

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation ("Parks") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("License Agreement") with The New York Shakespeare Festival, Inc. d/b/a The Public Theater ("The Public Theater") for operation and maintenance of a food, beverage and merchandise concession at The Delacorte Theatre, Central Park, Manhattan. The License Agreement will commence upon The Public Theater's receipt of a written Notice to Proceed and, unless terminated sooner in accordance with the License Agreement, shall terminate on December 30, 2023 (the same date as the Maintenance and Operation Agreement entered into by the City and Licensee on December 31, 2013) or the last day of any subsequent renewal period that is exercised pursuant to this License Agreement (the "Term"). Parks, in its sole discretion, shall have the option to renew this License Agreement for up to two additional five-year periods, provided that Parks has renewed the Maintenance and Operation Agreement for the same periods. In no event shall the Term, including any renewal periods, exceed the term of the Maintenance and Operation Agreement. In lieu of a license fee, The Public Theater shall use any revenue it receives from the operation of the concession to offset the cost of free events at The Delacorte Theater and the cost of operation and maintenance of The Delacorte Theater.

**THIS IS A TRUE COPY OF THE RESOLUTION ADOPTED BY THE
FRANCHISE AND CONCESSION REVIEW COMMITTEE ON**

February 10, 2016

Date: _____

Signed: _____

Title: Director of the Mayor's Office of Contract Services

- The Agency certifies that each affected CB/BP received written notice by 1/30/15, which was at least 40 days in advance of the FCRC meeting on 3/11/15 at which the agency sought and received approval to use a different selection procedure.
- The Agency certifies that each affected CB/BP received written notice on ___/___/___, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on ___/___/___.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on ___/___/___.

Law Department approved concession agreement on ___/___/___

Award is a major concession. YES NO

If YES, award was approved pursuant to Sections 197-c and 197-d of the NYC Charter as follows:

CPC approved on ___/___/___ City Council approved on ___/___/___ or N/A

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate and that I find the proposed concessionaire to be responsible and approve of the award of the subject concession agreement.

If the concession was awarded by other than CSB or CSP, additionally check the applicable box below:

- The concession was approved by the FCRC on ___/___/___.
- The concession was not subject to the approval of the FCRC because it has a term of <30 days and is not subject to renewal.

Name Alexander Han Title Deputy Director of Concessions

Signature _____ Date ___/___/___

CERTIFICATE OF PROCEDURAL REQUISITES

This is to certify that the agency has complied with the prescribed procedural requisites for award of the subject concession agreement.

Signature _____ Date ___/___/___

City Chief Procurement Officer

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:
CONCESSION AGREEMENT AWARDED BY OTHER THAN CSB OR CSP**

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The Operation and Maintenance of a Food, Beverage, and Merchandise Concession at The Delacorte Theater, Central Park, Manhattan

Instructions: Provide all information requested below; check all applicable boxes.

A. SELECTION PROCEDURE

Sole Source

Other *Describe:*

B. NEGOTIATIONS

Instructions: Describe the nature of negotiations conducted, including negotiations with respect to the amount of revenue offered.

Following FCRC approval to enter into negotiations with The New York Shakespeare Festival, Inc d/b/a The Public Theater ("The Public Theater" or "Licensee"), the New York City Department of Parks & Recreation ("Parks") and The Public Theater conducted meetings to discuss the terms of this License Agreement ("License Agreement"). In lieu of a license fee, Licensee shall use any revenue it receives from the operation of the Concession to offset the cost of free events at The Delacorte Theater and the cost of operation and maintenance of The Delacorte Theater.

C. BASIS FOR AWARD (If sole source award, attach the offer; if other than a sole source award, attach the three highest rated offers, if applicable.)

The agency determined that award of the concession is in the best interest of the City because:

Parks believes that it is in the best interests of the City of New York (the "City") to award a license agreement to The Public Theater for the operation and maintenance of a food, beverage, and merchandise concession at The Delacorte Theater in Central Park. The Public Theater, a non-profit corporation, was formed in 1962 for the purpose of presenting free theater productions in the City, including the popular Free Shakespeare in the Park programming at The Delacorte Theater. In 2013, Parks and the Public Theater entered into a ten-year license agreement whereby The Public Theater operates and maintains the Delacorte Theater as a public theatre for the production of free cultural and educational presentations for the benefit of the people of the City. Parks received FCRC approval to negotiate a concession agreement with The Public Theater for the operation and maintenance of a food, beverage, and merchandise concession at The Delacorte Theater in Central Park, and the license agreement would not exceed the term of the existing license agreement.

Joseph Papp founded The New York Shakespeare Festival (now known as The Public Theater) to present free performances of Shakespeare in public parks, churches, and community centers

throughout New York City. This radical endeavor in access and artistic engagement found a permanent home with the opening of The Delacorte Theater in Central Park on June 18, 1962. Since then, The Public Theater's longest running program has become one of the most venerable cultural programs in the city, serving over five million people with more than 150 free productions to date. The Public Theater has produced between two and three productions a season for the past 53 years at The Delacorte Theater.

The Public Theater's signature program, Free Shakespeare in the Park, embodies its mission to offer the highest quality work to everyone, free of charge. Presented each season at The Delacorte Theater, Free Shakespeare in the Park has become a beloved summer tradition and a quintessential New York experience. Many families who cannot afford to attend other major theater productions in the City look forward to Free Shakespeare in the Park each summer. Every summer, The Public Theater welcomes over 100,000 New Yorkers and visitors from across the country and around the globe to experience great theater, conceived and performed by world-class artists. The diversity of this audience is mirrored on The Public Theater's stage as well, with each production featuring an exhilarating mix of renowned classical performers and young, emerging actors. Additionally, The Public Theater continues to improve efforts to increase access to its programming, especially for audiences with disabilities.

The sale of food, beverages, and merchandise by The Public Theater at The Delacorte Theater would assist the Public Theater in addressing its maintenance and operations obligations under the license agreement, and the Public Theater is uniquely placed to operate such a concession at The Delacorte Theater.

D. PUBLIC HEARING N/A – Subject award NOT a significant concession]

1. Publication & Distribution of Public Hearing Notice

Subject concession is a **Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on ___/___/___, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on ___/___/___, which was not less than 15 days prior to the hearing date. Agency also published a public hearing notice twice in the two newspapers indicated below. A copy of each such notice was sent to each affected CB-BP by ___/___/___.

- _____, a NYC citywide newspaper on ___/___/___ and ___/___/___
- _____, a NYC citywide newspaper on ___/___/___ and ___/___/___

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 1/22/16, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 1/22/16, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 1/22/16.

- Our Town*, a NYC local newspaper published in the affected borough(s) on

- 2/4/16.
- Westside Spirit*, a NYC local newspaper published in the affected borough(s) on 2/4/16.
 - NY Post*, a NYC citywide newspaper on 1/28/16 and 2/2/16.

2. Public Hearing Date, Exception to Public Hearing Requirement

- A Public Hearing was conducted on ___/___/___.

OR

- The Agency certifies that the total annual revenue to the City from the subject concession does not exceed one million dollars and a Public Hearing was not conducted because, pursuant to §1-13(q)(2) of the Concession Rules, the Agency gave notice of the hearing and did not receive any written requests to speak at such hearing or requests from the Committee that the Agency appear at the hearing. Furthermore, the Agency certifies that it published a notice in the City Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

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City of New York
Parks & Recreation

The Arsenal
Central Park
New York, NY 10065
www.nyc.gov/parks

MEMORANDUM

TO: Hon. Gale A. Brewer, President of the Borough of Manhattan
Mr. Bob Gormley, District Manager, Manhattan Community Board 2
Mr. Wally Rubin, District Manager, Manhattan Community Board 5
Ms. Penny Ryan, District Manager, Manhattan Community Board 7
Ms. Latha Thompson, District Manager, Manhattan Community Board 8
Mr. Andrew Lassalle, District Manager, Manhattan Community Board 10
Mr. Angel D. Mescain, District Manager, Manhattan Community Board 11

FROM: Zoe Piccolo, Project Manager 

SUBJECT: Notice of Joint Public Hearing, February 8, 2015: Intent to Award as a Concession the Operation and Maintenance of a Food, Beverages, and Merchandise Concession at The Delacorte Theater, Central Park, Manhattan to The New York Shakespeare Festival, Inc. d/b/a The Public Theater ("The Public Theater" or "Licensee")

DATE: January 22, 2016

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and the New York City Department of Parks and Recreation to be held on Monday, February 8, 2016 at 253 Broadway, Borough of Manhattan, commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession the operation and maintenance of a food, beverage, and merchandise concession at The Delacorte Theater, Central Park, Manhattan, for a potential seventeen (17) year term, to The New York Shakespeare Festival, Inc. d/b/a The Public Theater. Compensation to the City will be as follows: In lieu of a license fee, Licensee shall use any revenue it receives from the operation of the concession to offset the cost of free events at The Delacorte Theater and the cost of operation and maintenance of The Delacorte Theater.

