LICENSE AGREEMENT

BETWEEN

MANHATTAN RIVER GROUP, LLC

AND

CITY OF NEW YORK
DEPARTMENT OF
PARKS & RECREATION

for

THE CONSTRUCTION, OPERATION AND MAINTENANCE OF A FULL-SERVICE RESTAURANT AND A LOUNGE AT THE DYCKMAN MARINA

MANHATTAN, NEW YORK

M28-SB

DATED: June 25, 2009

2009-000357

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LICENSE AGREEMENT ("License Agreement" or "License") made this 25 day of June, 2009 between the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and Manhattan River Group, LLC ("Licensee"), a New York limited liability company whose address is 120 West 58th Street, 3D, New York, New York 10019.

WHEREAS, Parks has jurisdiction over parklands of the City of New York and facilities therein pursuant to Section 533(a) of the City Charter; and

WHEREAS, the Dyckman Marina, located at the western end of Dyckman Street, Manhattan and bounded by Dyckman Street on the north, the Hudson River on the west and south, and Amtrak's Empire Corridor on the east, is property under the jurisdiction of Parks; and

WHEREAS, Parks desires to provide for the construction, operation and maintenance of a full-service restaurant and a lounge for the accommodation of and use by the public at Dyckman Marina; and

WHEREAS, Parks complied with the requirements of the Franchise and Concession Review Committee ("FCRC") for the selection of concessionaires, including the issuance of a Request for Proposals ("RFP") for the operation, maintenance and management of the Licensed Premises; and

WHEREAS, the Licensee desires to construct, operate and maintain a full-service restaurant and a lounge at the Dyckman Marina in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the construction, operation and maintenance of a full-service restaurant and a lounge at the Dyckman Marina.

NOW THEREFORE, in consideration of the promises and covenants contained herein, the parties do hereby agree as follows:

GRANT OF LICENSE

1.1 Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to construct, operate, maintain and manage the Licensed Premises, as hereinafter defined, as a seasonal, full service restaurant and a lounge in accordance with the provisions herein and to the satisfaction of the Commissioner of Parks ("Commissioner").

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate and maintain the Licensed Premises in accordance with the terms of this License. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Commissioner may deem as a default Licensee's failure to fulfill

any of its material obligations herein for any reason, subject to the notice and cure periods set forth in Section 3.3(a) hereof.

1.3 It is expressly understood that no land, building, space, or equipment is leased to Licensee by Parks, but that during the Interim Period (as hereinafter defined) and the Term of this License, Licensee shall have the exclusive use of the Licensed Premises for the purpose herein provided, except as otherwise set forth herein. Except as herein provided, Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with and so long as this License is not terminated by Commissioner.

1.4 Licensee shall provide, at all times, free access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction, for inspection purposes.

DEFINITIONS

2.1 As used throughout this License, the following terms shall have the meanings set forth below:

(a) "Alteration" shall mean (excepting ordinary repair and maintenance):

(i) any restoration (to original premises or in the event of fire or other cause), rehabilitation, modification, addition or improvement to Licensed Premises; or

(ii) any work affecting the plumbing, heating, electrical, water, mechanical, ventilating or other systems of Licensed Premises.

(b) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises, and shall include architectural and design fees necessary to implement the Capital Improvements, but not include the Design Review Fee referenced in Section 6.2 herein. Capital Improvements also include all Alterations and "Fixed and Additional Fixed Equipment," as that term is defined in Section 2.1(h) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed Premises. Capital improvements shall include those activities described in Section 6.1 and the Schedule of Capital Improvements attached as Exhibit D.

(c) "City" shall mean the City of New York, its departments and political subdivisions.

(d) "Commissioner" shall mean the Commissioner of the New York City Department of Parks & Recreation or his designee.

(e) "Comptroller" shall mean the Comptroller of the City of New York.

(f) "Expendable Equipment" or "Personal Equipment" shall mean all equipment, other than Fixed and Additional Fixed Equipment provided by Licensee.

(g) "Final Completion" or "Finally Complete" shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is required by Licensee pursuant to this License in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this License Agreement.

(h) "Fixed Equipment" shall mean any property affixed in any way to Licensed Premises, whether or not removal of said equipment would damage Licensed Premises.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to Licensed Premises subsequent to the date of execution of this License.

(ii) "Fixed and Additional Fixed Equipment" shall refer to Fixed Equipment and Additional Fixed Equipment jointly and severally.

(i) (i) "Gross Receipts" shall include all funds or receipts of any kind received by Licensee, without deduction or set-off of any kind, from the operation of the Licensed Premises, from the sale of food and beverages, merchandise and services of any kind at the Licensed Premises, from the licensing of the Licensed Premises for private functions, and from any related services of any kind, provided that Gross Receipts shall exclude (a) the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales and (b) the amount of any grants, loans, and supplemental funding awarded to Licensee or its affiliates by an municipality, organization or state or federal program. Gross Receipts shall include any orders placed or made at Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof. All sales made or services rendered from Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon Licensed Premises may be made other than at Licensed Premises.

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Section 14 herein, provided that in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's, or in the event Licensee offers for sale certain merchandise including, but not limited to t-shirts, caps, towels and other non-food items ("Merchandise Sales"), net receipts from such vending machines and Merchandise Sales shall be included in Gross Receipts, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions ("Commissions") received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees. For clarity, if Licensee receives $100 in connection with services provided by a subcontracted service and $30 is due to such service provider under an approved agreement, Licensee shall report $70 as its Gross

Receipts from such transaction. Notwithstanding anything herein to the contrary, Licensee shall not be permitted to outsource restaurant-related services without the prior consent of Parks.

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in gross receipts as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iv):

(a) With respect to non-catered restaurant services, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a "food service worker" pursuant to NY Labor Law §652(4). Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee.

(b) With respect to catered events, a "Gratuity" shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee.

(v) Gross Receipts shall not include uncollected sales debts known to be bad. Upon request, Licensee shall provide to Parks documentation of its efforts to collect such bad debts.

(j) "Licensed Premises" or "Premises" shall mean the areas of the Dyckman Marina reserved for a full-service restaurant and a lounge as designated on Exhibit A, attached hereto, and shall include the structures, as well as any improvements, constructed thereon, including, without limitation, all buildings or structures, walkways, curbs, trees and landscaping.

(k) "Special Events" shall mean any private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises, excluding "Special Events" as defined in Section 13 of this Agreement. Licensee shall submit to Commissioner for his prior approval, not to be unreasonably withheld or delayed, plans for any such Events at the Licensed Premises which are reasonably expected to attract more than thirty attendees, and which will result in the closing of the Licensed Premises to the public during

regular hours of operation. In the event that Licensee submits plans for any such Events at the Licensed Premises to the Commissioner for his approval hereunder, such plans shall be deemed approved if, within ten days of their receipt by the Commissioner, Commissioner does not reject them by sending Licensee written notice detailing the reasons for the rejection.

(l) "Substantial Completion" or "Substantially Complete" shall mean, with respect to an improvement at the Licensed Premises, that the City of New York Department of Buildings has issued a Temporary Certificate of Occupancy for the improvement or, if earlier, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as "punch list" items as provided for in Section 6.14 herein, and that the improvement may be utilized by the public.

(m) "Year" or "Operating Year" shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year.

TERM OF LICENSE

3.1 This License shall become effective upon Parks' giving written notice to proceed to Licensee and the concession shall commence on the first to occur of (i) the first day Licensee opens for business after the Final Completion of the Capital Improvements as contemplated in Section 6.1hereof, or (ii) the eighteen (18) month anniversary of the date of notice to proceed ("Commencement Date"), and shall terminate fifteen (15) years from the Commencement Date ("Termination Date or Expiration Date"). The period of operation between the notice to proceed and the Commencement Date of this License shall be referred to as the "Interim Period". The period between the Commencement Date and the Termination Date shall be referred to as the "Term".

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner in his sole and absolute discretion, at any time, however, such termination shall not be arbitrary and capricious. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

3.3 Parks may terminate this License for cause as follows:

(a) Should Licensee materially breach or fail to comply with any of the provisions of this License or any federal, state or local law, rule, regulation or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty days from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter,

Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three days notice: (i) the appointment of any receiver of Licensee's assets; (ii) the making of a general assignment for the benefit of creditors; (iii) the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of the License; and (iv) the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

(c) Nothing contained in paragraphs (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License.

3.4 Upon expiration or sooner termination of this License by Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against Commissioner, Parks or City, except as otherwise provided herein.

