

**LICENSE AGREEMENT**

**BETWEEN**

**BRYANT PARK CORPORATION**

**AND**

**CITY OF NEW YORK  
DEPARTMENT OF  
PARKS & RECREATION**

*for*

**THE OPERATION AND MAINTENANCE OF BRYANT PARK**

**MANHATTAN, NEW YORK**

**M 32, 36-O**

**DATED: \_\_\_\_\_, 2018**

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LICENSE AGREEMENT (this “License Agreement,” “Agreement” or “License”) made this \_\_\_ day of \_\_\_\_\_, 2018 between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 (Fax No. 212-360-3434), and Bryant Park Corporation (“Licensee “or “BPC”), formerly the Bryant Park Restoration Corporation, a New York not-for-profit corporation, whose address is 1065 Avenue of the Americas, Suite 2400, New York, NY 10018 (Fax No. (212) 719-3499).

**WHEREAS**, Parks has jurisdiction over parklands of the City and facilities therein pursuant to Section 533(a) of the City Charter and is charged with the duty to manage, maintain and operate City parks facilities; and

**WHEREAS**, Bryant Park located between 40<sup>th</sup> and 42<sup>nd</sup> Streets and Fifth and Sixth Avenues, in Manhattan, New York is a property under the jurisdiction of Parks; and

**WHEREAS**, pursuant to its Certificate of Incorporation, as amended, Licensee was formed in 1980 for the purpose of aiding and supplementing the activities of the City and the New York Public Library Astor, Lenox and Tilden Foundations with respect to the restoration, maintenance and utilization of Bryant Park (also referred to herein as the “Park,” “Licensed Premises” or “Premises” and are further denoted and described in Exhibit A attached hereto; the portion of the Park, Licensed Premises, or Premises enclosed by the broken red line on Exhibit A is referred to as the West Terrace; and

**WHEREAS**, the Bryant Park Management Corp. (“BPMC”) manages the Bryant Park Business Improvement District (“BID”), an area that includes the Licensed Premises, and by that certain Contract with the City of New York, Department of Small Business Services, dated as of July 1, 2017 (“SBS Contract”), BPMC agrees to provide supplemental sanitation, security, public programming, as well as capital improvements and maintenance thereof for the BID and BPMC provides funds to Licensee to fulfill its obligations under the SBS Contract regarding the Licensed Premises; and

**WHEREAS**, the City desires to encourage the participation of interested not-for-profit organizations in providing supplemental services, including maintenance, recreational and educational programs, for the benefit of the public; and

**WHEREAS**, Licensee and Parks have developed an effective public/private partnership through which Licensee, under the review and approval of the Commissioner, has undertaken substantial responsibility for public programming, specific maintenance, and capital improvements at the Park pursuant to that certain agreement dated as of July 29, 1985 between Parks and Licensee pursuant to which Licensee has operated and maintained the Park since that date; and

**WHEREAS**, at the time of BPC’s founding in 1980, the Park had suffered a severe decline in conditions and was substantially underused, caused by rampant crime and other social problems; and

**WHEREAS**, BPC was established to reverse the Park’s decline and transform the Park into a urban amenity to realize its potential to enhance the quality of life in the City; and

**WHEREAS**, beginning in 1988, BPC, working with the City, implemented a master plan for the Park, under which the Park’s infrastructure was overhauled, its monuments and landscaping were restored, and a restaurant pavilion, two newsstands (on the 42<sup>nd</sup> Street sidewalk bordering the Park) and four concessions kiosks were constructed; and

**WHEREAS**, with the reopening of the Park in April, 1992, BPC, in cooperation with the City, instituted a comprehensive program of activities in the Park, including high-level entertainment, educational and cultural events for people of all ages, to encourage use and enjoyment of the Park by the public while contributing to the cultural life of the City; and

**WHEREAS**, under BPC’s stewardship, the Park has been transformed into a world-class public space; and

**WHEREAS**, Licensee has made in excess of \$19 million in capital improvements to the Park; and

**WHEREAS**, Licensee is party to a lease agreement dated July 29, 1985, as amended, amongst the City and the New York Public Library (“the Terrace Agreement”) regarding the area depicted in Exhibit A as the West Terrace Demarcation; and

**WHEREAS**, the Terrace Agreement, as amended, provides that, pursuant to State alienation legislation as codified in the New York City Administrative Code Title 18, Section 18-128.2, Licensee be granted the right to enter into a lease to operate a restaurant or restaurants on the West Terrace and use the revenues from lease(s) for the benefit of the Park, which would include, but not be limited to, Licensee obligation under this License Agreement, Licensee’s administrative expenses, and Licensee’s Special Events and projects at the Park; and

**WHEREAS**, the Terrace Agreement is not a part of this Agreement, except that any revenues that Licensee receives pursuant to rights granted to Licensee from the Terrace Agreement, will be accounted for under this Agreement in order that all funds earned within the Licensed Premises are properly accounted for and used to benefit the Licensed Premises, and

**WHEREAS**, Parks desires to provide for the continued operation of food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks at the Park and the maintenance of the Park for the accommodation of and use by the public; and

**WHEREAS**, Licensee has extensive experience operating food concessions and special events, providing amenities and performing maintenance activities in the Park; and