A draft copy of the agreement may be reviewed or obtained at no cost, commencing January 25, 2016 through Monday, February 8, 2016, between the hours of 9 am and 5 pm, excluding weekends and holidays at the New York City Department of Parks & Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

Individuals requesting Sign Language Interpreters should contact the Mayor's Office of Contract Services, Public Hearings Unit, 253 Broadway, 9th Floor, New York, NY 10007, (212) 788-7490, no later than SEVEN (7) BUSINESS DAYS PRIOR TO THE PUBLIC HEARING.
TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

LICENSE AGREEMENT

BETWEEN

**CITY OF NEW YORK
PARKS & RECREATION**

AND

NEW YORK SHAKESPEARE FESTIVAL d/b/a THE PUBLIC THEATER

FOR

THE OPERATION AND MAINTENANCE OF A FOOD, BEVERAGE, AND
MERCHANDISE CONCESSION AT THE DELACORTE THEATER, CENTRAL PARK

NEW YORK, NEW YORK

DATED: _____, 2016

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THIS LICENSE AGREEMENT ("License"), made this day of , 2016, between the City of New York ("City"), a municipal corporation of the State of New York ("State") acting by and through the Commissioner of the Department of Parks & Recreation ("Commissioner" and "Parks", respectively), having its principal office at The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and the New York Shakespeare Festival d/b/a The Public Theater (hereinafter "The Public Theater" or "Licensee"), a not-for-profit corporation organized in accordance with the laws of the State, with an office at 425 Lafayette Street, New York, New York 10003.

WITNESSETH

WHEREAS, the Commissioner, pursuant to Section 533 of the New York City Charter is charged with a duty to manage and care for all the parks, including buildings therein, under the jurisdiction of the Department, for the beneficial use of the people of the City and has the duty to plan, develop, conduct and enter into arrangements for recreation programs for the benefit of the public; and

WHEREAS, the Commissioner recognizes the important cultural and educational value of The Delacorte Theater (hereinafter the "Theater") located in Central Park, Manhattan; and

WHEREAS, the Commissioner desires to ensure continuing access to and the highest and best use of the Theater by the public; and

WHEREAS, The Public Theater has contributed to the cultural heritage of the City by presenting quality plays to members of the public at no charge since 1954; and

WHEREAS, The Public Theater possesses the necessary expertise and is a leader in the promotion and production of public theatre and, in particular, has, with the encouragement and cooperation of the Department, successfully operated a summer theatre festival at the Theater since its opening in 1962; and

WHEREAS, in December 2013, Parks and The Public Theater entered into a license agreement ("Maintenance and Operation Agreement") for the use, operation, and management of the Theater between, at minimum, February 15 and November 10 of each year of the Maintenance and Operation Agreement (the "Operating Season"); and

WHEREAS, the total cost of the free events and maintenance and operation of the Theater is approximately five million dollars (\$5,000,000) annually, and the revenues generated from the Maintenance and Operation Agreement do not cover these costs; and

WHEREAS, The Public Theater desires to operate and maintain a food, beverage, and merchandise concession at the Licensed Premises (as defined in Section 1.1 of this License), related to the presentation of the summer theater festival, and to use any revenues generated to offset the high costs of the maintenance and operations of the Theater and programming free events at the Theater; and

WHEREAS, the Commissioner and The Public Theater desire to ensure that the coordinated efforts of Parks and Licensee will continue to serve the best interest of the public; and

WHEREAS, in accordance with Section 10 of the Maintenance and Operation Agreement, Parks and Licensee have sought approval of, and the Franchise and Concession Review Committee ("FCRC") has authorized, Parks' use of different procedures to enter into this Sole Source concession agreement with The Public Theater; and

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereto do agree as follows:

1. GRANT OF LICENSE

1.1 Parks hereby grants to Licensee and Licensee hereby accepts from Parks a non-exclusive license to maintain and operate a food, beverage, and merchandise concession at the Licensed Premises related to the presentation of a summer theater festival, in accordance with the terms and conditions set forth in this License and to the satisfaction of the Commissioner (the "Concession"). The "Licensed Premises" shall mean the designated area described within the site plan attached hereto as **Exhibit A**.

1.2 Licensee may, subject to the prior written approval of Parks, enter into sublicense agreements ("Sublicense Agreements") with third parties ("Sublicensees") to maintain and operate all or a portion of the Concession at the Licensed Premises during the Operating Season in accordance with the terms and conditions set forth herein. Prior to entering into any proposed Sublicense Agreement, Licensee shall submit to Parks a written request for approval, together with a copy of any proposed Sublicense Agreement, in a form reasonably acceptable to Parks. The terms and conditions of any proposed Sublicense Agreement shall be subject to Parks' prior written approval, which approval shall not be unreasonably withheld or delayed.

(a) Any Sublicense Agreement authorized by Parks shall be subject and subordinate to the terms and conditions of this License and Licensee shall require Sublicensee(s) to acknowledge in writing receipt of a copy of this License and that the License is binding upon Sublicensee(s). Each such Sublicense Agreement shall state that it is revocable in the discretion of the Commissioner and that all rights granted thereunder are subject and subordinate in all aspects to each and every term, condition and provision of the Maintenance and Operation Agreement. Licensee shall provide Parks with fully executed sublicense or other agreements within ten (10) days of execution.

(b) Licensee shall require Sublicensee(s) to comply with all provisions contained within this License, including, but not limited to, obtaining insurance required of the Licensee under this License and indemnifying the City as set forth in Articles 18 and 19 of this License.

(c) No Sublicense Agreement may be assigned without Parks' prior written approval. If approved, any subsequent Sublicense Agreement(s) will be subject to the terms and conditions set forth in this License.

1.3 During the Operating Season, Licensee shall sell only the concession items approved in advance by Parks, which approval shall not be unreasonably withheld or delayed. The schedule of approved concession items and accompanying prices ("Schedule of Approved Items and Prices") for the first Operating Season is attached as **Exhibit B**. Any increase in price or change in the Schedule of Approved Items and Prices is subject to Parks' prior written approval. Should

Licensee decide not to charge the maximum allowable prices for the approved concession items, this shall in no way be interpreted as a waiver of rights to charge such maximum allowable prices at any other time during the Term of this License.

1.4 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 whole or in part, in accordance with the terms of this License. In order to be in compliance with this License, Licensee must fulfill all of the obligations contained herein. Failure to fulfill any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner. 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 the Commissioner or his duly authorized representative, and such approval or permission shall not be unreasonably withheld or delayed. 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.

2. 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 the Licensed Premises.
 - (iii)** any work or construction which would or might affect in any manner, or have any impact whatsoever upon the structure, character, appearance or design of any portion of the Licensed Premises
- (b)** "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include all Alterations and "Additional Fixed Equipment," as that term is defined in Section 2.1(h)(i) 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.
- (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 Commissioner's 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 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 the Licensed Premises existing at the time Notice to Proceed is given, whose removal would damage the Licensed Premises.

(i) "Additional Fixed Equipment" shall mean Fixed Equipment affixed to the Licensed Premises subsequent to the date 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, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind, from the sale or provision of merchandise, food and beverages, or services of any kind, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee. Gross Receipts shall include any orders placed or made at the 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 or orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future either at or outside of the Licensed Premises. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the 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 the Licensed Premises may be made other than at the 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 Article 1 of this License, provided that Gross Receipts shall also include Licensee's income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors or sublicensees.

(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 food and beverages service, a "Gratuity" shall mean a charge that: (i) is separately, stated on the bill or invoice given to Licensee's customer or otherwise proffered by the 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 (other than management) 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 Section 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. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(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 (other than management) 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. 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. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee.

(j) “Licensed Premises” shall mean the area designated as such 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) “Licensee’s Special Events” shall mean any catered or private function (e.g. reservation of the Licensed Premises through Licensee by third parties) at the Licensed Premises, as defined in Article 38.3, excluding “Parks’ Special Events” as defined in Article 38.4 of this License.

(l) “Mobile Food Vending Unit” shall have the same definition as provided in Section 6-02 of Title 24 of the Rules of the City of New York. This License does not permit Licensee to operate Mobile Food Vending Units at the Licensed Premises.

(m) “Substantial Completion” or “Substantially Complete” shall mean, with respect to an improvement at the Licensed Premises, 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 approved in writing by Parks, and that the improvement may be utilized by the public.