3.5 In the event Commissioner terminates this License for reasons related to Paragraphs 3.3 (a) or (b) above, any property of the Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon the expiration or sooner termination of this License, City reserves the right to take immediate possession of the Premises.

3.7 Licensee shall, within 30 days following the expiration or sooner termination of this License, remove all personal possessions from the Premises. Licensee acknowledges that any personal property remaining on the Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to remove all possessions from the Premises within such 30-day period. Pursuant to Section 4.4 herein, City may seize the Security Deposit to recover such damages in part or in whole.

3.8 If this License is terminated as provided in Section 3.3 hereof, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

3.9 If this License is terminated as provided in Section 3.3 hereof:

(a) Parks may draw down on the Security Deposit in accordance with Section 4.4; and

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the termination date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed at an equal or higher fee (if at a lower fee, then only the net difference shall be owed by Licensee); and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability, provided that Licensee shall not be responsible for any further Capital Improvements or Alterations upon re-license of the Licensed Premises.

3.10 No receipt of moneys by Parks from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee's liability hereunder.

PAYMENT TO CITY

4.1 Licensee shall pay the City License fees for each Operating Year consisting of the higher of the minimum annual fee or an annual percentage of Gross Receipts derived from the operation of the Licensed Premises as set forth below:

OPERATING YEAR	MINIMUM ANNUAL FEE	Vs. % OF GROSS RECEIPTS
1	$8,551	5%
2	$40,827	5%

3	$59,927	5%
4	$78,604	8%
5	$81,008	8%
6	$84,030	8%
7	$86,871	9%
8	$90,217	9%
9	$92,587	9%
10	$95,929	9%
11	$100,365	9%*
12	$106,120	10%*
13	$110,403	10%*
14	$116,114	10%*
15	$120,744	10%*

*In years 11-15, if the total Gross Receipts in any year exceed $4,000,000 for the combined operations of the Licensed Premises and the Dyckman Marina (separately licensed to Licensee), the Licensee's fee percentage shall be increased by 1% to 11%; for Gross Receipts for combined operations over $5,000,000, the Licensee's fee percentage will be increased to 13%.

4.2 The minimum annual fee for each Operating Year shall be paid to the City in equal monthly installments on or before the first day of each month of each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments attached as Exhibit B. If at any time Licensee's percentage fee for a particular Operating Year becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the percentage fee on the thirtieth (30th) day of each month for the prior month's gross receipts.

4.3 Late charges shall be assessed on any undisputed payment that is overdue for more than ten days. In the event that payment of any undisputed license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of 2% per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. If such late fee(s) and all undisputed arrearages (including prior 2% charges) are not paid in full by the 10th day of the

month following the month in which it shall be due, or is already past due, an additional charge of 2% of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 **(a)** Upon affixing its signature to this License, Licensee shall provide the City with (i) a certified check in the amount of $30,186, payable to the City of New York, or (ii) an unconditional, irrevocable and transferable letter of credit (such letter of credit or any extension or replacement thereof being hereinafter referred to as the "L/C") issued for the account of the City by a New York Clearing House Bank acceptable to the City, in form and substance reasonably satisfactory to the City, in the amount of $30,186,as its security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Interim Period and the Term of this License.

(b) The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after five days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

4.5 **(a)** On or before the thirtieth day following each month of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. Licensee shall also submit a summary report of Gross Receipts for each Operating Year within thirty days after the end of each Operating Year of this License. Each of the reports referenced in the preceding two sentences shall report the Gross Receipts generated at the Licensed Premises in the categories for which rates, fees and

prices are specified on Exhibit C, the Schedule of Approved Hours and Rates, Fees and Prices, including, without limitation, the following categories:

Restaurant	Receipts from the operation of the restaurant at the Dyckman Marina;
Lounge	Receipts from the operations of the lounge at the Dyckman Marina;
Merchandise Sales	Receipts from charges made at the point of sale for any merchandise sold at the Licensed Premises;
Catering Events and Private Parties	Receipts from catering events and private parties at the Licensed Premises;
Take Out Service	Receipts from take out service at the Licensed Premises;
Miscellaneous	Any other sources of income realized from the Licensee's operation of the Licensed Premises, subject to prior written approval of the Commissioner.

(b) Licensee shall indicate on its statement of Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(c) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts or from the compensation due under this License.

4.6 On or before the thirtieth day following the end of each Operating Year, Licensee shall submit to Parks an income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee. The reports referenced in the preceding sentence shall be in the approved format provided in Exhibit E.

4.7 **(a)** Licensee, during the Interim Period and the Term of this License and any renewal thereof, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, including daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom. Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks or the

Comptroller, and Parks or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee prior to the commencement of the Interim Period and the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of six years.

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within 30 days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks or the Comptroller, of more than five percent in any two out of three consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. Licensee shall pay any assessment based upon such reasonable projections within fifteen days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

4.8 In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Sections 4.1 through 4.7 hereinabove, Licensee may be subject to a charge of $500.00 with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty days of such notice.

4.9 License fees shall be made payable to the City of New York Department of Parks & Recreation and delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation
Revenue Division
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10065

RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee to verify Gross Receipts as reported by the Licensee. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit

thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

5.2 The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License.

5.3 Notwithstanding the foregoing, the parties hereto acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to the provisions of the New York City Charter shall not be diminished, compromised or abridged in any way.

CAPITAL IMPROVEMENTS

6.1 Licensee shall expend or cause to be expended during the Interim Period and the Term of this License a minimum of $850,000 for Capital Improvements as defined in Section 2.1(b) herein. Such Capital Improvements shall include, but are not limited to, the items listed in the Schedule of Capital Improvements attached hereto as Exhibit D. Licensee shall perform and complete all such Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld. All Fixed and Additional Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this Section 6 shall become the property of Parks upon installation, at Parks' option.

6.2 **(a)** Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of $8,500, representing one percent of the cost of the minimum guaranteed Capital Improvements described in Section 6.1 above, as a fee for design review by Parks personnel (the "Design Review Fee").

(b) To ensure faithful completion of the Capital Improvements described herein, Licensee shall post a construction payment and performance bond to Parks, in an amount and form acceptable to Parks, if required by Parks, before any Capital Improvements are made pursuant to this Section 6.

6.3 The Total Cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets and such other supporting documents or other data as the Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in Exhibit D shall be included in the Total Cost in addition to architectural/engineering fees incurred by the Licensee. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request. Licensee shall spend or cause to be expended

the entire amount required to complete the Capital Improvements described in Section 6.1, including any amount needed above any estimated cost shown. In the event Licensee performs all Capital Improvements for less than the amount listed in Section 6.1 herein, any excess monies shall be remitted to the City as additional license fees within thirty days following the Commissioner's determination of Final Completion.

6.4 Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in Exhibit D. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In the event Licensee fails to finally complete a particular improvement by the date specified for completion in Exhibit D, Licensee may be required to pay the City liquidated damages of $100 per day until the outstanding improvement is completed, provided that such failure is not the result of delay by Parks or any City, state, of federal permitting authority and provided further that Parks has given Licensee a notice to cure such failure to complete and Licensee has failed to cure within the period specified in such notice. In the event of any delay by Parks or any City, state, or federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. Licensee's failure to comply with any phase of the schedules for Capital Improvements for a period of thirty days following written notice shall constitute a default upon which Commissioner may terminate this License by giving ten days written notice.

6.5 Licensee shall pay all applicable fees and shall submit to Parks and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer, who will oversee the entire construction project. Licensee shall submit the architect's or engineer's qualifications to Parks for prior approval. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms in all material respects to the plans approved by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to his satisfaction. The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.

6.6 Upon certification by Parks of Final Completion by Licensee of the Capital Improvements required herein, Licensee shall provide Parks with one complete set of final, approved "AS-DESIGNED" plans on 4 millimeter double matte Mylar. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by

diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. All "AS-DESIGNED" drawings submitted must be so labeled. Each drawing shall contain the name, address & telephone number of the Architect / Engineer and the Contractor. Each drawing shall also include the Parks property number, Block and Lot numbers for the Parks facility in which the work was performed, to the extent such information is available, and, if applicable, the Department of Buildings approval / application number.

6.7 For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses from the construction permit office located in the Olmsted Center, Flushing Meadows Corona Park prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks and a building permit issued by the Department of Buildings, insofar as it has jurisdiction over Capital Improvements. Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee shall notify Commissioner of the specific date on which construction shall begin.

