not be included in gross sales, but any industry standard fulfillment fee paid to Licensee for the sale shall be included in gross sales for the month in which payment for the sale is received. Sales made at or from the Premises but fulfilled offsite by Licensee shall be included in gross sales for the month in which payment for the sale is received. Sales made at another location but fulfilled from the Premises (on site or off site) shall be included in gross sales (less any industry standard fulfillment fees paid by Licensee for the sales for the month in which payment for the sale is received).

Gross sales shall not include, or if included there will be deduction of (but only to the extent that they have been included) the following: (1) credit card and bank fees and charges arising out of credit card sales and discounts; (2) sales to employees or complimentary meals served to employees; (3) cash or credit refunds or discounts to customers; (4) gratuities or service charges given to Licensee's employees; (5) taxes of whatever nature actually imposed and paid on the sale of items of goods or services in gross sales; (6) sales of Licensee's fixtures, machinery and/or equipment; (7) receipts from insurance claims and/or insurance proceeds, except if such proceeds are for lost business income, in which even same shall be included in gross sales; (8) proceeds of condemnation and eminent domain awards; (9) amounts collected by Licensee from customers for the account of, and for direct payment to, unrelated third parties providing services specifically for a customer function which generate gross sales, such as flowers, music and entertainment; (10) sums or credit received by Licensee in settlement of any claims for loss of or damage to merchandise; and (11) the amount of any complimentary meals and beverages offered by Licensee, not to exceed two percent (2%) of gross sales during any year.

(c) On the tenth day of each month of the Concession License Term, the Licensee shall pay in advance to City the fee of Two Hundred Dollars (\$200). If necessary, the initial month's payment shall be prorated on a daily basis based on the number of days remaining in that month based on Licensee's first day of operation.

(d) Within thirty days of the end of each calendar quarter, Licensee shall pay to City five percent (5%) of the gross sales for the preceding quarter.

7. Late Payment and Failure to Pay License Fee. (a) For any payment which is received by City more than five (5) days after the date it was due, Licensee shall pay a penalty of ten percent (10%) of the amount

Attachment 1

of that payment. If any payment remains unpaid more than forty-five (45) days after its due date, the City shall have the right to terminate this License after five (5) days written notice to Licensee.

(b) Licensee gives and grants to City a lien on all fixtures and merchandise located on the Concession Premises at any time from commencement to termination of the Concession License Agreement, and agrees that in the event of any failure on the part of Licensee to comply with this Concession License Agreement, City may take possession of and may sell the same in any manner provided by law, and may credit the net proceeds against any amounts due under the terms of this Concession License, including costs and reasonable attorneys' fees. Licensee agrees not to remove any fixtures from the Concession Premises without the advance written consent of City.

8. Financial Reporting. On the first day of every three months during the Concession License Term, starting on the first day of the fourth month of the Concession License Term, the Licensee shall provide to City a written report detailing the total gross monthly concession receipts for each month prior to the time of the report, including the amount actually paid to the California Franchise Tax Board for sales taxes. An additional report meeting the same criteria shall be provided to City one month after the last day of the Concession License Term. Any one of these reports will be deemed late if it is not received within ten days of the day it is due.

9. Utilities and Maintenance of the Concession Premises. (a) The City shall pay reasonable costs for the utilities, including water, gas, heat, light, and power supplied to the Concession Premises. The suspension or interruption in utility service to the Concession Premises for reasons beyond the ability or control of the City shall not constitute a default by City or entitle Licensee to any reduction or abatement of the monthly payment due to the City.

(b) Licensee hereby agrees that it has received the Concession Premises in satisfactory condition. Licensee shall clean and maintain the Concession Premises, and shall keep them in clean, orderly, and sanitary condition at all times throughout the License Term. Licensee shall maintain in good sanitary order, and condition, all portions of the Concession Premises including, but not limited to, (a) the interior of the kitchen facilities, including flooring, exposed plumbing, paint and finish; (b) any windows; (c) any personal property of the Licensee situated in or on site; (d) all City-owned kitchen appliances, including but not limited to the stove, grill, dishwasher, ice machine, microwave, refrigerator and freezer; (e) any heating, ventilating or air conditioning equipment installed by Contractor in or on site. Licensee shall clean all glass, and shall sweep and mop the floor of Concession Premises at least once per week.

(c) Licensee agrees to secure a health permit as a Dependent Food Service Operator and maintain the facility to Health Department standards as determined by the San Luis Obispo County Health Services Department or other health services agency contracted by City.