(n) “Year” or “Operating Year” shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year.

3. TERM

3.1 This License shall commence upon Licensee receiving written Notice to Proceed from Parks (“Commencement Date”) and, unless terminated sooner in accordance with this License, shall terminate on the same date as the Maintenance and Operation Agreement (December 30, 2023) or the last day of any subsequent renewal period that is exercised pursuant to this License (“Termination Date”). The period between the Commencement Date and the Termination Date,

including any exercised renewal period, shall be the "Term". There shall be two five-year renewal options, exercisable at Parks' sole discretion, provided that Parks has renewed the Maintenance and Operation Agreement for the same period. In no event shall the Term, including any renewal periods, exceed the term of the Maintenance and Operation Agreement.

3.2 Notwithstanding any language contained herein, this License is terminable at will by the Commissioner, at any time. Such termination shall be effective upon twenty-five (25) days' written notice to Licensee. The City, its employees, and its agents shall not be liable for damages to Licensee if this License is terminated by Commissioner as provided for in this Section 3.2. However, in the event of such termination at will, the Commissioner will in good faith reasonably work with the Public Theater to assist the Public Theater's efforts to mitigate resultant financial liabilities or interferences with its contractual obligations and commitments undertaken in connection with this License.

4. NO LEASE

4.1 It is expressly understood that the City has title to the Licensed Premises and that no land, building, space, improvement, or equipment is leased to the Licensee, but that during the Term of this License, Licensee shall have the use of the Licensed Premises for the purposes herein provided. Moreover, except as herein provided, Licensee shall have the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by the Commissioner in accordance with this License.

5. MAINTENANCE AND REPAIR

5.1 Licensee shall provide maintenance and repair of the Licensed Premises and comply with the standards as set forth in Section 8 of the Maintenance and Operation Agreement. A copy of Section 8 of the Maintenance and Operation Agreement is attached hereto as **Exhibit C**.

5.2 Licensee shall, at its sole cost and expense, operate and maintain the Licensed Premises in a good, clean, and orderly condition, ordinary wear and tear excepted, and shall be responsible for all daily maintenance of the Licensed Premises during the Operating Season to the reasonable satisfaction of the Commissioner. Any and all such maintenance and repair shall be performed in a good and workman-like manner. All maintenance and repair efforts by Licensee are subject to the review and approval of the Commissioner or designated representative in consultation with the Central Park Conservancy ("CPC"), which approval shall not be unreasonably withheld.

5.3 Such maintenance shall include, but not be limited to:

(a) Cleaning.

(i) Licensee shall keep the Licensed Premises, neat and clean, free of all waste, garbage, refuse, rubbish, litter, dirt, debris, and obstructions at all times. Licensee shall provide adequate waste receptacles, approved by Parks, and have the receptacles emptied on a daily basis during the Operating Season. Rubbish removal schedules, and the location and placement of all waste receptacles, are subject to the prior written approval of Parks or the Commissioner's designee;

(ii) Licensee shall maintain all walkways, sidewalks, improvements, and facilities, on the Licensed Premises.

(iii) Licensee shall, at its sole cost and expense, 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 promptly after the appearance of any such graffiti and shall continue until such graffiti is removed.

(iv) Licensee shall provide regular cleaning and maintenance schedules, which are subject to the prior written approval of Parks or the Commissioner's designee.

(b) Recycling. In compliance with all City, State, and Federal regulations regarding recycling, Licensee shall provide patrons with appropriately labeled, sized, and well-positioned recycling bins or receptacles for glass, metal, and plastic, and bins or receptacles for paper and cardboard. Licensee shall provide adequate recycling receptacles, approved by Parks, and have those receptacles emptied on a daily basis during the Operating Season. The design, location, and placement of all recycling receptacles are subject to the prior written approval of Parks and CPC.

(c) Pest Control. Licensee shall conduct regularly scheduled pest control inspections and extermination at the Licensed Premises and its adjacent areas, as needed. All pest control methods are subject to the prior written approval of Parks or the Commissioner's designee. To the extent Licensee applies pesticides to the Licensed Premises, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

(d) Other Maintenance. Licensee shall maintain all equipment and areas of the Licensed Premises in good condition and good working order at all times.

5.4 Licensee shall periodically inspect the Licensed Premises, and shall promptly notify Parks of any known hazardous condition(s) and institute reasonable measures to protect the public from harm, including, but not limited to, the erection of warning signs and temporary barriers. Should the Commissioner, in the Commissioner's sole judgment, decide that an unsafe or emergency condition exists at the Licensed Premises, after written notification, Licensee shall have twenty-four (24) hours to correct such unsafe or emergency condition. During this period, the Commissioner may require a partial or complete suspension of use of the affected area. If such unsafe or emergency condition cannot be remedied within the specified time frame, the Licensee shall notify the Commissioner in writing and indicate the amount of time needed to correct such condition. The Commissioner, in the Commissioner's sole discretion, may extend such period of time in order to permit Licensee to cure the unsafe or emergency condition, under such terms and conditions as appropriate, such consent not to be unreasonably withheld or delayed.

6. MAINTENANCE AND REPAIR STANDARDS

6.1 Licensee shall perform, or cause to be performed, maintenance and repair activities to the reasonable satisfaction of the Commissioner, and shall comply with the rating standards for all applicable enumerated categories set forth in the Parks Inspection Program ("PIP") to the extent such standards and categories apply to the Licensed Premises. Notwithstanding this provision, Licensee shall maintain the Licensed Premises in accordance with Parks' standards, including, but not limited to, the applicable categories as set forth in the PIP Manual and/or any other standards that Parks may require in the future. The PIP Manual is attached hereto as **Exhibit D**.

6.2 Licensee shall, at all times, operate and occupy the Licensed Premises in accordance with all applicable law and the provisions of any required licenses or permits, and shall, at its sole cost

and expense, obtain all licenses and permits that may be required to operate the Concession in accordance with applicable law.

7. OPERATIONS

7.1 Licensee, at its sole cost and expense, shall operate the Concession 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, including but not limited to the New York City Paid Sick Leave Law, attached hereto as **Exhibit I**. The Commissioner retains the right, throughout the Term of this License, to approve or disapprove any and all rates, fees, and prices to be charged by Licensee. Licensee shall accept the Licensed Premises in its "as is" condition. Licensee shall provide the necessary number of personnel having the requisite skills to perform the following services at the Licensed Premises:

- (a) operate two snack bars for the sale of food and beverage;
- (b) operate a fixed point of sale for the sale of merchandise;
- (c) operate stationary stands that sell pre-packaged snacks, drinks, and merchandise (Licensee is not permitted to operate Mobile Food Vending Units); and
- (d) continuously perform such ongoing and preventive maintenance activities, including but not limited to, as are necessary to keep the Licensed Premises in good order and repair and in accordance with industry standards to the reasonable satisfaction of the Commissioner.

7.2 The Concession is for the sale of food, beverage, and merchandise. Licensee agrees that it shall provide services and sell merchandise of high grade and good quality. The operation of the Concession shall be in such a manner so as to maintain the highest New York City Department of Health and Mental Hygiene ("DOHMH") inspection rating. No polystyrene foam products shall be utilized in connection with services or merchandise offered under this License. The sale of beverages from glass bottles or Styrofoam is strictly prohibited.

7.3 The Concession shall be opened, operated, and staffed, during the Operating Season, for such days and hours as the Commissioner shall reasonably approve. All employees of Licensee shall be qualified for their respective functions to conduct Licensee's operations and shall be made to wear appropriate uniforms, subject to the reasonable approval of the Commissioner. A copy of the staffing plan is attached hereto as **Exhibit E**.

7.4 Attached hereto as **Exhibit F** is the schedule of approved hours ("Schedule of Approved Hours") for the Licensed Premises. Any changes to this schedule at any time during the Term of this License must be approved in writing by the Commissioner, such approval not to be unreasonably withheld or delayed. Following the approval of such schedule, Licensee shall, at its sole cost and expense, print, frame, and prominently display, in a place and manner designated by the Commissioner, the current Schedule of Approved Hours.

7.5 Licensee shall record all sales transactions involved in the operation of this License and keep books and records as required and in compliance with the provisions set forth in Articles 21 and 25 and as deemed acceptable by the Commissioner.

7.6 Licensee shall designate an officer or representative to personally operate this License or employ an operations manager ("Manager"), qualified to manage operations of the Concession in a manner that is reasonably satisfactory to the Commissioner. The Manager or other representative must be available by telephone during all hours of operation, and Licensee shall

provide the Commissioner and the Parks Enforcement Patrol ("PEP") Communications Division with a twenty-four (24) hour pager or cellular telephone number through which Parks may contact the Manager or other representative in the event of an emergency. Licensee shall replace any Manager, officer, employee, sublicensee, or subcontractor whenever reasonably requested by Commissioner.