6.8 Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Licensee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable.

6.9 As required by Section 24-216 of the New York City Administrative Code, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this License and which are subject to the provisions of the New York City Noise Control Code (the "Code") shall be operated, conducted, constructed or manufactured without causing a violation of such Code. Such devices and activities shall incorporate advances in the art of noise control developed for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued pursuant to federal, state, City laws, rules, regulations and orders.

6.10 Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements.

6.11 No temporary storage or other ancillary structures and staging areas may be erected and maintained without a license obtained from Parks' Construction Division, License Office.

6.12 Licensee may not cut down, replant, or remove any trees from the Licensed Premises without the prior written approval of Parks' Forestry Division.

6.13 During performance of the Capital Improvements and up to the date of Final Completion, Licensee shall be responsible for the protection of the finished and unfinished

Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

6.14 Licensee shall provide written notice to Commissioner when the Capital Improvements are Substantially Completed. After receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection Commissioner and Licensee shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the reasonable satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all "punch list" items within a reasonable time as determined by the Commissioner.

6.15 Licensee, within three months of certification of Final Completion, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the New York City Comptroller upon request.

6.16 Licensee shall provide Parks with discharges for any and all liens which may be filed or levied against the Capital Improvements during construction of such improvements. Licensee shall use its best efforts to discharge such liens within thirty business days of receipt of lien by Licensee. Upon Final Completion, as defined in Section 2, of all Capital Improvements, Parks shall return to Licensee its remaining payment and performance bond on deposit with the City.

6.17 Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 6.17 shall constitute a default and may result in the termination of this License.

6.18 Neither Parks, nor the City, its agencies, officers, agents, employees or assigns thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 6.18 signed by the Commissioner or his authorized representative.

6.19 Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee to remove its equipment (other than Fixed and Additional Fixed Equipment) and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee. However, Licensee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures.

6.20 Prior to the commencement of any construction Licensee shall have an asbestos inspection performed on the existing structures at the Licensed Premises. In the event that asbestos removal is necessary, Licensee shall remove the asbestos according to City, State and Federal regulations.

ALTERATIONS

7.1 **(a)** Licensee may alter Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of City upon their attachment, installation or affixing.

(b) In order to alter Licensed Premises, Licensee must:

(i) Obtain Commissioner's written approval (which shall not be unreasonably withheld) for whatever designs, plans, specifications, cost estimates, agreements and contractual understandings may pertain to contemplated purchases and/or work;

(ii) insure that work performed and alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Article, in a good and workmanlike manner, and within a reasonable time; and

(iii) notify Commissioner of completion of, and the making final payment for, any alteration within ten days after the occurrence of said completion or final payment.

(c) Commissioner may, in his discretion, make repairs, alterations, decorations, additions or improvements to Licensed Premises at the City's expense, but nothing herein shall be deemed to obligate or require Commissioner to make any repairs, alterations, decorations, additions, or improvements, nor shall this provision in any way affect or impair Licensee's obligation herein in any respect.

7.2 Parks reserves the right to perform construction or maintenance work deemed reasonably necessary by Commissioner in the Commissioner's sole discretion at the Licensed Premises at any time during the Interim Period and the Term of this License, provided that such work is reasonably necessary to be performed during the Interim Period and the License Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its best efforts to give Licensee at least fourteen days' written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks'

construction, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for any claims, damages and injury resulting from its work hereunder, except to the extent such claims, damages and injury is caused by the negligence or willful misconduct of Licensee.

FIXED AND EXPENDABLE EQUIPMENT

8.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of the Commissioner, provide, and replace if necessary, all equipment necessary for the operation of this License, and put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

8.2 City has title to all Fixed Equipment on the Premises as of the date of commencement of this License. Title to any Additional Fixed Equipment, and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall be the responsibility of Licensee to remove its equipment (other than Fixed and Additional Fixed Equipment) and restore the Licensed Premises to the satisfaction of the Commissioner at Licensee's sole cost and expense after the expiration or sooner termination of this License.

8.3 Licensee shall supply at its own cost and expense all Expendable Equipment required for the proper operation of this License, and repair or replace same at its own cost and expense when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment which the Commissioner reasonably determines is necessary to the operation of this License.

8.4 Licensee must acquire, replace or repair, install or affix, at its sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein or as reasonably required by Commissioner.

8.5 Title to all Expendable Equipment obtained by Licensee shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

8.6 Licensee acknowledges that it is acquiring this License to use the Licensed Premises and Fixed Equipment thereon solely in reliance on its own investigation, that no representations, warranties or statements have been made by the City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee accepts them in their present condition "as is."

8.7 The Equipment to be removed by Licensee pursuant to this Section 8 shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it may have caused to the Licensed Premises.

UTILITIES

9.1 Licensee, at its sole cost and expense, shall directly pay for all utility costs associated with Licensee's construction and operations at the Licensed Premises. Licensee, at its sole cost and expense, shall install or cause to be installed, and maintain, all utilities, service lines, meters and supplies of power necessary for the proper operation of this License and pay all utility costs. Utilities, as described in this Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, water and sewer charges. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities as have jurisdiction over the construction and operation of the Premises. Parks does not make representation or warranty that existing cables, lines, meters, or supplies of power are adequate for Licensee's needs or that any entity can or will make such service available. Licensee shall contract directly for public telephone services at Licensed Premises. If requested, Parks shall use reasonable efforts to assist Licensee in obtaining utilities for the Licensed Premises.

OPERATIONS

10.1 Licensee, at its sole cost and expense, shall operate this License for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. The Commissioner retains the right, throughout the Interim Period and the Term of this License, to approve or disapprove (which approval shall not be unreasonably withheld) any and all rates, fees and prices to be charged by Licensee for any goods, rights or services provided pursuant to the operation of this License, however, if the Commissioner disapproves of such rates, fees or prices, the Commissioner shall provide Licensee with a written statement of the basis for said disapproval. Licensee shall provide the necessary number of personnel having the requisite skills together with the necessary personal and consumable equipment to construct, operate, manage, and maintain a seasonal full-service restaurant and a lounge for the use and enjoyment of the general public. Parks acknowledges that Licensee's initial name for the restaurant is Costera and for the lounge 315, which names may be changed only with Parks' prior approval, which shall not be unreasonably withheld.

10.2 The Licensed Premises shall be opened, operated and staffed by Licensee seven days a week during the period commencing on or around May 1 and concluding on or around October 31 of each calendar year for such hours as the Commissioner shall approve. In regulating the hours of operation, the Commissioner may consider the hours of operation of other similar Parks facilities, the nature of the community and the environs of the concession, Parks Rules and Regulations of operations, the public health and safety, and other similar considerations. Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours.

Annexed hereto as Exhibit C is the Schedule of Approved Hours and Rates, Fees and Prices for the first year of operation hereunder.

10.3 **(a)** Under no circumstances may the Licensee sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, or other tobacco products. No signs or any other kind of advertising for tobacco products shall be permitted at the Licensed Premises. In connection with the Licensed Premises, the Licensee shall not accept sponsorships of any kind on behalf of any kind of tobacco products.

(b) Smoking in any building on the Licensed Premises is strictly prohibited.

(c) Additionally, Licensee shall not use in its operations any polystyrene foam products.

(d) Licensee is prohibited from selling any beverages in glass bottles for consumption outside of the restaurant and lounge areas. All beverages for consumption outside of those areas shall be in non-glass, shatterproof containers.

10.4 Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits and licenses that may be required for construction and operation of the Licensed Premises in accordance with all applicable Federal, State and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all licenses and permits that may be required to operate the Licensed Premises in accordance with applicable law. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits.

10.5 Licensee further warrants that all food, beverage, , and services of any kind sold pursuant to this License shall be of a high grade and of good quality. Licensee shall operate in such a manner as to maintain a very high health inspection rating. Licensee shall submit to Commissioner for approval, not less than 60 days before the beginning of each Operating Year, a list or schedule of all items to be offered for sale pursuant to this License and the prices to be charged for each item. The schedule of approved prices shall be printed and displayed at the expense of Licensee in a place and manner designated by Commissioner. Licensee may change its approved prices, subject to approval of the Commissioner, which shall not be unreasonably withheld. In the event Licensee submits any change in the schedule of approved prices to the Commissioner hereunder, such change shall be deemed accepted if, within ten days after receipt by Commissioner, the Commissioner does not reject it by sending Licensee written notice detailing the reasons for the rejection.. Should Licensee choose to charge less than the prices approved by the Commissioner, this choice shall in no way be interpreted as a waiver of Licensee's right to charge the approved prices at any other time. Annexed hereto as Exhibit C is the Schedule of Approved Hours and Rates, Fees and Prices for the first year of operation hereunder.