10. Termination and Revocation of License. (a) This Concession License may be terminated with or without cause by the City upon providing written notice to the Licensee at least ten (10) days in advance of desired termination date. Licensee may terminate its obligations under this Agreement by providing the City with thirty (30) days written notice only in the event of a substantial failure by City to perform under the terms of this Agreement.

Attachment 1

(b) Upon termination or revocation of the License, Licensee agrees to vacate the Concession Premises within five (5) working days and to surrender this License.

11. Insurance Requirements.

a. Licensee shall have insurance in the following amounts:

- (1) General liability insurance with at least Two Million Dollars (\$2,000,000) combined single-limit coverage per occurrence for bodily injury and property damage; and
- (2) Workers' compensation and employer's liability insurance as required by the California Labor Code, as amended.

b. Each insurance policy required above shall be acceptable to the City Attorney:

- (1) The General Liability policy shall name the City specifically and separately as an additional insured under the policy by a valid endorsement.
- (2) Provide for written notice within 30 days or less of policy cancellation or termination;
- (3) Provide coverage by a Best's A-V rated carrier or better, admitted in California;
- (4) Provide a service of suit endorsement for all carriers not admitted in California; and
- (5) Provide that the City may pay any self-insured retention or deductible should Licensee fail or refuse to do so.

c. Failure to comply with insurance requirements under this Agreement shall be a material breach of this Agreement and allow for termination pursuant to Paragraph 10(b) of this License.

12. Indemnification. Licensee (which in this paragraph includes its employees, agents, or subcontractors) shall indemnify, defend and hold harmless the City of El Paso de Robles, its officers, agents and employees from any and all loss, damage, liability, cost or expenses, including attorneys' fees, expert fees and costs of suit, for any of the following: 1) Any personal injuries, property damage or death that Licensee may sustain while using CITY-controlled property or equipment, while participating in any activity sponsored by the CITY, or from any dangerous condition of property; or 2) Any injury or death which Licensee suffers or which is increased by any action taken to medically treat Licensee; or 3) Any claim of liability to third parties arising out of Licensee's negligence or wrongful or acts or omissions, excepting only liability caused by the sole negligence or wrongful conduct of the City.

13. Payment. The payments required by Paragraph 6 shall be made payable to the City of El Paso de Robles and considered paid when delivered to:

City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Attn: Lynda Plescia, Recreation Services

Attachment 1

14. Employment Laws. Licensee agrees to comply with all local, state, and federal laws affecting the employment of personnel, the payment of wages, and the payment of taxes in operating the business in the Concession Premises.

15. Anti-Assignment Clause. As the City has relied on the particular proposal of Licensee in entering into this Concession License Agreement, Licensee shall not assign, delegate, transfer or sublicense any duty or right under this License, or any portion of the Licensee's use of the Concession Premises. Any such purported assignment, delegation, transfer, or sublicense shall be void unless the City has previously approved such action in writing.

16. Costs and Attorney's Fees. In the event of litigation brought by either party to this Concession License Agreement to enforce any provisions of this Agreement, the prevailing party shall be entitled to an award of reasonable attorney's fees and costs of suit incurred pursuant to said litigation.

17. Licensee not a Lessee. No legal title or leasehold interest in the Concession Premises or appurtenances thereto shall be deemed or construed to have been created or vested in the Licensee by anything contained in this License Agreement.

18. Provisions Cumulative. The foregoing provisions are cumulative and in addition to and not in limitation of any other rights or remedies available to the City.

19. Merger Clause. This Agreement and its Attachments are the entire understanding of the parties, and there are no other terms or conditions, written or oral, controlling this matter. In the event of any conflict between the provisions of this Agreement and its Attachments, the provisions of this Agreement shall prevail.

20. Anti-Waiver Clause. None of the provisions contained herein shall be waived because of previous failure to insist upon strict performance, nor shall any provision be waived because any other provision has been waived, in whole or in part.

21. Severability. The invalidity in whole or in part of any provision of this agreement shall not void or affect the validity of any other provisions of this Agreement.