7.7 Licensee shall, at its sole cost and expense, provide equipment which will provide security for all monies received. Additionally, Licensee shall provide for the transfer of all monies collected to Licensee's designated banking institution and bear the loss of any lost, stolen, misappropriated, or counterfeit monies derived from operations under this License.

7.8 Licensee shall, at its sole cost and expense, 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;
- (c) conducting and supervising all activities of the Concession; and,
- (d) securing the Licensed Premises.

7.9 Licensee shall provide safe and accessible opportunities at the Licensed Premises for everyone, including people with disabilities as required by all City, State, and Federal laws. Licensee shall meet and exceed the minimum accessibility requirements whenever possible. Such accessibility shall be clearly indicated by signs and included in all advertising. Licensee shall include in its advertising and promotion program, described in Article 10 of this License, 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 Disability Act ("ADA") and regulations pertaining thereto as applicable.

7.10 Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises and surrounding parkland and shall provide for a twenty-four (24) hour per day security system at the Licensed Premises in accordance with plans that have received the prior written approval of Parks. The Licensed Premises and any other equipment used shall be secured every evening before closing for the day in a manner reasonably approved by the Commissioner.

7.11 Licensee shall maintain close liaison with PEP, the New York City Police Department ("NYPD"), and other police officials, and cooperate with all efforts to remove any illegal vendors from the Licensed Premises and its adjacent areas.

7.12 The Commissioner or Commissioner's designee shall have the right to reasonably approve the days and times on which deliveries to the Licensed Premises may be made.

7.13 Licensee shall be responsible for finding off-site parking. No trucks or storage containers may be permanently stationed at the Licensed Premises, in regards to the concessions.

8. COMPENSATION

8.1 In lieu of a license fee, Licensee shall use any revenue it receives from the operation of the Concession, as contemplated in Paragraph 1 herein, to offset the cost of free events at the Theater and the cost of operation and maintenance of the Theater ("Operating Costs"). In no event shall the revenue received by Licensee from the operation of the Concession during any Operating Season exceed the difference between the Operating Costs and the revenue received by Licensee from sources other than the Concession that is applied to the Operating Costs

("Other Revenue Sources") (the "Difference"). If at any time revenue received from the operation of the Concession is projected by Parks to exceed the Difference, Parks shall direct Licensee in writing to either: (1) suspend all operations at the Licensed Premises; or (2) continue its operations, provided it is determined that there is sufficient time within the current Operating Season for Licensee to implement a plan to provide additional services at the Licensed Premises, including but not limited to additional free events, subject to the prior written approval of Parks. Failure of Licensee to comply with such written directive within the time frame specified therein shall be deemed a material breach of this License and as such will be subject to immediate termination. Operating Costs shall include any and all administrative expenses directly related to the cost of free events at the Theater and operation and maintenance of the Theater, including, but not limited to:

- (a) any allocation of Licensee's office rent or overhead;
- (b) any portion of the salary of the President or development professionals employed by Licensee; and,
- (c) any other cost, such as insurance, which is expressly stated to be a cost to be borne by Licensee pursuant to this License.

8.2 No later than sixty (60) days after the end of Operating Season, Licensee shall deliver to Parks a statement of income and expense for the preceding Operating Season, signed and verified by an officer of Licensee. Such statement shall include but not be limited to details regarding Operating Costs, Other Revenue Sources and revenue received by Licensee from the operation of the Concession for the preceding month.

8.3 No later than sixty (60) days after the end of each Operating Season, Licensee shall deliver to Parks an accounting setting forth its calculation of annual Operating Costs, Other Revenue Sources, and revenues received by Licensee from the operation of the Licensed Premises for the preceding Operating Season, in accordance with Article 21 herein.

9. SIGNS

9.1 Licensee shall display, at its sole cost and expense and with the Commissioner's reasonable approval, such signs as may be needed to guide and inform the public as to the location, purpose, hours of operation, and related fees of the Licensed Premises. Licensee shall maintain such signs in good condition and repair and shall also include the Parks logo and indicate that the Licensed Premises are operated by Licensee through a license agreement with Parks.

9.2 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. Licensee shall, obtain any necessary approvals or permits from any governmental agency with jurisdiction over any nearby highways, streets, or other specified location contemplated for the placement of any signs off-site of the Licensed Premises. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval.

10. ADVERTISING

10.1 Licensee may establish an advertising and promotion program related to the Concession, subject to Parks' prior approval. 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 affects 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 the Commissioner's discretion, however, finds any advertising or other releases related to the Concession 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 and distribution of all advertising and promotional materials for the Concession.

10.2 Licensee shall not advertise any product brands in relation to Concession, without Parks' prior approval. Under no circumstances shall advertisements be permitted on the exterior of the Licensed Premises or on any building or structure on the Theater. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. No advertisements shall be placed at the Licensed Premises without the prior written approval of Parks.

10.3 Smoking of tobacco or electronic cigarettes at the Licensed Premises is strictly prohibited. The display or placement of tobacco or electronic cigarette advertising shall not be permitted. In connection with the Licensed Premises, the Licensee shall not advertise or accept sponsorships of any kind on behalf of any kind of tobacco or electronic cigarette products. Licensee shall adhere to and enforce this policy which may include the placement of signage as may be necessary to comply with this provision. It is agreed that the limitations in this Section 10.3 shall not apply to the smoking of tobacco or electronic cigarettes in the Theater and/or backstage spaces solely for theatrical purposes.

10.4 The advertising of alcoholic beverages shall not be permitted within two hundred and fifty (250) feet of any school, day care center, or house of worship.

10.5 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, 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.

11. ALCOHOLIC BEVERAGES

11.1 Licensee, or Sublicensee(s) approved by Parks, may sell alcoholic beverages at the Licensed Premises, provided that Licensee or such Sublicensee shall, prior thereto, obtain at its sole expense, all permits and licenses applicable to the sale of alcoholic beverages from the New York State Liquor Authority and any other governmental agency having jurisdiction thereof. Alcoholic beverages shall be served in recyclable cups and must be consumed within the designated areas of the Theater, subject to the prior approval of Parks.

12. MARKETING PARTNERSHIP AGREEMENTS

12.1 Licensee must obtain the written approval of Parks prior to entering into any marketing or sponsorship agreement related to the Concession. In the event that Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City's interests.

13. ALTERATIONS

13.1 Licensee may alter the Licensed Premises only in accordance with the requirements of Section 13.1(a). Alterations shall become property of the City, at its option, upon their attachment, installation, or affixing.

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

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

(ii) Ensure that work performed and Alterations made at the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to Sub-paragraph (i), in a good and workmanlike manner, and within a reasonable time; and,

(iii) Notify the Commissioner of the completion of, and the making of final payment for, any Alterations within ten (10) days after the occurrence of said completion or final payment.

(b) 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

14. ALTERATIONS BY PARKS

14.1 Parks may, in its sole but reasonable judgment and upon reasonable notice to Licensee, make additions, Alterations, repairs, decorations, or improvements to the Licensed Premises at the City's expense, but nothing herein contained shall be deemed to obligate or require Parks to make any additions, Alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair Licensee's obligations under this License in any respect.

14.2 Parks reserves the right to perform construction or maintenance work deemed reasonably necessary by the Commissioner, in the Commissioner's sole discretion, at the Licensed Premises at any time during the Term of this License. Licensee shall agree 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 (14) 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.

14.3 In the event that Parks' work will adversely impact Licensee's operation at the Licensed Premises or if Licensee must close the Licensed Premises because of such Parks construction, then Licensee shall be entitled to 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 property related to the operation of 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 and/or its Sublicensee.

15. FIXED AND EXPENDABLE EQUIPMENT

15.1 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.

15.2 The City has title to all Fixed Equipment at the Licensed Premises as of the date of the written Notice to Proceed. 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 such 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 the City chooses not to exercise such option, Licensee shall at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment, other than Fixed Equipment, and restore the Licensed Premises to the satisfaction of the Commissioner after the expiration or earlier termination of this License.

15.3 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 the Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment the Commissioner reasonably determines is necessary to the operation of this License.

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

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

15.6 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 shall accept them in their present condition "as is."

15.7 The equipment to be removed by Licensee pursuant to this License Agreement 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.

16. UTILITIES

16.1 Parks shall at its sole cost and expense provide the Licensee with all utilities, including water and electricity, necessary for its use and operation of the Licensed Premises pursuant to this License. The Licensee shall exercise its best efforts to conserve utilities and energy and shall

implement conservation programs promulgated from time to time by the City as directed by Parks.