10.6 Licensee shall record all transactions involved in the operation of this License and keep books and records as set forth in Section 4 hereinabove and as deemed acceptable by the Commissioner. Licensee shall institute a revenue control system acceptable to the Commissioner.

10.7 An officer of the Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. The Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor or sublicensee whenever reasonably requested by Commissioner.

10.8 Licensee shall provide equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

10.9 Licensee, at its sole cost and expense, shall provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

(a) collecting and safeguarding all monies generated under this License;

(b) maintaining the Licensed Premises; and

(c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

10.10 Licensee shall provide access to the Licensed Premises to disabled members of the public. Such accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall include in its advertising and promotion program, described in Section 10.15 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation.

10.11 Licensee shall, at its sole cost and expense, provide for a twenty-four hour per day security system at the Licensed Premises, which shall be either an electronic system or a twenty-four hour unarmed guard or both. Licensee shall secure the Licensed Premises every evening before closing for the day. During the period when the Restaurant and Lounge will not be open, the facility should additionally be secured by means of a locked gate on the shore end of the pier. No grant of authority for Licensee to establish living quarters on the Licensed Premises is provided by this obligation, provided that Licensee may staff the Licensed Premises on a 24 hour a day basis during the winter.

10.12 Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such

claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

10.13 Licensee shall promptly notify Commissioner of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

10.14 Licensee shall maintain close liaison with the Parks Enforcement Patrol and New York City Police Department. Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

10.15 Licensee may establish an advertising and promotion program, and upon the reasonable request of Licensee, Parks use reasonable efforts to assist Licensee with its efforts to post basic signage indicating the direction to the Licensed Premises on adjacent paths and trails, at Licensees cost and expense. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising matter which in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely effects the reputation of the Licensed Premises, Parks, or the City of New York. Licensee may release news items to the media as it sees fit. If the Commissioner in his discretion, however, finds any advertising or other releases to be unacceptable, then Licensee shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior approval as to design, content and distribution of all advertising and promotional materials, provided that in the event that Licensee submits any advertising and promotional materials to the Commissioner for his approval hereunder, such advertising and promotional materials shall be deemed accepted if, within ten days of its receipt by the Commissioner, Commissioner does not reject it by sending Licensee written notice detailing the reasons for the rejection.

10.16 Under no circumstances shall Licensee be permitted to place advertisements on the exterior of its concession area or on any building or structure on the Licensed Premises. Licensee shall not advertise any product brands without Parks' prior approval. The Licensee is prohibited from placing or permitting the placement of advertisements in the Licensed Premises without the prior written approval of Parks. The display or placement of tobacco advertising shall not be permitted. The advertising of alcoholic beverages shall not be permitted within 250 feet of any school, day care center, or house of worship. In the event advertising is allowed, the following standards will apply: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful or obscene as determined by Parks, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Any such prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks. Any sign posted at the Licensed Premises, or any advertisement used in connection with such facility, shall be subject to the approval of the Commissioner (which shall not be unreasonably withheld), shall be appropriately located, and shall state that the Licensed

Premises are New York City Parks & Recreation concessions operated by the Licensee. A sample of each new sign and/or advertisement shall be sent for Parks' approval to Parks' Revenue Division, 830 Fifth Avenue, Central Park, New York, NY, 10065, provided that in the event Licensee submits any sign and/or advertisement to the Commissioner for his approval hereunder, such sign and/or advertisement shall be deemed accepted if, within ten days of its receipt by the Commissioner, the Commissioner does not reject it by sending Licensee written notice detailing the reasons for the rejection.

10.17 Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, Licensee shall be responsible for obtaining any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval, provided that in the event Licensee submits any such sign to the Commissioner for his approval hereunder, such sign shall be deemed accepted if, within ten days of its receipt by the Commissioner, the Commissioner does not reject it by sending Licensee written notice detailing the reasons for the rejection.

10.18 Licensee shall not have any outdoor, amplified music without the Commissioner's prior written approval. Concerts are strictly prohibited at the Licensed Premises. All amplified music at the Licensed Premises must cease at 10:00 p.m. Notwithstanding the foregoing, any musical programming or other type of entertainment provided solely to enhance the atmosphere of the café (that is not amplified) shall be permitted without prior approval of Parks during business hours. Any music equipment permitted under this License shall be supplied at Licensee's sole cost and expense. Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or such other entity as they may require for such music. Licensee shall operate and play such sound equipment and music in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-244, and only at times and at a sound level acceptable to the Commissioner.

10.19 Should Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within 20 days from the mailing of said notice, notwithstanding any other provisions herein, then Commissioner may terminate this License. If Licensee is prevented from complying with the written notice for reasons beyond its control, then Commissioner may not terminate this License until Licensee has been given a reasonable opportunity to comply and has failed to do so.

10.20 Should Commissioner, in his sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24

hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in his sole discretion, which shall not be arbitrary or capricious, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.21 1 n the event that Parks authorizes Licensee to place vending machines at the Licensed Premises, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards, attached hereto as Exhibit F, which apply to all beverage vending machines located on City property, for the entire Term.

10.22 [Intentionally omitted].

10.23 If Licensee wishes to sell alcoholic beverages at the Licensed Premises, Licensee shall, prior thereto, obtain at its sole expense all permits and licenses applicable to the sale of alcoholic beverages from the State Liquor Authority any other governmental agency having jurisdiction thereof. Alcoholic beverages may only be served during sit-down service and must be consumed on the Licensed Premises.

10.24 Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzine, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

10.25 Licensee shall notify the Commissioner (by no later than five (5) business days prior to the scheduling of the event in question) whenever Licensee tentatively schedules any private use of the Licensed Premises (e.g., private parties) which would close the Licensed Premises to the general public. In no event shall Licensee close the Licensed Premises to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks. In the event that Licensee submits plans for any such activities at the Licensed Premises to the Commissioner for his approval hereunder, such plans shall be deemed approved if, within ten days of their receipt by the Commissioner, Commissioner does not reject them by sending Licensee written notice detailing the reasons for the rejection. Any closure of the Licensed Premises which Licensee seeks to schedule during public hours of use must be announced to the public, by posting notification of such closure, at the Licensed Premises at least two weeks in advance. In addition, Parks may make use of the Licensed Premises, as provided in Section 13 herein.

10.26 Licensee shall submit to Commissioner for his prior reasonable approval, not less than sixty days before the first day of each Operating Year, schedules for the coming Operating Year concerning operating days and hours, and a proposed schedule of rates, fees and prices for the services and products to be provided under this License during the forthcoming Operating Season. Following approval of such schedules, Licensee shall, at its sole cost and expense, print, frame, and prominently display in a place and manner designated by Commissioner, the current

approved schedule of operating days, hours, rates, fees and prices. Annexed hereto as Exhibit C is the Schedule of Approved Hours and Rates, Fees and Prices for the first year of operation hereunder.

10.27 The location, design, and number of tables and chairs at the Licensed Premises are subject to Parks' prior written approval.

10.28 Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes. In addition, Licensee shall provide supplemental equipment for fire protection, including but not limited to alarms, extinguishers, hoses and hose reels.

10.30 Licensee should be aware that the City currently has and is developing "marketing partnership" agreements identifying specific brands as the "designated" or "official" products or services of the City of New York. As this occurs, the Licensee will be required to sell the specific products so identified on an exclusive basis if the Licensee sells goods in that product category. If directed by the City, the Licensee will be required to purchase the products from designated distributors or suppliers, provided the distributors or suppliers provide the products at a competitive price. If the product is in the form of a service, the Licensee will be required to use the service identified. (For example, if the City enters into a marketing partnership with a financial institution that provides credit card service, the Licensee will be required to accept payment by means of that credit card). If a City marketing partnership for a service is exclusive, Licensee will be required to use that service on an exclusive basis. Licensee, working with the City's marketing representative, may be required to give the City's marketing representative priority in the placement and scheduling of advertising. Marketing partners will be required to pay the market rate for any such advertising. The City reserves the right to preclude Licensee from selling competing products, or using competing services, in those categories for which the City has entered into a "marketing partnership" agreement. Preclusion of any such product or service shall not change the amount of any payment to the City.