**WHEREAS**, Licensee is willing to continue to perform responsibilities associated with maintaining and repairing the parkland comprising the Park for the benefit of the public, including the provision of programs, amenities and activities that will increase public interest in and awareness of the parkland; and

**WHEREAS**, the Franchise and Concession Review Committee (“FCRC”) authorized Parks to enter into a Sole Source License Agreement with Licensee for the operation of food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and

other visitor services and events authorized by Parks at the Park and for the revenue therefrom to be used exclusively for the maintenance and operation of the Park as set forth herein for the accommodation of and use by the public; and

**WHEREAS**, Licensee desires to operate food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks and maintain and operate the Park in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the operation of food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks at the Park and the maintenance and operation of the Park;

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

**1. GRANT OF LICENSE**

1.1 (a) Parks hereby grants to Licensee and Licensee hereby accepts from the Commissioner this License and the rights and obligations contained herein to operate and maintain the Licensed Premises for the use and enjoyment of the general public in accordance with the terms herein and to the reasonable satisfaction of the Commissioner.

(b) (1) Licensee is hereby authorized and agrees to provide food concessions approved by Parks (“Food Concessions”), from mobile food units, kiosks and/or booths, subject to the approval of Parks. Parks has heretofore approved five (5) food kiosks and three (3) mobile food carts in the Park. Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain Food Concessions in the Park.

(2) Licensee is hereby authorized to provide the following:

(i) Temporary or seasonal markets for food or other Parks appropriate items (e.g., holiday market, farmers’ market and food kiosks) for sale approved by Parks (“Temporary Markets”). Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain, Temporary Markets in the Park. Food Concessions and Temporary Markets may take the form of mobile food units, kiosks and/or booths. The design and placement of all Food Concessions and Temporary Markets are subject to Parks’ written approval;

(ii) Special Events (as defined in 56 RCNY Section 1-02) permitted by Parks at the Park. Subject to this Section 1 and Section 13, Licensee shall have the right to host its own Special Events, or contract with third parties to operate Special Events in the Park (together, “Licensee’s Special Event(s)”);

(iii) Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain newsstands located along the south side of West 42<sup>nd</sup> Street, west of Fifth Avenue, adjacent to the Park (“Newsstands”).

(iv) License shall have the right to operate and maintain, or to grant sublicense to a third party to operate and maintain a carousel in the Park (“Carousel”);

(v) Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain a seasonal ice rink and related amenities in the Park (“Seasonal Rink”);

(vi) Advertising (as set forth in this subdivision (vi) and as defined in Section 2): Licensee shall have the exclusive right to sell and display Advertising on the newsstands panels located along the south side of West 42<sup>nd</sup> Street, west of Fifth Avenue, adjacent to the Park (“the Newsstand Panels”), subject to the prohibitions contained in Section 10.12 (c), (d), and (e) and the following conditions: Advertising shall only be placed on the Newsstands Panels (or any replacement thereof) during the term of this License. No Advertising shall be placed on any fences, park furniture or free standing structures of any kind other than the Newsstands. In addition, notwithstanding the restriction that Advertising be contained in the Newsstands Panels and the prohibitions contained in Section 10.12 regarding signage, for Licensee’s Special Events in which a product or service is being promoted, temporary promotional signage may be permitted in the Licensed Premises for the duration of the applicable Licensee’s Special Event, subject to approval by Parks of such Licensee’s Special Event and the relevant signage.

(c) (i) Licensee may sublicense portions of the Park (the “Sublicensed Premises”) for the operation of Food Concessions or Temporary Markets, a carousel, newsstands, an ice-skating rink and other visitor services and events authorized by Parks to sublicensees approved in advance in writing by Parks (the “Sublicensees”). The terms and conditions of any such sublicense (“Sublicenses”) shall be subject to the prior written approval of Parks. Any Sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation of any Sublicense shall be equally applicable to any Sublicensee except as may be otherwise expressly noted in this Agreement. Licensee shall require any Sublicensee to agree in writing that it will comply with Parks’ directives and the provisions of this License applicable to Licensee and shall be responsible for assuring such compliance. If any Sublicensee does not comply with this License insofar as applicable to it, such Sublicensee’s operations shall be terminated by Licensee upon direction of Parks. No Sublicense may be assigned without the prior written consent of Parks.

(ii) In selecting a Sublicensee, Licensee shall comply with the written procedures, established by the Licensee and approved by Parks, for soliciting requests for proposals (“RFP”) from qualified proposers and for selecting a qualified proposer with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee in accordance with Parks’ usual procedures and

requirements and subject to Parks' approval. Parks' disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check.

(iii) Licensee has granted a sublicense to JAGR BRYANT PARK LLC d/b/a Joe Coffee, a New York limited liability company, to operate a Food Concession using the food kiosk at the Park under the name Joe Coffee pursuant to a License Agreement dated as of April 17, 2017. Parks hereby approves such Food Concession.

(iv) Licensee has granted a sublicense to BREAD OF BRYANT PARK, LLC, a New York limited liability company to operate a Food Concession using the food kiosk at the Park under the name Breads Bakery pursuant to a License Agreement dated as of March 26, 2015. Parks hereby approves such Food Concession.

