

ID 109783

DATE: October 25, 2024

TO: Board of Acquisition and Contract

FROM: Kathleen M. O'Connor, Commissioner
Department of Parks, Recreation and Conservation

RE: Authority to enter into a license agreement with Westchester Mall, LLC, for the use of the Westchester Mall on Tuesday and Friday mornings for the term January 1, 2025 through December 31, 2025 for the operation of "Mall Walk at The Westchester" at no cost to the County and for the County to defend and indemnify the Owner

Authority is hereby requested for the County of Westchester ("County"), acting by and through the Department of Parks, Recreation and Conservation ("PRC"), to enter into a license agreement with Westchester Mall LLC (the "Owner"), for the use of the Westchester Mall weekly on Tuesday and Friday mornings between 8:00 a.m. and 12:00 p.m. for "Mall Walk at The Westchester" for the term January 1, 2025 through December 31, 2025 (the "License Agreement"). Pursuant to the terms of the License Agreement, Westchester County residents will be allowed to walk on site and provide health talks and related programs in mall common areas, at no cost to the County.

As consideration for the License Agreement, the Owner requires the County to:

"defend, indemnify and hold the Owner, Simon Management Associates, LLC and/or its successor, any tenant of the Shopping Center, the Merchant's Association or Promotional Fund (and all their officers, partners, subsidiaries, shareholders, directors, managers, employees, customers, and invitees), harmless from and against any and all claims for personal injuries, death, damages, costs, and/or other expenses, including reasonable attorney's fees, arising from or in any way relating to the negligent acts or omissions of the County in connection with its use of the Common Area of the Shopping Center or any part of facility thereof, unless such claims for personal injuries, death, damages, costs, and/or other expenses, including reasonable attorney's fees are due to the sole negligence of the Owner, Simon Management Associates, LLC and/or its successor, any tenant of the Shopping Center, or the Merchant's Association or Promotional Fund, and the County does hereby release, discharge and acquit the Owner and Simon Management Associates, LLC and/or its successor (and all their shareholders, directors, employees, customers and invitees), tenants of the Shopping Center (and their owners, officers, directors, employees, customers and invitees) and the Merchant's Association or Promotional Fund from any and all claims, demands, and actions for any loss, costs, expenses, damage or injury either to the person or property of the County and each member of the County, unless such claims, demands, actions, losses, costs, expenses, damages or injuries either to the person or property of the County and/or each member of the County, are sustained by reason of any grossly negligent condition of said Common Area of the Shopping Center, or due to any grossly

negligent act or omission of any employee or agent of the Merchant's Association or Promotional Fund, Owner, Simon Management Associates, LLC and/or its successor, or tenants of the Shopping Center.”

The goals and objectives of the License Agreement are to provide recreational opportunities to Westchester County residents. This will enable Westchester County residents to walk in the Westchester Mall to improve their fitness and well-being. The operation of the proposed License Agreement will continually be monitored by PRC staff.

Accordingly, the attached resolution is submitted for your consideration.

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/20/2024 - RAYMOND SCULKY, SECRETARY

RESOLUTION

Upon a communication from the Commissioner of the Department of Parks, Recreation and Conservation, be it hereby

RESOLVED, that the County of Westchester (“the County”) is authorized to enter into a license agreement with Westchester Mall, LLC (the “Owner”) for the use of the common areas of the Westchester Mall weekly on Tuesdays and Fridays from 8:00 a.m. to 12:00 p.m. for the Department of Parks, Recreation and Conservation to provide “Mall Walk at The Westchester” for Westchester County residents to walk on site and to provide health talks and related programs, for the term January 1, 2025 through December 31, 2025, at no cost to the County (“License Agreement”); and be it further

RESOLVED, that as consideration for the License Agreement, it will contain the following language requiring the County to:

“defend, indemnify and hold the Owner, Simon Management Associates, LLC and/or its successor, any tenant of the Shopping Center, the Merchant’s Association or Promotional Fund (and all their officers, partners, subsidiaries, shareholders, directors, managers, employees, customers, and invitees), harmless from and against any and all claims for personal injuries, death, damages, costs, and/or other expenses, including reasonable attorney’s fees, arising from or in any way relating to the negligent acts or omissions of the County in connection with its use of the Common Area of the Shopping Center or any part of facility thereof, unless such claims for personal injuries, death, damages, costs, and/or other expenses, including reasonable attorney’s fees are due to the sole negligence of the Owner, Simon Management Associates, LLC and/or its successor, any tenant of the Shopping Center, or the Merchant’s Association or Promotional Fund, and the County does hereby release, discharge and acquit the Owner and Simon Management Associates, LLC and/or its successor (and all their shareholders, directors, employees, customers and invitees), tenants of the Shopping Center (and their owners, officers, directors, employees, customers and invitees) and the Merchant’s Association or Promotional Fund from any and all claims, demands, and actions for any loss, costs, expenses, damage or injury either to the person or property of the County and each member of the County, unless such claims, demands, actions, losses, costs, expenses, damages or injuries either to the person or property of the County and/or each member of the County, are sustained by reason of any grossly negligent condition of said Common Area of the Shopping Center, or due to any grossly negligent act or omission of any employee or agent of the Merchant’s Association or Promotional Fund, Owner, Simon Management Associates, LLC and/or its successor, or tenants of the Shopping Center.”

; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute and deliver any and all documents and to take all action necessary and appropriate to effectuate the purposes hereof.

Account to be Charged/Credited:

Year	Fund	Dept	Major Program, Program & Phase Or Unit	Object/ Sub- Object	Trust Account	Dollars
n/a						

Budget Funding Year(s): 2025 Start Date: January 1, 2025 End Date: December 31, 2025

Funding Source:

Tax Dollars: _____

State Aid _____

\$ n/a

Federal Aid: _____

(must match resolution)

Other: _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 11/20/2024 - RAYMOND SCALKY, SECRETARY