10.31 Licensee may not cut down, replant, or remove any trees from the Licensed Premises without the prior written approval of Parks' Forestry Division. Any attachments to trees, such as lights, are not permitted.

10.32 Licensee shall maintain the entire Licensed Premises in a safe and stable condition, repairing as needed all components, equipment, and structures, including without limitation the bar area and deck seating. Maintenance and security are solely the responsibility of Licensee year-round.

10.33 Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations and determine whether Licensee is in compliance with the terms and conditions of this License. Parks may issue directives to Licensee regarding any violations found at the Licensed Premises. Licensee shall comply with all Parks' directives within the time period specified therein. In the event that Licensee receives two such directives for the same violation within a six-month period, Licensee shall pay Parks as liquidated damages the sum of $500 per day for each such violation until such violation is corrected.

10.34 L icensee recognizes that there is a canoe club that is not part of this License at the southern end of the marina. The canoe club will continue to operate during the Term hereof, and Licensee may not disturb the club's utility lines that run through the Licensed Premises. Parks shall make best efforts to give Licensee notice within 30 days after Notice to Proceed as to the location of the club's utility lines. Otherwise Licensee shall use best efforts not to disturb the club's utility lines. In the event that Licensee unintentionally disturbs the club's utility lines and the utility lines are outside of the location indicated by Parks, such disturbance of the club's utility lines shall not be a breach of this agreement.

10.35 Licensee shall comply with governmental directives and restrictions issued in the event of a drought.

MAINTENANCE, SANITATION AND REPAIRS

11.1 Licensee shall, at its sole cost and expense and to the reasonable satisfaction of Commissioner, put, keep, repair and preserve in good order the Licensed Premises and its associated landscaping. Licensee shall at all times keep the Licensed Premises clean, litter free, neat and, with respect to the food and beverage service operations and public restrooms, fumigated, disinfected, deodorized and in every respect sanitary. While in operation, Licensee shall provide regular cleaning and maintenance services for the Licensed Premises (up to and including the perimeter of the Licensed Premises), and collect and remove all litter, debris and garbage therefrom. Licensee shall repair and maintain in good working order any and all equipment installed at the Licensed Premises necessary for the proper operation of this License. Licensee shall provide equipment maintenance contracts, or directly provide maintenance services deemed by Parks to be equivalent to service contracts, for the equipment on the Licensed Premises. Licensee shall adhere to the maintenance schedules recommended by the manufacturers for all mechanical systems and equipment.

11.2 Licensee shall maintain the Licensed Premises to the satisfaction of the Commissioner. All such maintenance shall be performed by Licensee in a good and worker-like manner. In part to secure Licensee's obligation to maintain and repair the Licensed Premises, Licensee shall provide Parks with a Security Deposit as provided in Section 4.4(a).

11.3 No later than thirty days before the end of each Operating Year, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks. Such inspection shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee.

11.4 Licensee shall provide adequate waste receptacles at the Licensed Premises that are approved by Parks and shall have these receptacles emptied on a daily basis and ensure that all garbage is removed by a private carter. All waste, garbage, refuse, rubbish and litter which collect upon the Licensed Premises and within fifty (50) feet of the entrances to the Licensed Premises, without regard for its source, shall be daily collected, recycled if possible, bagged, and removed from the Licensed Premises by Licensee at a frequency satisfactory to the Commissioner, all at the Licensee's sole cost and expense. In performing its duties under this

section, Licensee shall comply with all applicable ordinances and programs of the City, State, and Federal governments, including without limitation those regarding recycling.

Licensee shall provide for its patrons' use appropriately sized and well-positioned blue plastic recycling bins or receptacles for bottles and cans, and green bins or receptacles for papers, catalogs and magazines. These containers shall be properly labeled with recycling logos and the containers, and the areas around them, shall be maintained in a clean, sanitary, and graffiti-free state.

Licensee shall properly bundle and/or separate, as required, for pickup pursuant to City, State, and Federal law, all corrugated cardboard, magazines and catalogs, newspapers, high grade office paper and envelopes, computer paper, phone books, paper bags, cardboard boxes, pizza boxes, non-Styrofoam egg cartons, milk and juice cartons, aluminum products (including foil and trays), metal cans, plastic and glass bottles, detergent bottles, glass jars, milk jugs, metals (pans, irons), aerosol cans, wire hangers, and paint cans. These recyclables must be rinsed or rid of all food products, as necessary.

11.5 At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises and the Fixed and Additional Fixed Equipment to Parks in a well maintained state, in good repair, ordinary wear and tear excepted.

11.6 At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises during the Term hereof. Such graffiti removal shall be commenced within twenty-four hours from the appearance of any such graffiti and shall continue until such graffiti is removed.

11.7 Licensee shall regularly take steps to ensure that the Licensed Premises are free of pests. Pest control methods chosen by Licensee shall be subject to the approval of Parks. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of the New York City Administrative Code.

11.8 Licensee shall register any and all underground oil storage tanks with over a 1,100-gallon capacity with the Department of Environmental Protection ("DEP"). Licensee shall conduct or cause to be conducted a tightness test on said underground oil storage tanks on a regular basis in accordance with City, state and federal regulations and, in any event, at least once every five years.

11.9 Licensee acknowledges that there are no sewer lines at the Licensed Premises and that the existing toilets flush into three in-ground holding tanks which are located behind the existing café, behind the Quonset Hut and next to the boat pump-out station near the launch. Licensee shall ensure that all holding tanks are pumped out on a regular basis and in accordance with all applicable federal, state and City laws, rules and regulations.

11.10 In the event Commissioner directs Licensee to undertake any maintenance or repair at the Licensed Premises, Licensee shall within 48 hours from the time of notification by the

Commissioner undertake such maintenance or repair and shall complete same within the time reasonably established by the Commissioner. If Licensee fails to undertake such maintenance or repair within 48 hours of notification or fails to complete same within the time established by the Commissioner, Licensee shall pay liquidated damages to Parks of $250 per day for each day such maintenance or repair is not undertaken and/or not completed.

11.11 Licensee shall obtain Parks' written approval (which shall not be unreasonably withheld) before adding or removing any planting or other landscaping at or associated with the Licensed Premises, provided that in the event that Licensee submits any such request to Parks for approval hereunder, such request shall be deemed approved if, within ten days of its receipt by Parks, Parks does not reject it by sending Licensee written notice detailing the reasons for the rejection.

11.12 Upon request, Licensee shall cooperate with and permit DEP to access its sewerage outfall structure through the Licensed Premises to conduct maintenance and related activities thereon.

11.13 In the event DEP brings a sewer line to the Licensed Premises, Licensee agrees, in its sole discretion and at its sole cost and expense, to hook up its operations at the Licensed Premises to the sewer line in accordance with all applicable laws, rules and regulations.

APPROVALS

12.1 Licensee is solely responsible for obtaining all government approvals, permits and licenses required by Federal, State and City laws, regulations, rules and orders to fulfill this License.

12.2 Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by Commissioner or his duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

RESERVATION FOR SPECIAL EVENTS

13.1 For the purposes of this Section 13 the term "Special Event(s)" shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Special Events and unanticipated eventualities at the Licensed Premises. Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Section 13 shall in no way limit Parks' right to sponsor or promote Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks

will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Special Event, and provided further that Parks shall not authorize or permit Special Events more frequently than once per calendar month without the prior written approval of Licensee, which shall not be unreasonably withheld . Such events shall not, without the prior written consent of Licensee, prohibit the Licensee in any way from access to the Licensed Premises. All third parties sponsoring or promoting Special Events shall be required to obtain insurance naming Licensee as an additional insured.

13.2 Parks agrees to notify any third party operator or sponsor of Special Events of Licensee's access rights to the Licensed Premises and to provide same with the name and telephone number of Licensee's manager.

PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

14.1 Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, a majority of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner (which shall not be unreasonably withheld) by submitting a written request including proposed assignment documents as provided herein. The Commissioner may request any additional information he deems necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than 49% in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee may be made under any circumstance if such sale will result in a change of control of Licensee violative of the intent of this Section 14, without the prior written consent of Commissioner, which shall not be unreasonably withheld.

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than forty-nine percent of stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the

management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

14.3 No consent to or approval of any assignment or sublicensee granted pursuant to this Section 14 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall cause the immediate termination of this License.