17. PROHIBITIONS ON USE

17.1 Nuisance and Waste. Licensee shall not create or suffer to be created any nuisance or danger to the public safety or public property in, on or about the Licensed Premises and shall not commit or cause any waste, damage, disfigurement, or injury to the Licensed Premises.

17.2 No Combustibles. Licensee shall not use or permit the storage of any illuminating oils, candles, oil lamps, turpentine, benzene, naphtha, poly or other similar substances, or explosives of any kind or any substance or thing prohibited in the standard policies of fire insurance companies in the State of New York at the Licensed Premises.

17.3 Licensee should be aware that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. As such, the following terms and conditions shall apply:

(a) If the Licensee wants to sell merchandise that uses the City's trademark, Licensee shall purchase such merchandise from authorized licensees of the City of New York. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products of non-park-related events; and,

(b) The knowing sale of counterfeit or unlicensed merchandise by this Licensee will result in the immediate termination of this License Agreement.

17.4 Licensee shall not use or allow the Licensed Premises to be used or occupied for any unlawful purpose or in violation of the provisions on the use of the Licensed Premises as set out in this License.

18. INSURANCE

18.1 Licensee's Obligation to Insure

(a) From the date this License is executed through the date of its expiration or termination, Licensee shall ensure that the types of insurance indicated in this Article 18 are obtained and remain in force, and that such insurance adheres to all requirements herein.

(b) Licensee is authorized to undertake or maintain operations under this License only during the effective period of all required coverage.

18.2 Commercial General Liability Insurance

(a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). This insurance shall protect the insured from claims for property damage and/or bodily injury, including death, that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall name the City, and the Central Park Conservancy ("CPC"), together with their respective officials and employees, , as Additional Insureds for claims that may arise from any of the operations under this License.

Coverage shall be at least as broad as the most recent edition of ISO Form CG 2026. “Blanket” or other forms are also acceptable if they provide the City and CPC, together with their officials and employees, with coverage at least as broad as ISO Form CG 2026.

18.3 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance

(a) Licensee shall maintain Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in Licensee’s operations under this License, and such insurance shall comply with the laws of the State of New York.

18.4 Business Automobile Liability Insurance

(a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Business Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. If vehicles are used for transporting hazardous materials, such Business Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

18.5 Liquor Law Liability Insurance

(a) In the event Licensee shall serve alcohol on the Licensed Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name the City and CPC, together with their respective officials and employees, as Additional Insureds pursuant to the most recent edition of ISO Form CG 20 26. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

(b) In the event Licensee shall permit sublicensees or others to serve alcohol on the Site, the Licensee shall carry or cause each such person to carry liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence, and name the City, and CPC, together with their respective officials and employees, as Additional Insureds pursuant to the most recent edition of ISO Form CG 20 26. Such insurance shall be effective prior to the commencement of any service of alcohol by such person on the Licensed Premises and continue throughout such operations

18.6 General Requirements for Insurance Coverage and Policies

(a) Policies of insurance required under this Article 18 shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from the City Corporation Counsel.

(b) Policies of insurance required under this Article 18 shall be primary and non-contributing to any insurance or self-insurance maintained by the City or CPC.

(c) Wherever this Article 18 requires that insurance coverage be “at least as broad” as a specified form (including all ISO forms), there is no obligation that the form itself be used, provided that the Licensee can demonstrate that the alternative form or endorsement contained in its policy provides coverage at least as broad as the specified form.

(d) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article 18 unless approved in writing by the Commissioner. Under no circumstances shall the City or CPC be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that

any such self-insurance program provides the City and CPC with all rights that would be provided by traditional insurance under this Article 18, including but not limited the defense and indemnification obligations that insurers are required to undertake in liability policies.

(e) The City's and CPC's limits of coverage for all types of insurance required under this Article 18 shall be the greater of (i) the minimum limits set forth in this Article 18 or (ii) the limits provided to Licensee under all primary, excess and umbrella policies covering operations under this License.

(f) All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the New York City Department of Parks & Recreation, Attn: General Counsel, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

(g) All required policies, except Workers' Compensation, Employers Liability, and Disability Benefits, shall include a waiver of the right of subrogation with respect to all insureds and loss payees named therein.

18.7 Proof of Insurance

(a) Certificates of Insurance for all insurance required in this Article 18 must be submitted to and accepted by the Commissioner prior to or upon execution of this License.

(b) For Workers' Compensation, Employers Liability Insurance, and Disability Benefits, the Licensee shall submit one of the following:

- (i) C-105.2 Certificate of Worker's Compensation Insurance;
- (ii) U-26.3 - State Insurance Fund Certificate of Workers' Compensation Insurance;
- (iii) Request for WC/DB Exemption (Form CE-200);
- (iv) equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article 18 other than Workers Compensation, Employers Liability, and Disability Benefits, Licensee shall submit proof of the required insurance in a form acceptable to the Commissioner. This shall include (i) Certificates of Insurance certifying the issuance and effectiveness of such policies of insurance, each with the specified minimum limits, and the company code issued to the insurance company by the National Association of Insurance Companies (the NAIC number); (ii) the additional insured endorsement(s) in Licensee's policy/ies (including its general liability policy) naming the City and CPC as Additional Insured or loss payee, as required herein; and (iii) a duly executed "Certification by Broker or Agent" in the form required by the Commissioner, attached hereto as **Exhibit G**, or certified copies of all policies referenced in such Certificate of Insurance.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

(e) Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent with the requirements of this Article 18 is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

(f) Licensee shall be obligated to provide the City with a copy of any policy of insurance required under this Article 18 upon request by the Commissioner or the New York City Law Department.

18.8 Miscellaneous

(a) Licensee may satisfy its insurance obligations under this Article 18 through primary policies or a combination of primary and excess/umbrella policies, so long as all policies provide the scope of coverage required herein.

(b) In the event Licensee requires any contractor to procure insurance with regard to any operations under this License and to name Licensee as an Additional Insured thereunder, Licensee shall ensure that such contractor also name the City, including its officials and employees, and CPC as Additional Insureds with coverage at least as broad as the most recent edition of ISO Form CG 20 26.

(c) Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City or CPC is an insured under the policy.

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article 18, Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than twenty (20) days after such event. For any policy where the City or CPC is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York and the Central Park Conservancy as Additional Insureds as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007 and to CPC at 14 E. 60th Street, 8th Floor, New York, New York 10022.

(e) Licensee's failure to secure and maintain insurance in complete conformity with this Article 18, or to give the insurance carrier timely notice on behalf of the City or CPC, or to do anything else required by this Article 18 shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City or CPC at any time.

(f) Insurance coverage in the minimum amounts provided for in this Article 18 shall not relieve Licensee of any liability under this License, nor shall it preclude the City or CPC from exercising any rights or taking such other actions as are available to it under any other provisions of this License or the law.

(g) In the event of any loss, accident, claim, action, or other event that does or can give rise to a claim under any insurance policy required under this Article 18, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(h) Licensee waives all rights against the City and CPC, including their officials and employees, for any damages or losses that are covered under any insurance required under this Article 18 (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(i) In the event Licensee requires any entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also name the City and CPC, including their officials and employees, as Additional Insureds with coverage at least as broad as ISO form CG 20 26.

(j) In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article 18 shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, Licensee shall immediately forward a copy of such notice to both the New York City Department of Parks & Recreation, Attn: General Counsel, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article 18.

19. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION

19.1 Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors.

19.2 Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

19.3 Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, contractors, subcontractors, or any other person.

19.4 Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in

the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

19.5 Licensee shall defend, indemnify and hold the City and CPC, their officers and employees harmless from any and all claims or judgments for damages on account of any injuries or death to any person or damage to any property and from costs and expenses to which the City and/or CPC, their officers and employees may be subjected or which they may suffer or incur allegedly arising out of or in connection with any operations of Licensee and/or its agents to the extent resulting from any negligent act of commission or omission, any intentional tortious act, or failure to comply with the provisions of this License or of the Laws. Licensee shall not be required to indemnify the City or CPC or their agents, employees, or officers for any claims arising solely out of the negligence, gross negligence or intentional actions of the City or CPC or their agents, employees, or officers. Insofar as the facts or law relating to any of the foregoing would preclude the City or CPC or their officials and employees from being completely indemnified by Licensee, the City, CPC and their officials and employees shall be partially indemnified by Licensee to the fullest extent permitted by law.