(v) Licensee has granted a sublicense to Belgo BRO LLC, a New York limited liability corporation, to operate a Food Concession using the food kiosk at the Park under the name Wafels and Dinges pursuant to a License Agreement dated as of March 27, 2015. Parks hereby approves such Food Concession.

(vi) Licensee has granted a sublicense to Bryant Park Southwest LLC, a Delaware limited liability corporation, to operate a Food Concession using the food kiosk at the Park under the name Southwest Porch pursuant to a License Agreement dated as of March 27, 2015. Parks hereby approves such Food Concession.

(vii) Licensee has granted a sublicense to LPQ WEST 40TH ST., INC., a Delaware limited liability corporation, to operate a Food Concession using the food kiosk at the Park under the name Le Pain Quotidien pursuant to a License Agreement dated as of March 18, 2015. Parks hereby approves such Food Concession.

(viii) Licensee has granted a sublicense to MOVE SYSTEMS INTERNATIONAL, LLC, a Delaware limited liability corporation, to operate three (3) mobile food carts at the perimeter sidewalks adjacent to Park pursuant to a License Agreement dated as of June 19, 2017. Parks hereby approves such Food Concession.

(ix) Licensee has granted a sublicense to URBAN SPACE HOLDINGS, INC., to operate a Temporary Market at the Park under the name Holiday Shops pursuant to a License Agreement dated as of April 16, 2016. Parks hereby approves such Temporary Market concession.

(x) Licensee has granted a sublicense to RINK MANAGEMENT SERVICES CORPORATION, a Virginia Corporation, to operate a seasonal skating rink at the Park ("Park Rink") and to provide a concession for skate rentals and supplies, dated August 9, 2016. Parks hereby approves such concession

(xi) Licensee has granted a sublicense to HUDSON YARDS SPORTS & ENTERTAINMENT LLC., D/B/A Union Square Events, a New York limited liability company, to operate food, beverage, and event concessions as part of the seasonal Park Rink, dated May 31, 2016. Parks hereby approves such concession.

(xii) Licensee has granted a sublicense to Zashim Uddin, to operate two newsstands located along the south side of West 42<sup>nd</sup> Street, west of Fifth Avenue, adjacent to the Park, dated July 14, 2014. Parks hereby approves such concession.

(d) Licensee may operate the Licensed Premises for Licensee's Special Events. All Licensee's Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner's designee, which approval shall not be unreasonably withheld. Licensee shall give the Commissioner at least twenty-one (21) days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee's Special Event. Licensee's Special Events may not restrict public access to the Licensed Premises without Parks' prior written consent. Licensee's Special Events shall not require a sublicense, but the sponsor or host of the event must enter into an agreement with Licensee that is acceptable to Parks before the commencement of load-in for such Licensee's Special Event.

(e) Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or other entities as may be required for any music or music programming during its programming.

(f) All Gross Receipts (as hereinafter defined) received by Licensee from any Advertising, Sponsorships (as defined below), Restaurant Leases (as defined below) and from any of Licensee's Special Events, or the operation of, or the Sublicense of any Food Concessions, Temporary Markets, carousel, newsstands, ice-skating rink and other visitor services and events authorized by Parks shall be accounted for within the general ledger accounts of Licensee in a clearly identifiable manner and will be used by Licensee exclusively to pay Expenses (as hereinafter defined). Any Excess Revenues (as hereinafter defined in Section 2.1(f)) for any Fiscal Year and any disbursements therefrom shall be accounted for by Licensee in the general ledger accounts referenced above in a clearly identifiable manner, and any Excess Revenues shall be used exclusively to pay: i) accumulated Expenses incurred in the prior Fiscal Year that exceed Gross Receipts for that Fiscal Year; or ii) Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in Section 4.1(c).

(g) (i) Subject to the approval of the Commissioner, Licensee, as part of its mission and in connection with Licensee's Special Events, may provide free services and programming open to the public in the Licensed Premises, including, without limitation, horticulture, education, athletics, maintenance, tours, food, products, programs, and concerts. All the events and programs listed on Exhibit B are approved. Licensee may make non-substantive changes to the Exhibit B without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee that it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in advance in writing by Parks. To the extent Licensee has, prior to March 1 of any year of the Term, set the schedule of the Licensee's Special Events for the balance of that year, then Licensee agrees to provide Parks with any update or change to Exhibit B for that year no later than March 1 of that year. The foregoing shall not restrict Licensee's right to update or change Exhibit B after March 1.

(ii) All aspects of Licensee's Special Events shall comply with the Parks Department Rules and Regulations, including, but not limited to obtaining Parks permits where applicable. Licensee is responsible for securing any/all ancillary permits required as they pertain to outside agency regulations. These may include, but not be limited to NYPD Amplified Sound permits, Department of Buildings' structural or temporary place of assembly permits, Department of Health permits and Fire Department permits. 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), the Administrative Code of the City of New York, §24-et seq., and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises 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. A cabaret license will be strictly prohibited at the Licensed Premises.

(h) No Advertising is permitted in the Licensed Premises, except for the Advertising on the Newsstands Panels.