PARKS CONSTRUCTION

15.1 Parks reserves the right to perform safety or maintenance work at its discretion on or throughout the Licensed Premises at any time during the Interim Period and the Term of this License, provided that such work is reasonably necessary to be performed during the Interim Period and the License Term. Licensee agrees to cooperate with Parks, to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one week notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury is caused by the negligence or willful misconduct of Licensee.

15.2 In the event Licensee's operation of the Licensed Premises is materially affected due to maintenance and/or construction activities related to sewerage outfall located at the Licensed Premises by DEP, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of such maintenance and/or construction activities, including but not limited to: 1) reimbursement of unamortized capital expenses for capital improvement irreparably damaged by DEP during its maintenance and/or construction activities; and/or 2) termination of this License if such construction and/or maintenance activities by DEP cause substantial damage (as reasonably determined by Parks) so as to prevent Licensee from operating the Licensed Premises as contemplated herein.

COMPLIANCE WITH LAWS

16.1 Licensee shall comply and cause its employees and agents to comply with all laws, rules, regulations and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

16.2 Licensee shall not use or allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner violative of a certificate pertaining to occupancy or use during the Interim Period and the Term of this License.

NON-DISCRIMINATION

17.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

17.2 All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

NO WAIVER OF RIGHTS

18.0 No acceptance by Commissioner of any compensation, fees, penalty sums, charges or other payments in whole or in part for any periods after a default of any terms and conditions herein shall be deemed a waiver of any right on the part of Commissioner to terminate this license. No waiver by Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

INDEMNIFICATION

19.1 Licensee shall defend, indemnify and hold the City, Parks, DEP, their agents and employees harmless against any and all loss, liability, obligations, fines, damages, penalties, claims, costs, charges, or expenses, including reasonable attorneys' fees, for which they are or may be liable as a result of any personal injury, death or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of Licensee, or others, in connection with Licensee's operations pursuant to this License (except to the extent that such injury, death, or property damage is caused by the gross negligence or willful misconduct of the City, Parks or DEP).

19.2 The City, Parks, DEP may arrange for their own defense and the defense of their agents and employees by the Corporation Counsel in any action, claim, suit, or other proceeding, and, having done so, may at any time thereafter, tender their further defense to Licensee, without any prejudice to any rights to which they, or any of them, may be entitled to under Section 19.1, including the right to be indemnified and held harmless, as therein provided.

19.3 Licensee's duty to defend, indemnify and hold the City, Parks, DEP, their agents and employees harmless, as provided in Section 19.1, shall not be abrogated, diminished or otherwise affected by Licensee's further duty in their behalf to procure and maintain insurance pursuant to the provisions of Section 20 hereof, nor by their failure to avail themselves of the benefits of such insurance by due and timely demand upon the insurers therefor, and shall survive the expiration or sooner termination of this License.

19.4 Licensee assumes all risk in the operation of this License.

WORKERS' COMPENSATION AND INSURANCE

20.1 Licensee shall, at its own cost and expense, procure and maintain such insurance for the Interim Period and the Term of this License as will:

(a) protect Licensee from Worker's Compensation, Disability, and Employer's Liability claims;

(b) insure Licensee, its agents and sublicensees, the City, Parks, DEP and their agents and employees against any and all loss, liability, obligations, fines, damages, penalties, claims, charges, costs, or expenses, including reasonable attorneys' fees, for which they, or any of them, are or may be liable as a result of any personal injuries, death, or property damage arising, in whole or in part, from any negligent or intentional conduct on the part of the Licensee and its contractors, affiliates, subsidiaries, agents, assigns and invitees in connection with Licensee's operations pursuant to this License, including but not limited to the design, construction, installation, operation, repair, maintenance, replacement or removal of any Capital Improvements;

(c) provide coverage against business interruption losses; and

(d) insure the property and equipment of the City, Parks and DEP against any damage whatsoever.

20.2 The policies shall provide the amounts of insurance hereafter mentioned, and before delivery of the License, all certificates of insurance shall be submitted to Commissioner for his approval and retention. Each certificate shall be marked "Premium Paid" and shall have endorsed thereon: "No cancellation of or change in this policy shall become effective until after thirty days notice by Certified Mail to Asst. Commissioner for Revenue, Department of Parks and Recreation, The Arsenal, 830 Fifth Avenue, New York, New York 10065." Each policy shall also provide that the insurer is obligated to provide a legal defense in the event any claim is made against the City. If, at any time, any of said policies become unsatisfactory to Commissioner as to form or substance, or if a company issuing any such policies shall become unsatisfactory to Commissioner, Licensee shall promptly (within not more than fifteen (15) business days) obtain a new policy, and submit the same to Commissioner for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinabove provided. If, at any time, any of said policies shall terminate, Licensee shall, prior to the termination of such existing policy, promptly obtain a new policy, and submit the required Certificate of Insurance to Commissioner for written approval, which shall not be unreasonably withheld, and for retention thereof as hereinbefore provided. In the event any insurance is suspended, discontinued, or terminated, Licensee shall have the right, prior to such suspension, discontinuation, or termination, to secure replacement insurance satisfying the requirements of this Section 20 and provide Parks with a Certificate of Insurance evidencing such insurance. Upon failure of Licensee to maintain, furnish and deliver insurance (including renewal or replacement insurance) or to provide Certificate(s) of Insurance as above provided in this Section 20, this License may, at the election of Commissioner, be suspended, discontinued or terminated and any and all payments made by Licensee on account of this License shall thereupon be retained by Commissioner as additional liquidated damages along with the Security Deposit. Failure of

Licensee to take out and/or maintain or the taking out or maintenance of any required insurance shall not relieve Licensee from any liability under this License, nor shall the insurance requirements be construed to conflict with or limit the obligations of Licensee concerning indemnification.

20.3 If the Licensed Premises and/or Fixed and Additional Fixed Equipment shall be damaged or destroyed by fire, or other covered cause, such damage shall be promptly repaired or replaced by Licensee so that the Licensed Premises and/or Fixed and Additional Fixed Equipment are in the same condition as prior to such damage. At Licensee's request, the City shall advance insurance proceeds received by Commissioner to cover such costs except that such payments shall in no event exceed the amount actually collected and received by Commissioner under the insurance policies. Licensee shall immediately commence and diligently prosecute to completion any restoration or repair within six months (or such longer period as is reasonably necessary to complete such restoration and repairs) after Licensee is notified by Commissioner that insurance proceeds have been received and are available for such work. Any extension of time for the completion of Restoration shall be granted at the reasonable discretion of Commissioner.

20.4 All insurance proceeds paid to the City on account of such damage or destruction, less the reasonable costs of the City for the recovery or adjustment of the losses, shall be applied by the City to the payment of the cost of the restoration, repairs, replacements, rebuilding or alterations, including the costs of temporary repairs, provided the same has been approved by Commissioner in writing, for the protection of property pending the completion of permanent restoration, repairs, replacements, rebuilding or alterations (collectively referred to as the ("Restoration"), and shall be paid out from time to time as such restoration progresses upon the written request of the Licensee which shall be accompanied by a certificate signed by an executive officer of Licensee and signed also in accordance with Section 6.5 by the architect or engineer in charge of Restoration (who shall be satisfactory to the Commissioner) dated not more than 30 days prior to such request, setting forth the following:

(a) that the sum then requested either has been paid by Licensee, or in the event the Licensee is unable to pay for the Restoration, and funds are to be advanced by the City pursuant to Section 20.3, that said sum is justly due or shall become due to contractors, subcontractors, suppliers, engineers, architects or other persons who shall or have rendered services or furnished materials for said Restoration, and giving a brief description of such services and materials and the several amounts so paid and/or due or to become due to each of said persons in respect thereof and the sum then requested does not exceed the value of the services and materials described in the certificate;

(b) that except for the amount, if any, stated in said certificate to be due for services or materials, there is no outstanding indebtedness known to Licensee, after due inquiry, which is then due for labor, wages, materials, supplies or services in connection with Restoration;

(c) that the cost, as estimated by such architect or engineer, of the Restoration required to be done subsequent to the date of such certificate in order to complete the same does

not exceed the insurance money remaining in the hands of the City after payment of the sum requested in such certificate; and

(d) a Title Company search or other evidence satisfactory to the Commissioner showing that there has not been filed with respect to the Licensed Premises any mechanic's or other lien which has not been discharged of record.