19.6 Licensee shall defend, indemnify and hold the City and CPC harmless from any and all claims or judgments for damages and from costs and expenses to which the City or CPC may be subject to or which it may suffer or incur allegedly arising out of or in connection with any infringement by Licensee of any copyright, trade secrets, trademark or patent rights or any other property or personal right of any third party by the Licensee and/or its agents in connection this Agreement. Insofar as the facts or Law relating to any claim would preclude the City or CPC from being completely indemnified by Licensee, the City and CPC shall be partially indemnified by Licensee to the fullest extent permitted by law.

19.8 Licensee's obligation to defend, indemnify and hold the City and CPC and their officers and employees harmless shall not be limited in any way by Licensee's obligations to obtain and maintain insurance.

20. Reserved

21. INSPECTION OF RECORDS AND AUDITS

21.1 Licensee will establish and maintain accurate records and accounts, in a manner satisfactory to the Commissioner, which sufficiently and properly reflect all revenues and direct and indirect costs of any nature resulting from Licensee's operations pursuant to this License, and set forth, in a manner reasonably acceptable to the Commissioner, its expenditures in any way connected to Licensee's Operating Costs. Such records must include, but not be limited to, the details of how Licensee has applied the revenue it received in connection with its operation of the Concession to the Operating Costs as further described in Article 8. Such records and accounts shall conform to generally accepted accounting principles ("GAAP").

21.2 Licensee shall furnish to the Commissioner a detailed income and expense report for each fiscal year during the Term of this License. Such statements shall be prepared by an independent Certified Public Accountant retained at the sole cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than sixty (60) days after the close of each Operating Season. Copies of sales tax reports, if any, shall be submitted whenever requested by the Commissioner. In addition, Licensee shall provide the Commissioner within

sixty (60) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as an annual report to be filed with the Charities Bureau or any successor report). Finally, no more than sixty (60) days after the end of each Operating Season, Licensee shall provide the Commissioner with detailed statements concerning Other Revenue Sources and any revenue generated at the Licensed Premises and detailed statements to the Commissioner's reasonable satisfaction, concerning the expenses that Licensee has incurred in connection with the Operating Costs as described in Article 8. Attached hereto as **Exhibit H** are Licensee's projected figures for the first Operating Season, which Parks has acknowledged and accepted. No later than ninety (90) days prior to the commencement of the second Operating Season and subsequent Operating Season thereafter, subject to the prior written approval by Parks, not to be unreasonably withheld, Licensee shall submit a detailed projection of the Operating Season's proposed budget and related expenses for operations of the Concession.

21.3 Licensee, during the Term of this License, shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale, and price of the item sold. Licensee also must establish a dedicated bank account for all deposits related to this concession's revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years from the date of creation of the record. 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 sales receipts, and sales books; and duplicate bank deposit slips and bank statements. Licensee shall provide copies of its statement of Gross Receipts as described in this Section 21.3 to Parks within thirty (30) days of the end of each Operating Season.

21.4 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 Licensee prior to the commencement of 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 Licensee. Licensee shall maintain each year's records, books of account, and data for a minimum of ten (10) years from the date of creation of the record, book of account, or data.

21.5 (a) On or before the thirtieth (30th) day following each month of each Operating Season, 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. Each of the reports of Gross Receipts shall report the Gross Receipts generated at the Licensed Premises from any sources of income, including merchandise, realized from the Licensee's operations at the Licensed Premises in the following categories.

<u>Food and Beverage</u>	Gross Receipts from the sale of food and beverages at the Licensed Premises
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<u>Merchandise</u>	Gross Receipts from the sale of merchandise at the Licensed Premises;
<u>Miscellaneous</u>	All other sources of income realized from Licensee's operations including but not limited to reservation of the Licensed Premises for Special Events.

(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 (if applicable), may be deducted from Gross Receipts or from the compensation due under this License.

21.6 The failure or refusal of Licensee to furnish any of the statements required to be furnished under this Article 21 within thirty (30) days after its due date, the failure or refusal of Licensee to maintain adequate internal controls or to keep any of the records as required by this Article 21 after written prior notice from Parks or the Comptroller, or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by Parks or the Comptroller, the results of which are provided by written notice to Licensee in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one (1) 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. Licensee shall make available to the office of the Comptroller, and/or Parks' auditor, on demand, all books, records, documents, and correspondence pertaining to the License Agreement, for the purpose of examination, audit, review, or any purpose deemed necessary by the office of the Comptroller and/or Parks.

21.7 If Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have materially breached any of the provisions contained in this Article 21, Licensee may be subject to a charge of five hundred dollars (\$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 (30) days of such notice

21.8 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.

22. NO REMOVAL OF RECORDS FROM THE LICENSED PREMISES

22.1 Where performance of this License may involve the use by Licensee of Parks' papers, files, data, or records at Parks' facilities or offices, Licensee shall not remove any such papers, files, data, or records, therefrom without the prior approval of Parks.

23. ACCESS AND INSPECTION AT LICENSED PREMISES

23.1 Parks’ inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License. Based on their inspections, Parks may issue directives regarding deficiencies the Licensee shall rectify in a timely fashion. Violations of the terms and conditions of this License may also result in the assessment of liquidated damages. If Licensee fails to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the reasonable timeframe set forth in such notice. If Licensee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages, and/or suspend or terminate this License. Parks may impose a two hundred and fifty dollar (\$250) administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

Provision	Liquidated Damage Per Occurrence
Unauthorized menu items or merchandise	\$150.00
Missing or unauthorized price or rate list	\$250.00
Overcharging	\$350.00
Expanding	\$350.00
Blocked exits	\$350.00
Improper disposal (Noxious liquids, debris, etc.)	\$350.00
Structure or equipment obviously damaged or in poor repair	\$250.00
Graffiti	\$350.00
Unauthorized Advertising	\$350.00
Improper storage	\$350.00
Failure to provide designated spaces for persons with disabilities	\$250.00
Vending without valid DOHMH Permit	\$350.00

23.2 If Licensee receives an assessment for one of the above violations, there is a process by which the assessments may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

(a) Filing an Appeal.

If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee’s appeal (such as photographs, documents, witness statements, etc.) should also be included. If no appeal is received within ten (10) days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee.

(a) Adjudication of Appeal.

The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at The Arsenal, Central Park 830 Fifth Avenue, New York, New York 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks. The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

23.3 Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present to observe the operations at the Licensed Premises.

24. SOUND

24.1 Licensee or its Sublicensee(s) shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers, ("ASCAP"), Broadcast Music, Inc. ("BMI"), Society of European Stage Authors and Composers ("SESAC") or other such entity as it may require for such music. Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically DEP, regarding noise levels. Any sound or music equipment shall be operated 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. Licensee must make every effort to ensure that any and all sound and/or music from its operation of the Concession is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations.

25. RETENTION OF RECORDS

25.1 Licensee agrees to retain all books, records, and other documents relevant to this License for ten (10) years after the date of creation of the record. City, State, and Federal auditors shall have full access to and the right to examine any of said materials during this period, upon reasonable prior notice. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the powers, duties, and obligations of the Comptroller pursuant to law shall not be diminished, compromised or abridged in any way.

26. PERSONNEL

26.1 All experts, independent contractors, consultants or employees of Licensee who are engaged 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 in connection with this License. Nothing included in this section or in any other provision of this License shall be construed to impose any liability or duty upon the City or CPC for (A) acts, omissions, liabilities or obligations of (i) Licensee (ii) any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent for or arising from work to be done on behalf of Licensee or (B) taxes or fees of any nature including but not limited to unemployment insurance, workers' compensation,

disability benefits and social security with respect to the Licensee or any person or entity referred to in subparagraph (A)(ii) of this paragraph.

27. NO DISCRIMINATION

27.1 Licensee shall not unlawfully discriminate against any employee, applicant for employment, or patron because of race, creed, color, national origin, age, sex, disability, marital status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act (“ADA”) and regulations pertaining thereto as applicable. Any violation of this Article 27 shall be a material breach of this License.

28. WAIVER OF COMPENSATION

28.1 Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained, except to the extent arising from the negligent or willful misconduct of the City, 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 discharge the Commissioner, the Commissioner's agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the aforementioned causes.

28.2 Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, or any other payment whatsoever, in the event this License is terminated by the Commissioner earlier 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.

29. INVESTIGATIONS

29.1 (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, 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 (5) 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 29.1(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 Commissioner or agency head may include but shall not exceed:

(i) The disqualification for a period not to exceed five (5) 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 29.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 29.1(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 Section 29.1(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 License 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.