(i) All menus, merchandise, and other services (items and prices), which are attached hereto as Exhibit C are approved by Parks. Licensee may make non-substantive change to the Exhibit C without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in advance in writing by Parks. Licensee may increase any previously approved price by up to 3% a year by submission of written notice to Parks. Unless Parks objects, within twenty (20) days after receipt of written notice from Licensee, the increase is approved. However, if Parks objects then the parties will negotiate in good faith to resolve the dispute during which time the increase will not go into effect. In addition, Licensee may increase any previously approved price by more than 3% per year subject to Parks' prior written approval. If any changes are made to Exhibit C, Licensee shall update Exhibit C accordingly and promptly provide a revised Exhibit C to Parks.

(j) All Sponsorships and acknowledgment of Sponsorships, which are attached hereto as Exhibit D are approved by Parks. Licensee may make non-substantive changes to the Exhibit D without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee that it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in writing by Parks. If any changes are made to Exhibit D, Licensee shall update Exhibit D accordingly and promptly provide a revised Exhibit D to Parks.

(k) All hours of operation of Licensee and any Sublicensee, which are attached hereto as Exhibit E are approved by Parks. Licensee may make non-substantive change to the Exhibit E without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days

after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in writing by Parks. If any changes are made to Exhibit E, Licensee shall update Exhibit E accordingly and promptly provide a revised Exhibit E to Parks.

(l) Parks must approve in writing all prices for goods or services, or activities authorized in this Section 1.1.

1.2 All menus, merchandise, and other services for Sublicensees or Licensee's operations must be approved in advance in writing by Parks, other than what has already been approved pursuant to Section 1.1 (i) and Exhibit C . Licensee, if it is selling food to the public, and any Sublicensee, shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by Licensee or any Sublicensee, as applicable, to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene ("DOHMH") permits. A person may operate a Food Concession only if it has obtained the permits and authorizations required by DOHMH. At all times that a Food Concession is operating, a staff person with a valid DOHMH food handler's license must be present. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

1.3 The operation of a mobile food unit in the Park shall require a DOHMH Vendor License for each person designated as an operator of a mobile food unit and a DOHMH Mobile Food Vending Unit Permit for each mobile food unit. All persons designated as mobile food unit operators must have a valid DOHMH Vendor License in order to operate. All mobile food units must pass a DOHMH inspection in order to receive a DOHMH Mobile Food Vending Unit Permit. All mobile food units operating under this Agreement or a Sublicense must first pass a DOHMH inspection. Licensee or any Food Sublicensee, as applicable, must submit to Parks a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit before the operation of a mobile food unit can commence. Licensee or any Sublicensee, as applicable, must provide Parks with documentation that it has been issued a valid DOHMH Vendor License and DOHMH Mobile Food Vending Unit Permit for each mobile food unit. If Licensee or any Sublicensee operates a mobile food unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Parks will instruct the operator thereof to cease operations and such operator will be subject to fines. When warranted, Officers of the Parks Enforcement Police, New York City Police Department, FDNY and DOHMH may confiscate the mobile food units, including goods. In the case of any third-party not operating under Licensee's auspices or as otherwise authorized to operate pursuant to Federal, State, or City law, Parks will take reasonable steps to instruct the operator thereof to cease operations and such operator will be subject to fines.

1.4 The design, dimensions, and placement of any mobile food unit operating in the Park is subject to Parks' prior written approval.

1.5 It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee or to any Sublicensee pursuant to this License Agreement, but that, during the Term of this License, Licensee and any Sublicensee shall have the use of the Licensed Premises for the purposes herein provided. Notwithstanding the foregoing, the parties acknowledge and agree that the West Terrace and the improvements thereon are leased to Licensee pursuant to the Terrace Agreement and are not licensed to Licensee pursuant to this Agreement. However, the parties further agree that Licensee's operations and activities on the West Terrace are subject to the terms and provisions of this License Agreement for so long as this License Agreement is in full force and effect, but the operations and activities of Restaurant Lessee (as defined below) on the West Terrace and the improvements operated by Restaurant Lessee on the West Terrace are not subject to the terms and provisions of this License Agreement, notwithstanding anything to the contrary contained in this License Agreement, except Licensee shall comply with Section 4.1(b) as it relates to Restaurant Lessee for so long as this License Agreement is in full force and effect. Similarly, Restaurant Lessee is not a Sublicensee, the Restaurant Lease is not a Food Concession, and no other food or beverage operation conducted by Restaurant Lessee on the West Terrace shall constitute a Food Concession under this License Agreement.

1.6 Licensee shall, and shall cause any Sublicensee to, provide at all times full and free access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction for inspection purposes and to ensure Parks' satisfaction with Licensee's and any Sublicensee's compliance with the terms of this License or any sublicense.

1.7 (a) Licensee may enter into Sponsorships with a Sponsor, and may install Sponsorship Recognition for such Sponsor, all subject to the prior written approval of Parks, including, but not limited to, approval over the size, quantity and location of Sponsorship Recognition and other forms of recognition and subject to applicable laws, rules and regulations Licensee may submit to Parks for its approval proposed plans or mock-ups for Sponsorship Recognition, and if Parks approves any such proposed plans or mock-ups, then Licensee shall be entitled to use Sponsorship Recognition without any further approval of Parks so long as such Sponsorship Recognition is not materially different from the proposed plans or mock-ups theretofore approved by Parks, or from Exhibit D. In recognition of the commercial exigencies of product promotions, Licensee shall submit to Parks for its approval Sponsorship Recognition or related plans or mock-ups promptly after any of the foregoing is available, and Parks shall endeavor in good faith to review any submissions and respond with its approval or comments as expeditiously as practical, notwithstanding anything to the contrary contained in Section 12.3 or elsewhere in this Agreement.