Upon compliance with the foregoing provisions of Section 20.4, the City shall, on behalf of the Licensee out of such insurance money, pay or cause to be paid to the persons named in the certificate, pursuant to Section 20.4(a), the respective amounts stated in said certificate to be due to them and/or shall pay or cause to be paid to Licensee the amount stated in said Certificate to have been paid by Licensee. Notwithstanding the foregoing, in the event that Licensee fails to undertake the Restoration of Licensed Premises as a result of damage or destruction by fire or other casualty in accordance with Section 20.3, the Commissioner may but shall not be obligated to proceed with such Restoration using insurance proceeds received for such purpose and may terminate this License upon written notice to Licensee. However, if this License is terminated as provided in this paragraph, Licensee shall be responsible for the payment of any fees or other sums then due and owing to the City and the City reserves any and all rights it may have against the Licensee in law or in equity as a result of the termination of this License Agreement.

20.5 Should Licensee fail, after notice from the City of the need thereof, to perform its obligations required hereunder, City in addition to all other available remedies may, but shall not be obligated to, enter upon the Licensed Premises and perform Licensee's said failed obligations using any equipment or materials on the premises suitable for such purposes. Licensee shall forthwith on demand reimburse City for all costs and expenses so incurred.

20.6 All required insurance must be issued by companies which have an A.M. Best rating of at least A-7 or a Standards & Poor rating of at least AA and are duly licensed to do business in the State of New York and must be in effect and continue so during the life of the License in not less than the following amounts (or such higher amounts as the City's Risk Manager may hereafter require):

Worker's Compensation Insurance . . . . . Per Statutory Limits

Disability Insurance. . . . . Per Statutory Limits

Employer's Liability (for any
one occurrence). $1,000,000

Comprehensive General Liability Insurance (with Broad Form Property Damage, Products/Completed Operations Liability, Contractual Liability, Independent Contractors, Fire/ Legal Liability, Property Insurance Endorsements)
for any one occurrence
not less than $2,000,000.00

Personal Injury Liability
Insurance (for any one
occurrence) $2,000,000

Property Damage Insurance
(for any one occurrence). $1,000,000

Any Auto, Hired Auto, and Non-Owned Auto Insurance
for any one occurrence
not less than $1,000,000.00

Fire and Extended Coverage Insurance
for any one occurrence
not less than.....the replacement value of the buildings and Fixed and Additional Fixed Equipment at the Licensed Premises, which shall be reassessed every year or at Parks' discretion.

20.7 In the event that claims in excess of these amounts are filed against the City, the amount of excess of such claims, or any portion thereof, may be withheld from any payment due or to become due Licensee until such time as Licensee shall furnish such additional security covering such claims as may be reasonably determined by Commissioner. All policies other than Worker's Compensation, Disability and Fire and Extended Coverage shall name the City of New York, Parks and DEP as additional insured parties. The Fire and Extended Coverage policy shall name Parks as sole insured.

WAIVER OF COMPENSATION

21.1 Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

21.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by Commissioner sooner than the fixed term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

INVESTIGATIONS

22.1 (a) The parties to this license shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or City

governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

(b) (i) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

(ii) If any person refuses to testify for a reason other than the assertion of his or her privilege against self incrimination in an investigation, audit or inquiry conducted by a City or State governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony concerning the award of, or performance under, any transaction, agreement, lease, permit, contract, or license entered into with the City, the State, or any political subdivision thereof or any local development corporation within the City, then

(A) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 22 (d) below without the City incurring any penalty or damages for delay or otherwise.

(c) The penalties which may attach after a final determination by the Commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five years from the date of an adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this license, nor the proceeds of which pledged, to an unaffiliated and unrelated

institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

(d) The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

(i) The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge, or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.

(ii) The relationship of the person who refused to testify to any entity that is a party to the hearing, including, but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.

(iii) The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with the City.

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under (c) above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in (b) (ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

(e) (i) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

(ii) The term "person" as used herein shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.

(iii) The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

(iv) The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this agreement upon not less than three days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this agreement by the Licensee, or affecting the performance or this License Agreement.

CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

23.1 This License Agreement shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of the Licensee, and shall be governed by and construed in accordance with the laws of the State of New York.

23.2 Any and all claims asserted by or against the City arising under this License or related thereto shall be heard and determined either in the courts of the United States located in New York City ("Federal Courts") or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License Agreement and its intent, Licensee agrees:

(a) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to the Licensee at its address set forth in this License, or to such other address as the Licensee may provide to the City in writing; and

(b) With respect to any action between the City and the Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise have (i) to move to dismiss on grounds of forum non conveniens, (ii) to remove to Federal Court; and (iii) to move for a change of venue to a New York State Court outside New York County.

23.3 With respect to any action between the City and the Licensee in Federal Court located in New York City, the Licensee expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the City of New York.

23.4 If the Licensee commences any action against the City in a court located other than in the City and State of New York, upon request of the City, the Licensee shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

WAIVER OF TRIAL BY JURY

24.0 Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this license. Any action taken by Commissioner relating to this license may only be challenged in a proceeding instituted in New York County pursuant to CPLR Article 78.

CUMULATIVE REMEDIES - NO WAIVER

25.0 The specific remedies to which the City may resort under the terms of this License are cumulative and are not intended to be exclusive of any other remedies or means of redress to which it may be lawfully entitled in case of any other default hereunder. The failure of the City to insist in any one or more cases upon the strict performance of any of the covenants of this License, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

EMPLOYEES

26.0 All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

INDEPENDENT STATUS OF LICENSEE

27.0 Licensee is not an employee of Parks or the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the City, or of any department, agency, or unit thereof, and they will not make any claim, demand, or application to or for any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

CREDITOR-DEBTOR PROCEEDINGS

28.0 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

CONFLICT OF INTEREST

29.0 Licensee represents and warrants that neither it nor any of its directors, officers, members, partners or employees, has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, nor any person whose salary is payable, in whole or part, from the City treasury, shall participate in any decision relating to this License which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

PROCUREMENT OF AGREEMENT

30.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License upon an agreement or understanding for a commission, percentage, brokerage fee, contingent fee or any other compensation. Licensee further represents and warrants that no payment, gift or thing of value has been made, given or promised to obtain this or any other agreement between the parties. Licensee makes such representations and warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

30.2 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this license without liability, entitling the City to recover all monies paid hereunder, if any, and the Licensee shall not make any claim for, or be entitled to recover, any sum or sums due under this license. This remedy, if effected, shall not constitute the sole remedy afforded the City for the falsity or breach, nor shall it constitute a waiver of the City's right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License.

NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

31.0 No claim whatsoever shall be made by the Licensee against any officer, agent or employee of the City for, or on account of, anything done or omitted in connection with this License.

ALL LEGAL PROVISIONS DEEMED INCLUDED

32.0 Each and every provision of law required to be inserted in this License shall be and is inserted herein. Every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall, forthwith upon the application of either party, be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

33.0 If any term or provision of this License or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this License shall be valid and enforceable to the fullest extent permitted by law.

JUDICIAL INTERPRETATION

34.0 Should any provision of this License require judicial interpretation, it is agreed that the court interpreting or considering same shall not apply the presumption that the terms hereof shall be more strictly construed against a party by reason of the rule of construction that a document should be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this License and that legal counsel was consulted by each responsible party before the execution of this License.

MODIFICATION OF AGREEMENT

35.0 This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

NOTICES

36.0 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the

attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner.

IN WITNESS WHEREOF, the parties hereto have caused this License Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK DEPARTMENT OF PARKS & RECREATION

By: _____
Elizabeth W. Smith
Assistant Commissioner for Revenue and Marketing

Dated: 6/25/09

MANHATTAN RIVER GROUP, LLC

By: _____

Dated: 6/25/2009

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

Acting Sharon Cantor
Corporation Counsel

JAN 25 2009

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this 25 day of June, 2009 before me personally came Elizabeth W. Smith to me known, and known to be the Assistant Commissioner for Revenue and Marketing of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Justin Carroll
Notary Public

JUSTIN CARROLL
Notary Public, State of New York
No. 02CA6149091
Qualified in Queens County
Commission Expires July 3, 2010

STATE OF NEW YORK

ss:

COUNTY OF

On this 25th day of June, 2009 before me personally came Chris Villano to me known and who, being duly sworn by me, did depose and say that he is the Principal of Manhattan River Group, LLC and that he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that he executed the same on behalf of that company for the purposes mentioned therein.