30. NOTICE

30.1 Licensee shall prepare and provide to Parks operational status reports as reasonably requested by the Commissioner. In addition, Licensee shall immediately, or within twenty-four (24) hours of occurrence or notice thereof, report major and/or unusual incidents in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage, or theft which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the maintenance and repair of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

30.2 Licensee shall promptly notify Parks of any unusual conditions that may develop in the course of the operation of the Concession, including, but not limited to, fire, flood, casualty, and substantial damage of any character. Licensee shall also notify Parks to the extent it is aware of any such unusual conditions.

30.3 All notices from Licensee to Parks shall be in writing and delivered by mailing a copy of such notice by registered or certified mail, return receipt requested, to the Office of the Revenue Division, New York City Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065, or such other address as Parks may designate, with copies sent to Parks' General Counsel at the same address. All notices from Parks to Licensee

shall be dispatched in the same manner, and delivered to Licensee at Jeremy Adams, Public Theater, 425 Lafayette Street, New York, NY 10003, or such other address as may be notified from time to time.

31. PARKS' RIGHT TO TERMINATE

31.1 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, the Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation, or order. In the event that Licensee fails to respond in a reasonable manner to the Commissioner, substantially comply with such written notice, or commence, in good faith and with due diligence, efforts to comply with such order within the time frame set forth in said notice from the mailing thereof, subject to unavoidable delays beyond reasonable control of Licensee and notwithstanding any other provisions herein, then this License may 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, the Commissioner, by notice in writing, may revoke and terminate this License. Such revocation and termination shall be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three (3) 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 (60) days.

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

(d) Upon expiration or earlier termination of this License by the Commissioner, all rights of Licensee herein shall be forfeited without claim for loss, damages, refund of investment, or any other payment whatsoever against the Commissioner, Parks, or City.

(e) In the event the Commissioner terminates this License for reasons related to Sub-paragraphs (a) or (b) above, any property of Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the Concession during the balance of the Operating Season and may be held and used thereafter until all debts incurred by Licensee hereunder, at the time of termination of this License, are paid in full.

(f) Licensee agrees that upon the expiration or earlier termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the

City. Upon the expiration or earlier termination of this License, the City reserves the right to take immediate possession of the Licensed Premises.

(g) Licensee shall within thirty (30) days following the expiration or earlier termination of this License, remove all personal possessions from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or earlier termination of this License is intended to be abandoned. Licensee shall remain liable to the City for any damages, and the cost of removal or disposal of property, should all possessions fail to be removed from the Licensed Premises within thirty (30) days following the earlier expiration or date of termination of this License. All obligations of Licensee hereunder will remain in effect until the Licensed Premises are fully vacated and all property has been removed.

(h) If this License is terminated as provided herein, 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 therefore and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

32. RESPONSIBILITY FOR PROPERTY AFTER TERMINATION

32.1 Licensee shall be held responsible for the condition of all property belonging to the City upon the earlier termination or expiration of this License, ordinary wear and tear excepted. Upon such earlier termination or expiration, Licensee shall quit the Licensed Premises and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

33. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS

33.1 Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and invitees to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and the Licensee's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 *et seq.*, the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

34. REPRESENTATIONS, WARRANTIES, AND COVENANTS

34.1 Licensee makes the following representations and warranties:

(a) Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite and authority to execute, deliver, and perform this License.

(b) This Agreement has been duly authorized by all necessary corporate action on the part of Licensee, has been duly executed and delivered by Licensee, and assuming due execution and delivery by the City, constitutes a legal, valid, binding, and enforceable obligation of

Licensee.

(c) The execution and delivery of this License, and compliance with the provisions herein, do not and will not conflict with or constitute a violation of or default under Licensee's Certificate of Incorporation, by-laws, or any statute, indenture, mortgage, deed of trust, or other agreement or instrument to which Licensee is bound, or, to the knowledge of Licensee, any statute, order, rule, or regulation of any court, governmental agency or body having jurisdiction over Licensee or any of its activities or properties.

(d) Licensee has neither been asked to pay, offered to pay nor paid any illegal consideration, whether monetary or otherwise, in connection with the procurement of this License.

(e) Licensee has not employed any person to solicit or procure this License, and has not made and shall not make any payment of any commission, percentage, brokerage, contingent fee, or any other compensation in connection with the procurement of this License.

34.2 Licensee covenants and agrees that during the Term, it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

35. CONFLICT OF INTEREST

35.1 Licensee represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers 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 Parks, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership, or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

36. PROHIBITION AGAINST ASSIGNMENT

36.1 Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent or more of the shares of or interest in Licensee 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 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 ten percent or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law.

36.2 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 ten percent or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. 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.

36.3 No consent to or approval of any assignment or sublicense granted pursuant to this Article 36 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.

36.4 In addition to the foregoing requirements, Licensee shall immediately report to Parks any proposed change of five percent or more of the shares of or interest in Licensee when such change takes place.

37. FEDERAL EMPLOYER IDENTIFICATION NUMBER

37.1 Licensee represents that it is not in arrears to the City upon any debt, contract, or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of Licensee to receive public contracts. The Federal Employer Identification Number of Licensee is 13-3561657.

38. PARKS' RESERVATION OF RIGHTS AND INTERESTS

38.1 Public Events. The parties to this License will give each other timely written notice in advance of all press conferences, public ceremonies, or other public or planned news events relating to the subject of this License.

38.2 Public Communications. In any statement or release made to the public relating to the subject of this License, Licensee will conspicuously acknowledge the involvement of Parks. If the Commissioner finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Premises is incorrect or unacceptable, Licensee and the Commissioner agree in good faith to make such release, advertisement, or statement accurate and acceptable to both parties.

38.3 Subject to Parks' prior written approval, Licensee may conduct Licensee's Special Events or programs at the Licensed Premises. Licensee shall submit to Parks for approval all plans for any Licensee's Special Events or programs at the Licensed Premises that would require the portion of the Licensed Premises typically reserved for public food service to be closed to the public. In no event shall the Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events. All catered Licensee's Special Events must be primarily related to dining activities. All revenue generated through such Licensee's Special Events must be reported to Parks as Gross Receipts.

38.4 Parks reserves the right to use the Licensed Premises for events or programs sponsored or permitted by Parks ("Parks' Special Events"). Such use of the Licensed Premises shall be arranged by Parks upon consultation with Licensee and with reasonable advance notice to Licensee. Parks agrees to use its reasonable efforts to notify Licensee at least thirty (30) days in advance of any such event or program. It is expressly understood that this Article 38 shall in no way limit Parks' right to sponsor or promote events 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 event. Parks shall require such third parties to purchase insurance for said events, naming Licensee and Parks as Additional Insured parties and post a clean-up and restoration bond to ensure clean-up and restoration of the Licensed Premises.

39. WAIVER OF JURY TRIAL

39.1 Licensee hereby expressly waives all rights to trial by jury in any proceeding hereafter instituted by the City against Licensee or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants, or conditions of this License or the use and occupation of the Licensed Premises or any matter whatsoever in any way connected with this License, including, but not limited to, the relationship between the City and Licensee. The provision relating to waiver of jury trial shall survive the expiration or earlier termination of this License.

40. USE OF NAME

40.1 The parties will not use the name of the other party, its subsidiaries, or affiliates in any sales or marketing publication or advertisement without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld or delayed. This provision will survive any termination of this License.

41. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE

41.1 This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of Licensee and shall be governed by and construed in accordance with the laws of the State of New York. 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 ("Federal Courts") located in New York City 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 and intent, it is understood:

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

(b) With respect to any action arising out of this License between the City and Licensee in New York State Court, Licensee expressly waives and relinquishes any rights they might otherwise have to:

- (i) move to dismiss on grounds of forum non conveniens;
- (ii) remove to Federal Court; or,
- (iii) move for change of venue to a New York State Court outside New York County.

(c) With respect to any action arising out of this License between the City and Licensee in Federal Court located in New York City, 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.

(d) If Licensee commences any action arising out of this License against the City in a court located other than in the City and State of New York, upon request of the City, Licensee shall 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, 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.

42. CLAIM AGAINST OFFICERS OR EMPLOYEES

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

43. ALL LEGAL PROVISIONS DEEMED INCLUDED

44.1 It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that 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.

44. SEVERABILITY

45.1 If any provision(s) of this License is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

45. HEADINGS AND TABLE OF CONTENTS

46.1 The article headings and Table of Contents contained in this License are inserted for convenience only and shall not enlarge or limit the scope or meaning of the various and several articles hereof. Unless the context requires otherwise, words of any gender used in the License shall include the other gender and words in the singular number shall include the plural.

46. ENTIRE AGREEMENT

47.1 This License constitutes the entire agreement between the parties and cannot be changed, modified or terminated orally, but only by an instrument in writing executed by Commissioner and Licensee.