(b) (i) Except as set forth in subparagraph (ii) below, all intellectual property rights in the Park name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Park and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on behalf of the City, or (ii) in the case of trademarks, used by the City in commerce, unless Licensee is a prior user of any trademark in commerce, are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-

profit activities , Licensee shall obtain the prior written permission and approval from Parks for such use. If Parks permits Licensee to use the City IP for non-commercial purposes, such use will be non-exclusive, royalty-free, world-wide, non-transferrable and non-sublicensable and any revenue generated by Licensee therefrom will be for not-for-profit purposes and will be used by Licensee only in support of the Park. To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require the prior, written agreement of Parks, on terms to be agreed by the parties, and any revenue derived by Licensee shall be used exclusively to benefit the Park. Upon Parks' request, Licensee shall provide Parks with an accounting reasonably satisfactory to Parks of revenue derived from and expenditures made from any use of City IP. To the extent that prior permission and approval of Parks has already been obtained to use City IP (whether for non-commercial or commercial purposes, as the case may be), it is hereby continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (i). Nothing in this subparagraph (i) prohibits Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from using the words "Bryant Park" as part of the business address thereof or in the ordinary course of business thereof, and nothing in this subparagraph (i) requires Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from obtaining permission from Parks to use the words "Bryant Park" as provided in this sentence; provided, however, that Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee specifically acknowledge that the Bryant Park name or words as described in this subparagraph (i) are included within the definition of City IP and no permitted use by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall result in any ownership interest, title or other right on the part of Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee in such words or name, and further provided that any permitted use of such City IP by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall immediately terminate when such person ceases to operate in the Park.

(ii) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("Licensee Specific IP") are the property of Licensee: such intellectual property (1) was created by or on behalf of Licensee, any Sublicensee, their respective employees, contractors, or others, other than at the specific direction of the City or Parks, and (2) includes no City IP (as defined in subparagraph (i) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee's activities, as shall Licensee's ability to use any City IP that is incorporated into Licensee Specific IP with the City's permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this License Agreement exclusively in connection with Licensee's activities, but such restriction shall terminate on the expiration or termination of this License Agreement. Licensee hereby grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise

sales, licensing or other use intended to or which does generate revenue) without the prior written approval of Licensee.

(iii) All goodwill associated with the City IP or the Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names, and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor the Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner which could be inconsistent with or damaging to the owner's name and reputation. Either party shall have the right to terminate this Agreement, upon written notice, in the event that any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. In the event that any of the City IP or Licensee Specific IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, prior to exercising the right of termination provided for in this paragraph, shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(A) During the Term of this License Agreement, each party may make only the uses described in subparagraphs (i) and (ii) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City, nor Licensee shall acquire any rights in the Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(B) The parties will not use the name or logos 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, conditioned, or delayed.

(C) All provisions of this section will survive any expiration or termination of this License Agreement, except as otherwise set forth in this section.

1.8 In addition to the requirements of Sections 1.1(d) and (g) above concerning Licensee's Special Events, Licensee and any Sublicensee, as applicable, must obtain a Parks permit for any Special Event attended by over twenty (20) people or any Special Event pursuant to which Licensee derives or retains revenues through fees or other charges. The Licensee shall use reasonable effort to provide Parks with no less than thirty (21) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed Special Event.

## 2. DEFINITIONS

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

(a) “Advertising” shall mean any words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information for the sale or the use of a product or service.

(b) “Alteration” shall mean (excepting ordinary repair and maintenance) (i) any restoration, rehabilitation, modification, renovation, or improvement to the Licensed Premises; (ii) any work or construction which would or might affect in any manner or have any impact whatsoever upon the character, appearance, or design of any portion of the Licensed Premises or its adjacent areas; (iii) any work affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the Licensed Premises or any major component of such systems; (iv) affixing or installing any equipment to any area of the Licensed Premises; (v) any seasonal landscaping that constitutes a significant departure from landscaping previously done by Licensee. The following do not constitute an Alteration: (A) landscaping that does not involve the installation, replacement, modification or relocation of Fixed and Additional Fixed Equipment and that is similar to landscaping previously done by Licensee, including, without limitation, planting, maintaining and removing grass, trees, flowers, beds or shrubbery, (B) installation of Expendable Equipment, (C) repair and maintenance of Expendable Equipment or Fixed and Additional Fixed Equipment, including painting any such equipment, and (D) replacement of Fixed and Additional Equipment in kind.

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

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

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

(f) “Excess Revenues” means, for any Fiscal Year, the positive difference, if any, between Licensee’s Gross Receipts for such Fiscal Year and Expenses for such Fiscal Year.

(g) “Expendable Equipment” or “Personal Equipment” shall mean all equipment and property, other than Fixed and Additional Fixed Equipment.

