

ID56134

DATE: March 28, 2017

TO: Board of Acquisition and Contract

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

RE: AUTHORITY TO AMEND A RESOLUTION TO ENTER INTO A LICENSE AGREEMENT WITH THE WESTCHESTER LLC AND SIMON PROPERTY GROUP, INC. (THE "LANDLORD") FOR THE USE OF THE WESTCHESTER MALL ON TUESDAY AND FRIDAY MORNINGS FOR THE TERM JANUARY 1, 2017 THROUGH DECEMBER 31, 2017 FOR THE OPERATION OF "MALL WALK AT THE WESTCHESTER" AT NO COST TO THE COUNTY TO ADD RELEASE LANGUAGE TO THE COUNTY'S OBLIGATION TO DEFEND AND INDEMNIFY THE LANDLORD.

Authority is hereby requested for the County of Westchester ("County") to amend a Resolution adopted by your Honorable Board on January 26, 2017, which authorized a License with The Westchester LLC and Simon Property Group, Inc. (the "Landlord") for the use of the Westchester Mall on Tuesday and Friday mornings between 8:00 a.m. and 10:00 a.m. for "Mall Walk at The Westchester" for members to walk on site and to provide health talks and related programs in mall common areas for the term January 1, 2017 through December 31, 2017 (the "Resolution"), in order to add release language to the County's duty to defend and indemnify the Landlord. The License has not been executed.

In addition to the Landlord's requirement that the County indemnify, defend and hold them harmless from and against any and all claims arising from the County's, or "Mall Walk at The Westchester" member's negligence, unless the claim is the result of the landlord's sole negligence, there is also a requirement that the County "release, discharge and acquit" the Landlord from any and all claims of "damage or injury either to the person or property" of the County or participants, unless such claim or injury is "sustained by reason of any grossly negligent condition" of the Mall common area "or due to any grossly negligent act or omission" of the Landlord. Authority to include the additional language in the Resolution was inadvertently omitted.

All other terms and conditions of the Resolution shall remain in full force and effect.

Accordingly, the attached resolution is submitted for your consideration.

KMO/DI

RESOLUTION

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

RESOLVED, that the Resolution adopted January 26, 2017 authorizing the County of Westchester (“the County”) to enter into a license agreement with The Westchester LLC and Simon Property Group, Inc. (the “Landlord”) for the use of the common areas of the Westchester Mall on Tuesdays and Fridays from 8:00 a.m. to 10:00 a.m. for the Department of Parks, Recreation and Conservation to provide “Mall Walk at The Westchester” for Westchester residents to walk on site and to provide health talks and related programs, for the term January 1, 2017 through December 31, 2017, at no cost to the County (the “Resolution”) is hereby amended to add language which requires that the County “release, discharge and acquit” the Landlord from any and all claims of “damage or injury either to the person or property” of the County or participants in the mall walk, unless such claim or injury is “ sustained by reason of any grossly negligent condition” of the Mall common area “or due to any grossly negligent act or omission” of the Landlord; and be it further

RESOLVED, that all other terms and conditions of the Resolution shall remain in full force and effect; 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): _____ Start Date: January 1, 2017 End Date: December 31, 2017

Funding Source: Tax Dollars: _____

State Aid _____

\$ n/a Federal Aid: _____

(must match resolution)

Other: _____