47. MODIFICATION

48.1 This License may be modified from time to time by notice in writing duly executed by both parties hereto, but no modification of this License shall be effective until the same has been agreed to in writing and duly executed by both parties.

48. JUDICIAL INTERPRETATION

49.1 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.

49. COUNTERPARTS

50.1 This License may be executed in counterparts, each of which shall be an original and all of which counterparts taken together shall constitute one and the same License.

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

CITY OF NEW YORK
PARKS & RECREATION

NEW YORK SHAKESPEARE FESTIVAL
d/b/a THE PUBLIC THEATER

By: _____

By: _____
Executive Director

Dated: _____

Dated: _____

By: _____
General Manager

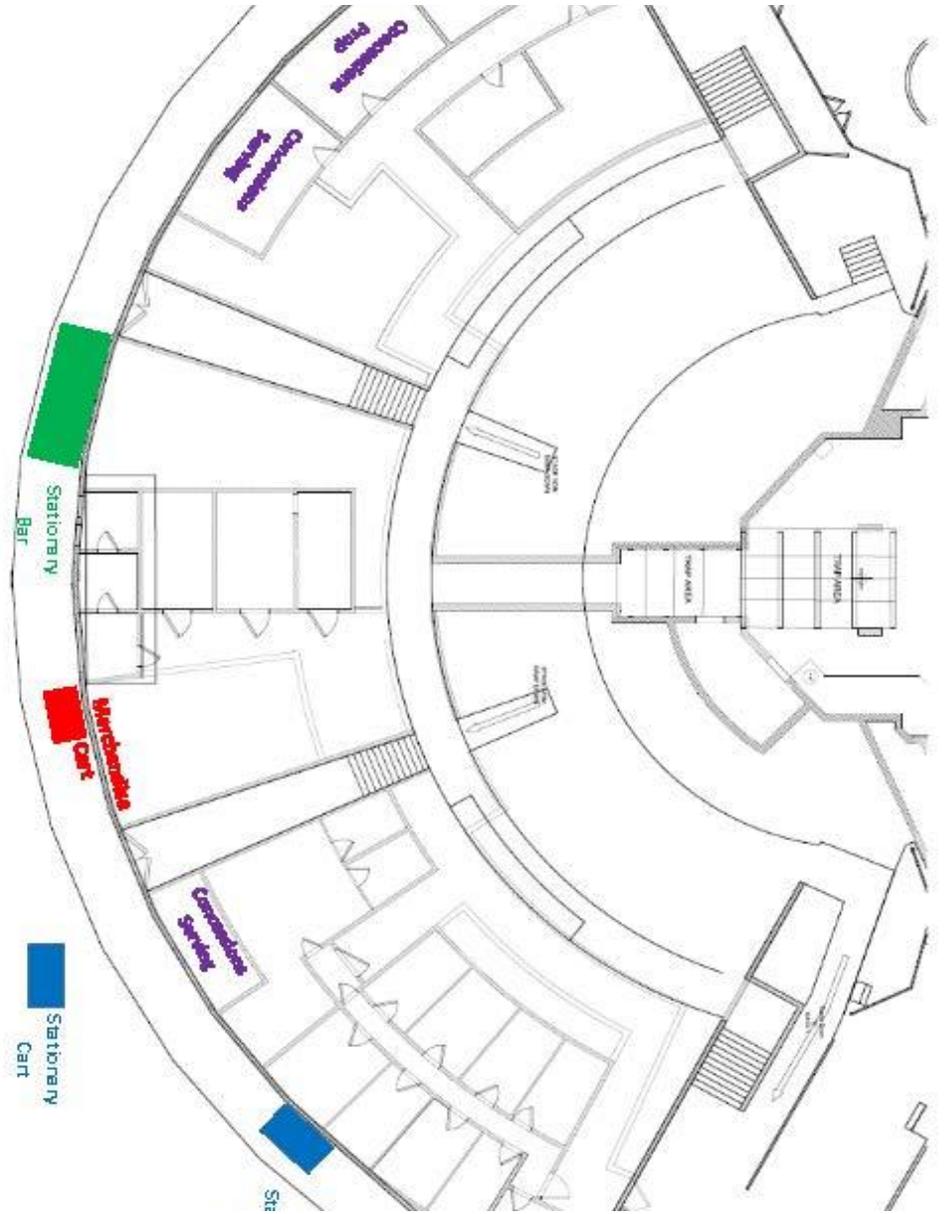
Dated: _____

APPROVED AS TO FORM:
Certified as to Legal Authority

Acting Corporation Counsel

Dated: _____

EXHIBIT A – THE LICENSED PREMISES



Delacorte Theatre Concessions Location

EXHIBIT B – SCHEDULE OF APPROVED ITEMS AND PRICES

To be provided by Parks to Licensee upon request or written Notice to Proceed

**EXHIBIT C – SECTION 8 OF THE MAINTENANCE AND OPERATIONS
AGREEMENT**

Section 8.MAINTENANCE and REPAIR

- (a.) During the Operating Season, the Public Theater shall maintain the Site in a good, clean and orderly condition (ordinary wear and tear excepted) and shall make all minor repairs necessary to keep the Site in good and safe condition. Such ongoing maintenance and repairs shall include, but not be limited to: (i) keeping the Site free from trash, litter and debris; and (ii) making all minor repairs to seating, stage and dressing areas necessary to keep the Theater in good and safe condition. At such times during Operating Season as the Site is under the control of the Department or its designees, the Department or its designee shall be responsible for the performance of the maintenance and repair work described hereinabove; however, the Public Theater may perform such maintenance and repair work at the request of the Department and shall be reimbursed by the Department for the reasonable costs of performing the work requested by the Department.
- (b.) During the Off-Season the Department or its designee shall be responsible for the continuing care of turf, trees, plants and landscaping adjacent to the Site.
- (c.) The Department or its designee will cooperate with the Public Theater in arranging for the removal of refuse collected by the Public Theater pursuant to subsection (a) hereinabove. Such refuse shall be neatly placed for sanitation pick-up at locations designated by the Department or its designee.
- (d.) The Department or its designee shall be responsible for all structural and other major reconstruction or renovation necessary to keep the Site in good and safe condition.
- (e.) All maintenance and repair efforts by the Public Theater are subject to the review and approval of the Commissioner or designated representative in consultation with the Central Park Conservancy (“CPC”), which approval shall not be unreasonably withheld.
- (f.) Licensee shall be responsible for performing any work on or at the Theater necessary to provide winterizing protection to the Site. In accordance with paragraph 4(c) herein, Licensee shall submit a schedule of such proposed work for DPR’s review. Such schedule shall be modified to accommodate DPR’s use in the Off-Season as provided in Section 4 herein.
- (g.) The parties understand that the Public Theater is planning to develop a five-year capital improvement and modernization plan, in cooperation with the City, acting through DPR, which will propose a project to be funded in partnership by the City and the Public Theater. The Public Theater anticipates a draft scope of such plan will be delivered to DPR by the end of 2014.

EXHIBIT D – PIP MANUAL

EXHIBIT E – STAFFING PLAN

To be provided by Parks to Licensee upon request or written Notice to Proceed

EXHIBIT F – SCHEDULE OF APPROVED HOURS

To be provided by Parks to Licensee upon request or written Notice to Proceed

EXHIBIT G - CERTIFICATION BY BROKER OR AGENT

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

All certificates of insurance (except certificates of insurance solely evidencing Workers' Compensation Insurance, Employer's Liability Insurance, and/or Disability Benefits Insurance) must be accompanied by one of the following:

- (1) the Certification by Insurance Broker or Agent on the following page setting forth the required information and signatures;

-- OR --

- (2) copies of all policies as certified by an authorized representative of the issuing insurance carrier that are referenced in such certificate of insurance. If any policy is not available at the time of submission, certified binders may be submitted until such time as the policy is available, at which time a certified copy of the policy shall be submitted.

EXHIBIT H – PROJECTED FIGURES FOR THE FIRST OPERATING SEASON

To be provided by Parks to Licensee upon request or written Notice to Proceed

EXHIBIT I – PAID SICK LEAVE LAW RIDER

Introduction and General Provisions

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

The Concessionaire agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Concessionaire further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire.

The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must

¹ Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSSL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSSL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSSL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

Records

An employer must retain records documenting its compliance with the PSSL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSSL.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSSL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSSL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSSL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

More Generous Policies and Other Legal Requirements

Nothing in the PSSL is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous sick time policy, or the obligation of an employer to comply with any contract, collective bargaining agreement, employment benefit plan or other agreement providing more generous sick time. The PSSL provides minimum requirements pertaining to sick time and does not preempt, limit or otherwise affect the applicability of any other law, regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.