(h) “Expenses” means all costs incurred by Licensee in operating, repairing, maintaining and managing the Park and in performing Licensee obligations and providing services required or permitted by this Agreement, including sanitation, security, programming, Licensee’s Special Events and horticulture, performing Alterations, Minor Alterations, installing Additional Fixed Equipment and Expendable Equipment, and performing other work that does not constitute an Alteration, as well as any overhead and administrative costs solely incurred in

providing those services. Such costs include, but are not limited to, personnel costs, third-party contract costs, cost of debt service related to Capital Improvement for the Licensed Premises financed by Licensee, insurance, costs of supplies and depreciation of Capital Improvements, Fixed and Additional Fixed Equipment and Expendable Equipment, if the foregoing have been installed by Licensee. The personnel whose cost is included as an Expense includes those persons performing services at the Licensed Premises, such as sanitation and security, horticultural, programming and Licensee's Special Events, as well as those persons responsible for the supervision of the Park and responsible for supervision of persons performing the aforementioned services. The categories and amount of expenses, including the salaries of administrators, managers and supervisors, for each Fiscal Year shall be consistent with the line items set forth in the Annual Operating Budget and Operating Plan for such Fiscal Year to be submitted by Licensee to the Commissioner for review and approval pursuant to clause (iv) of Section 4.1(f) and will only cover any salary related to work performed in or on behalf of the Premises. Expenses shall exclude the salary of the President of Licensee or any successor title and the costs and expenses attributable to Licensee's charitable fund-raising staff.

(i) "Fiscal Year" shall mean the period beginning each July 1 during the Term and ending June 30 of the following calendar year.

(j) "Fixed Equipment" shall mean any property affixed in any way to the Licensed Premises at the time notice to proceed is given, whether or not removal of said equipment would damage Licensed Premises. Fixed Equipment includes, without limitation, walls, structures, monuments, light poles, paving stones and concrete and similar ground surfaces, benches affixed to the ground, chairs affixed to the ground, fences and gates affixed to the ground, and the Public Restrooms, as defined below.

(i) "Additional Fixed Equipment" shall mean property affixed to the Licensed Premises subsequent to the date notice to proceed is given. Additional Fixed Equipment may include, without limitation, walls, structures, light poles, paving stones and concrete and similar ground surfaces, benches affixed to the ground, chairs affixed to the ground, and fences and gates affixed to the ground.

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

(k) (i) "Gross Receipts" shall include without limitation all funds or other consideration received by Licensee and any Sublicensee, without deduction or set-off of any kind, from Advertising, Sponsorship (as defined below), Restaurant Leases (as defined below) and from any of Licensee's Special Events, or from the sale of food and beverages, wares, merchandise or services of any kind from any Sublicensee, or operation by Licensee of any Food Concessions, Temporary Markets, carousel, newsstands, ice-skating rink and other visitor services and events authorized by Parks, 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 or any Sublicensee. 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 any Sublicensee for services to be rendered or orders taken at the Licensed

Premises for services to be rendered by Licensee or any Sublicensee outside thereof. For example, if Licensee or any Sublicensee 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 also include receipts from all Sponsors, whether in cash or as discounts against the purchase price of materials, equipment or commodities. Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized Sublicense or subcontract agreement, as provided in Section 1.1(c), provided that Gross Receipts shall also include Licensee's income from rental and sublicense or subcontracting fees and commissions received by Licensee in connection with all services provided by Licensee's subcontractors or Sublicensees. Gross Receipts shall also include all fees and other consideration received by Licensee in connection with Licensee's Special Events.

(iii) 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 received by Licensee or any Sublicensee from all sources from the operation of the Food Concessions, Temporary Markets, Licensee's Special Events, the carousel, newsstands (including any funds received from Advertising on the Newstands), the ice-skating rink, and other visitor services and events authorized by Parks shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee or any Sublicensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iii):

(A) With respect to non-catered food and beverage service, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's or any Food Sublicensee's customer, or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee or any Food Sublicensee receives and pays over in total to its employees (other than management) 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 who are paid a cash wage as a "food service worker" pursuant to NY Labor Law §652(4). Licensee and any Food Sublicensee 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 or any Food Sublicensee, as applicable. "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 or any Food Sublicensee's customer, (ii) is specifically designated as a gratuity, or

purports to be a gratuity, and (iii) is paid over by Licensee or any Food Sublicensee 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 or any Food Sublicensee (as applicable) 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 or any Food Sublicensee (as applicable). "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(C) Gross Receipts shall include without limitation all funds or other consideration received by Licensee from any lessee under (i) the lease granted to ARK BRYANT PARK CORP., a New York Corporation ("Restaurant Lessee"), dated August 1, 1993, as amended ("Grill Lease"), or (ii) the lease granted to Restaurant Lessee, as authorized in the Grill Lease, dated February 18, 2005, as amended ("Café Lease")<sup>1</sup> or any successor leases to the Grill Lease or the Café Lease, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Grill Lease and the Café Lease, 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 regarding the Grill Lease or the Café Lease (collectively, and as may be amended, extended, supplemented or restated from time to time, the "Restaurant Leases;" the term "Restaurant Leases" also includes any other lease for a restaurant on any portion of the West Terrace entered into by Licensee after the date hereof and authorized by the Terrace Agreement; and the term "Restaurant Lessee" also includes any lessee under any such other Restaurant Lease).