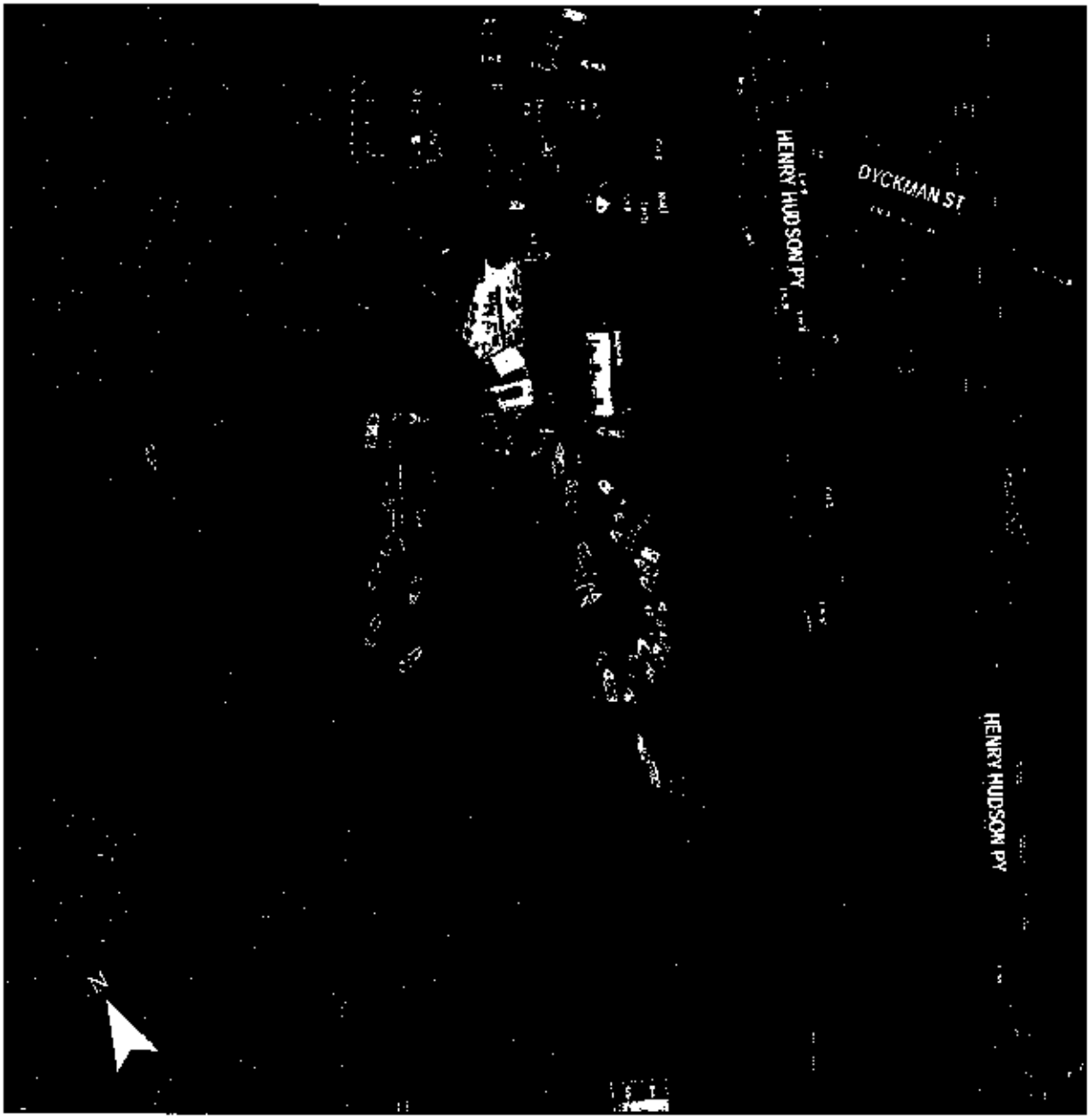
Justin Carroll
Notary Public

JUSTIN CARROLL
Notary Public, State of New York
No. 02CA6149091
Qualified in Queens County
Commission Expires July 3, 2010

EXHIBIT A

SITE PLAN

Dyckman Restaurant & Lounge M28-SB
Fort Washington Park, Manhattan



0 25 50 100 150 200 Feet

Licensed Premises
33,008.587 sq. ft.

City of New York Parks and Recreation
Parklands Division
Michael R. Bloomberg, Mayor
Adrian Benepe, Commissioner

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This map has been prepared in whole or part using secondary data.
Data accuracy is limited by the scale and accuracy of the original sources.
Site-specific conditions should be field-verified.
For legal accuracy refer to the maps that established parks and acquisition maps.

EXHIBIT B

SCHEDULE OF MINIMUM ANNUAL FEE PAYMENTS

(TO BE PROVIDED UPON COMMENCEMENT)

EXHIBIT C

SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES

(TO BE PROVIDED BY LICENSEE)

The Restaurant and Lounge will not be permitted to operate past 11:00 p.m. on Sundays through Wednesdays and 12:30 a.m. on Thursdays through Saturdays, without the prior approval of Parks, which shall not be unreasonably withheld or delayed.

EXHIBIT D

CAPITAL INVESTMENT

1. Demolition of current cafe
2. Demolition of other structures
3. Restaurant (Costera) Canopy
4. Restaurant (Costera) Unit 1 (kitchen, bar, storage, etc.)**
5. Restaurant (Costera) Unit 2 (WC's, Office, etc.) **
6. Railing, Decking, Gates, Fences, etc.
7. Lounge (315) Kitchen Unit
8. Landscaping

TOTAL COST FOR CAPITAL INVESTMENT:	$850,000*

*This total cost for capital investment must be expended by the end of Year 2.
**Units 1 and 2 may be combined into a single unit.

The following represents a timetable for such work:

TIMETABLE:

[To be supplied]

EXHIBIT E

ANNUAL REPORTING FORM

(TO BE SUPPLIED UPON COMMENCEMENT)

EXHIBIT F

CITYWIDE BEVERAGE MACHINES STANDARDS

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) **Specifications regarding the product mix:**

1) No more than two columns (or "buttons") may be unlimited calorie beverages (the maximum of two columns applies irrespective of the total number of columns in the machine).

2) Unless otherwise approved by the City in writing, water is required to be stocked for a minimum of 2 columns (or "buttons"). Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.

3) The remaining products must be ≤25 calories per 8 oz.

B) **Specifications regarding product display placement**:

1) Water must be placed in the position with the highest selling potential.

2) "High Calorie" beverages (defined as any beverage > 25 calories per 8 oz) must be placed in the position with the lowest selling potential.

3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.

4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

C) **Specifications regarding size:**

1) All beverage selections with the exception of water and seltzer are limited to 12 oz. For the purposes of these Standards, seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz. and no artificial sweeteners.

2) All water and seltzer selections must be at least 12 oz.

3) Portion sizes smaller than 12 oz are encouraged for High Calorie beverages.

D) **Calorie labeling**:

1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information. (adapted from HC §81.50)

E) **Promotional space:**

1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8oz) and/or healthy activities.

F) **Price:**

1) Pricing models that encourage healthy choices (e.g. by establishing lower prices for healthy beverage choices (≤ 25 calories per 8 oz) relative to "High Calorie" beverages (> 25 calories per 8 oz)) are encouraged.

For Vending Locations Regularly Used by Children age 18 and under

A) **Specifications regarding the product mix:**

1) Beverage vending machines can only include:
   - Water

   Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.

   - Unsweetened milk,1% or nonfat only
   - Beverages with ≤ 25 calories per 8 oz
   - Carbonation and caffeine are allowed

2) Prohibited:
   - Artificial sweeteners
   - Other "natural" non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
   - Artificial flavors and colors

3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:

   - Should not be caffeinated
   - Should be ≤ 10 calories per 8 oz

B) **Calorie labeling:**

1) Every machine must display the total calorie content for each item, as sold, clearly and conspicuously, adjacent or in close proximity so as to be clearly associated with the item, using a font and format that is at least as prominent, in size and appearance, as that used to post either the name or price of the beverage where it can be seen before the consumer presses the button to choose the beverage. Existing nutrition labeling on the beverages does not meet this requirement. The City will have sole discretion regarding the display of calorie information.

   (adapted from HC §81.50)

C) **Promotional space:**

1) Promotional space on the vending machines (i.e. sides, front graphic panel, etc.) including but not limited to the language and graphics, if used, is subject to the approval of the City in its sole discretion and must be used only to promote healthy beverage choices (≤ 25 calories per 8 oz) and/or healthy activities.

Note that New York City beverage vending standards may be revised or updated in the future. Vendors would have time to come into compliance with any changes