22. Notices to Parties. Any statements, communications, or notices to be provided pursuant to this Agreement shall be sent to the attention of the persons indicated below, until such time as notice of any changes of person to be notified or change of address is forwarded to all parties:

Licensee:

NCI Affiliates, Inc
496 Linne Rd
Paso Robles, CA 93446
Atten: Crystal Nevosh

City:

City of El Paso de Robles
1000 Spring Street
Paso Robles, CA 93446
Atten: Lynda Plescia, Recreation Services

Attachment 1

23. Choice of Law. This Agreement shall be governed by the laws of the State of California. Venue for any action arising from this Agreement, including but not limited to matters concerning validity, construction, performance, or enforcement shall be exclusively in the state or federal courts located in San Luis Obispo County, California.

24. Possessory interest. Licensee acknowledges that this License may create a taxable possessory interest subject to property taxation, and that Licensee shall be solely responsible for satisfaction of any property taxes levied in connection with this License.

25. City's Access to Concession Premises. Licensee acknowledges the City's absolute right to enter the Concession Premises in order to assure Licensee's compliance with the terms of this License.

26. Non-Discrimination and Equal Employment Opportunity. Licensee represents and agrees that it does not and will not discriminate against any employee or applicant for employment because of race, religion, color, medical condition, sex, sexual orientation and/or gender identity, national origin, political affiliation or opinion, or pregnancy or pregnancy-related condition.

27. Business License. The Licensee shall be required to obtain a City of El Paso de Robles Business License prior to execution of this Agreement.

IN WITNESS WHEREOF, this Agreement has been executed on behalf of the City by its Officer thereunto authorized and by Licensee, the date and year first above written.

CITY OF EL PASO DE ROBLES
A Municipal Corporation

NCI Affiliates, Inc.

Ty Lewis
City Manager

Date: _____

Date: _____

APPROVED AS TO FORM:

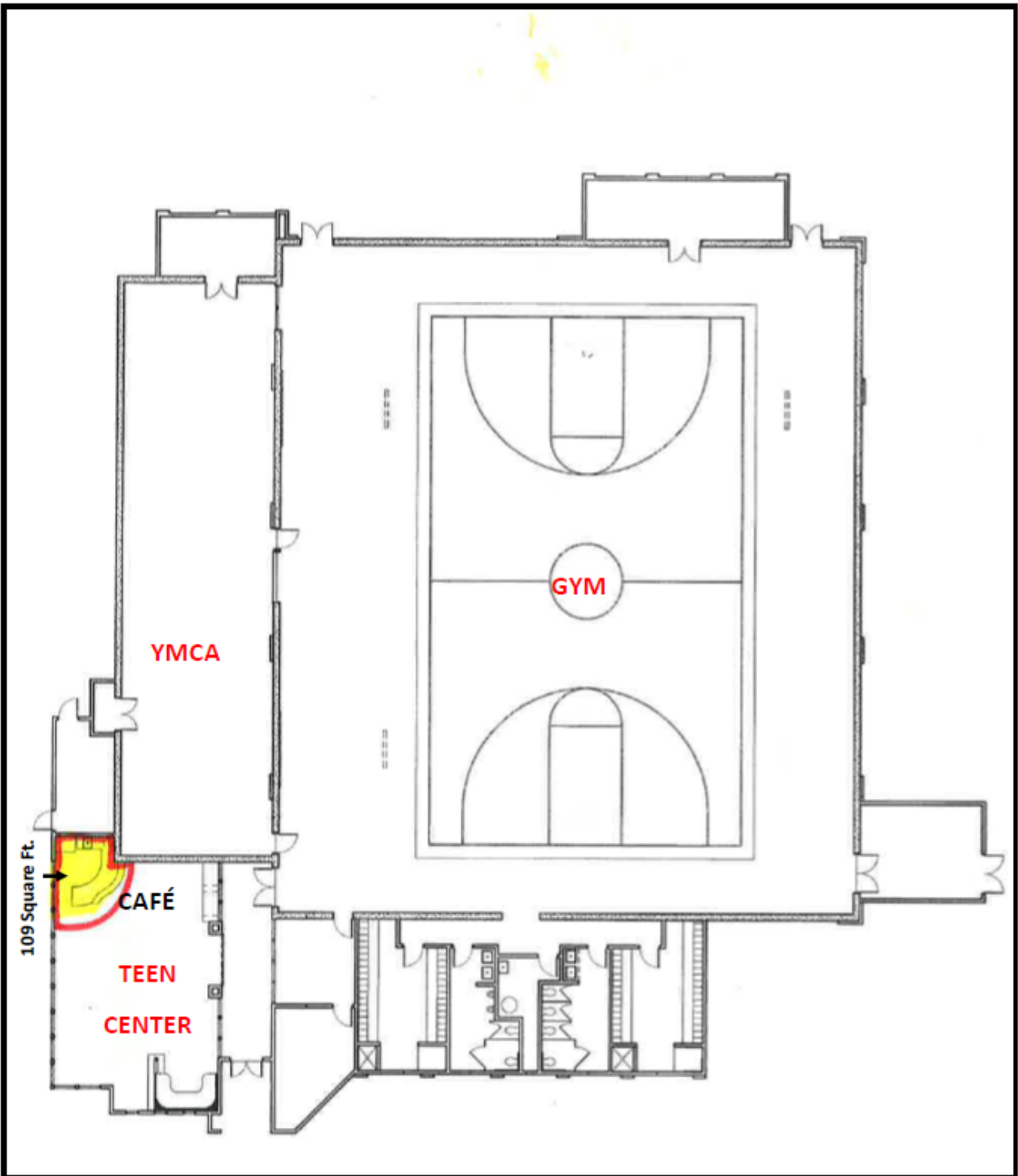
Attachment 1

OFFICE OF THE CITY ATTORNEY
Elizabeth Wagner Hull, City Attorney

By: _____

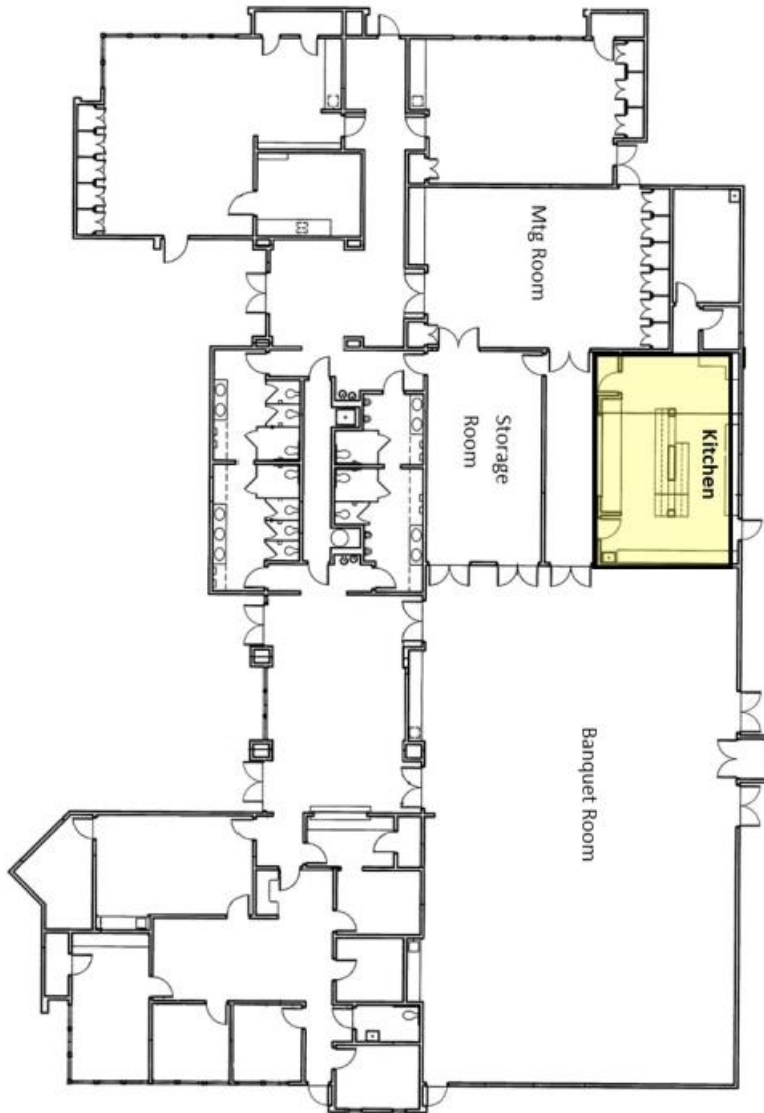
Attachment 1

EXHIBIT A
Centennial Park Recreation Center Floor Plan



Attachment 1

Administration Building



Attachment 1

EXHIBIT B

City-Provided Furniture, Fixtures, and Equipment

Café Equipment

Glass Door Display Refrigerator

Countertop Freezer

Microwave

Coffee Maker

Toaster

Kitchen Equipment

Commercial refrigerator

Chest Freezer

Gas Oven

Gas Grill and Stove

Dish Sanitizer

Ice Machine