(l) "Licensed Premises" or "Premises" shall have the meaning as ascribed to them in the preamble to this Agreement and shall include the structures, as well as any improvements constructed thereon, including the Public Restroom, all walkways, curbs, trees, and landscaping.

(m) "Licensee's Gross Receipts" shall mean the Gross Receipts received by Licensee, ~~and but~~ expressly excluding Gross Receipts received only by any Sublicensee

(n) "Minor Alterations" shall mean the following, provided the work does not have an estimated cost of two hundred fifty thousand dollars (\$250,000), or greater,:

(i) Below ground modifications, alterations, or maintenance of utility lines servicing the Premises as may reasonably be necessary for the operations thereof (provided that there is no permanent, or longer than six (6) month change to any above ground feature at Premises, and the work does not last more than six (6) months).

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<sup>1</sup> Both the Grill Lease and Café Lease are authorized by the Terrace Agreement.

(ii) In-kind improvements to exterior of any kiosks in the Premises, or interior improvements to such kiosks, including, but not limited to heating, air conditioning, ventilation, electrical service, water service, or utility relocation.

(iii) In-kind improvements to the interior of the Public Restroom, including, but not limited to the ceiling, appliances and fixtures, lighting and in-kind improvements to the waiting area outside of the Public Restroom.

(iv) Painting and general refurbishment of the perimeter fence of the Premises and any other metal elements within the Premises, but excluding any monuments or works of art.

(v) Cleaning, pointing, in-kind stone replacement and other related work associated with the perimeter wall for the Premises upon which the iron fence is situated.

(vi) Maintenance of bronze torchieres at the stairs of the perimeter of the Premises.

(vii) On-going maintenance of bluestone, granite, and brick pavers throughout the Premises.

(viii) Maintenance and in-kind repair of stone elements, including, but not limited to the balustrades, stone benches, and inscribed commemorative pavers.

(ix) Maintenance and in-kind repair of two (2) newsstands on south side of 42<sup>nd</sup> Street at the perimeter of the Premises, including the Advertising panels attached to the newsstands.

(x) Maintenance and in-kind repair of drinking fountains and maintenance of Lowell architectural fountain.

(xi) Maintenance and repair of wayfinding signs and plaques within the Premises.

(xii) Painting, staining, and other similar methods of preservation of wood elements within the Premises, including, but not limited to trellises, pergolas, doors, and gates.

(o) “Public Restrooms” shall mean the restroom indicated on Exhibit A.

(p) “Sponsor” shall mean a person contributing money to Licensee in exchange for acknowledgment of its contribution.

(q) “Sponsorship or “Sponsorships” shall mean an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of operating and maintaining the Park, a Licensee’s Special Event or other program within the Park, the person contributing such payment or payments is acknowledged by Licensee for such contribution.

(r) “Sponsorship Recognition” shall mean a sign, graphic or other display that recognizes the financial contribution of the Sponsor identified therein to Licensee, the Park, a Licensee’s Special Event or other program at the Park.

(s) “Sublicensee’s Gross Receipts” shall mean the Gross Receipts received only by ~~of~~ any Sublicensee, but not received by ~~and expressly excluding the Gross Receipts of~~ Licensee.

### **3. TERM OF LICENSE**

3.1 This License shall become effective upon Parks giving written notice to proceed to Licensee (“Commencement Date”) and, unless terminated sooner in accordance with this License Agreement, shall terminate ten years from the Commencement Date or on the last day of any subsequent renewal periods that are exercised pursuant to this License (“Termination Date” or “Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the “Term.” The parties hereto, by mutual agreement, shall have the option to renew this License for up to two (2) additional five-year periods. Each such option must be exercised by either party at least 12 months before what would otherwise be the Termination Date. If either party timely exercises a renewal option, the other party shall use best efforts to respond to such exercise by written notice given within thirty (30) days of such exercise, which notice shall state whether the other party accepts or rejects such exercise or requests additional time to make a decision.

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

3.3 Parks may terminate this License for cause as follows:

(a) Should Licensee or any Sublicensee 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 this License, such Sublicensee or the Licensed Premises, the Commissioner shall in writing order Licensee to remedy such breach or failure. If Licensee fails to remedy such breach or failure within thirty (30) days following the mailing or other transmission of such written order, then the Commissioner shall have the right to terminate this Agreement. Notwithstanding

the foregoing, if such breach or failure cannot be remedied within such thirty (30) day period given the nature and scope of such breach or failure or due to reasons beyond Licensee's control, as reasonably determined by Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's reasonable judgment to cure such breach. If such breach or failure arises from the acts or omissions of a Sublicensee, as reasonably determined by Commissioner, the cure period shall be reasonably extended by Commissioner beyond such thirty (30) days (not to exceed an additional 30 days) to give Licensee time to induce such Sublicensee to comply with such breach or failure or, if such Sublicensee fails to remedy such breach or failure in a timely manner, for Licensee to terminate the applicable Sublicensee and regain possession of the Sublicensed Premises. If a breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing or other transmission thereof.

(b) The following shall constitute events of default for which this License may be terminated on one day's notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors by Licensee; 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 this License; and the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

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

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

3.6 Licensee shall, on or prior to the date that is fifteen (15) days following the expiration or sooner termination of this License (the fifteen (15) day period beginning on the expiration or sooner termination of this License being the "Removal Period," and the last day of the Removal Period being the "Removal Deadline"), remove from the Licensed Premises and shall cause any Sublicensee to remove, all Personal Equipment, all Capital Improvements and Alterations or Minor Alterations that are not Additional Fixed Equipment, and Additional Fixed Equipment to which the City has not taken title pursuant to Section 7.2(a) and Section 8.3 (such equipment being "Removal Equipment"). Licensee acknowledges that any Removal Equipment remaining on the Licensed Premises after the Removal Deadline shall be deemed to be abandoned. Licensee shall remain liable to the City for the cost of removal or disposal of Removal Equipment, should Licensee fail to remove all

Removal Equipment from the Licensed Premises by the Removal Deadline. During the Removal Period, Licensee shall have the right to enter the Licensed Premises to remove any Removal Equipment, provided that Licensee shall maintain the insurance required by Article 20 hereof during the Removal Period and shall indemnify, defend and hold the City and its officials harmless against and all claims and demands of third parties for injury, including death, or property damage, arising out of any such entry and removal, and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements), arising from any such claims and demands. In addition, if the removal of Removal Equipment results in damage to the Park and Licensee or such Sublicensee fails to repair such damage to the Commissioner's reasonable satisfaction and upon such deadline as reasonably determined by the Commissioner, then Licensee shall be responsible for the cost of such repair which shall be promptly paid to Parks upon Parks' written demand to Licensee (the cost of such removal and the cost of such repair being collectively, "Removal Costs").

3.7 In addition to Removal Costs, Licensee shall be liable to Parks for the following damages if Parks terminates this Agreement pursuant to Section 3.3: (i) if Parks terminates this Agreement pursuant to Section 3.3 on account of the failure of Licensee to comply with Licensee's maintenance obligations under this Agreement, the reasonable costs borne by Parks to perform the specific maintenance obligations that Licensee failed to perform in accordance with this Agreement, and (ii) if at the time of any such termination, Licensee commenced an Alteration or Minor Alteration and fails to complete such Alteration or Minor Alteration, Licensee shall be liable for the cost to complete such Alteration or Minor Alteration which shall be promptly paid to Parks upon Parks' written demand to Licensee; provided, however, that unless the performance by Licensee of such Alteration or Minor Alteration was the basis for Parks terminating this Agreement pursuant to Section 3.3, at the parties' mutual election Licensee shall have the right to complete such Alteration or Minor Alteration at Licensee's expense and the termination of this Agreement on account thereof shall be suspended until such Alteration or Minor Alteration is completed to the extent necessary for the purposes of completing such Alteration or Minor Alteration. During such time, the Insurance and Indemnification requirements of this Agreement shall remain in force. Except for Removal Costs and such other damages and other sums as are set forth in Sections 3.6 and 3.7, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.3. Except for Removal Costs, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.2.

3.8 If this License is terminated as provided in Section 3.2 or 3.3 hereof, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises without being liable to indictment, prosecution or damages therefor and may dispossess Licensee and any Sublicensee by summary proceedings or other legal means.

3.9 Except as otherwise provided in Section 3.7, if this License is terminated as provided in Section 3.3 hereof, Parks may complete all repair, maintenance and construction work required to be performed by Licensee or any Sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable, which will not be at Licensee's expense, and Parks may relicense the Licensed

Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

3.10 No receipt of moneys by Parks from Licensee or any Sublicensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee or any Sublicensee, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy.

3.11 In the event this License Agreement is terminated, Parks will not reimburse Licensee's or any Sublicensee's unamortized capital improvement cost.

#### **4. FINANCIAL RECORDS AND REPORTS**

4.1 (a) On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Licensee's Gross Receipts, signed and verified by an officer of Licensee, reporting any Licensee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Licensee's Gross Receipts shall survive the termination of this License. Licensee shall indicate on its statement of Licensee's Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(b) On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement, from each Sublicensee and each Restaurant Lessee, of such Sublicensee's or Restaurant Lessee's Gross Receipts, signed and verified by an officer of such Sublicensee, or Restaurant Lessee, reporting such Sublicensee's or Restaurant Lessee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Sublicensee's or Restaurant Lessee's Gross Receipts shall survive the termination of this License. Each such Sublicensee or Restaurant Lessee shall indicate on its statement of Sublicensee's or Restaurant Lessee's Gross Receipts whether or not such Sublicensee's or Restaurant Lessee's Gross Receipts are inclusive of sales tax collected. Notwithstanding anything to the contrary in the foregoing, the statement of Gross Receipt for any Sublicensee or Restaurant Lessee may be for its fiscal or operating year rather than the Fiscal Year.

(c) Within one hundred twenty (120) days after the end of each Fiscal Year, Licensee shall submit detailed income and expense statements for itself for operating the Park during the preceding Fiscal Year. Such statements shall be in sufficient detail to show that Licensee is in full compliance with Section 1.1(f) hereof. Such report must contain a certification from Licensee's Chief Financial Officer certifying that all of Licensee's Gross Receipts, including any Excess Revenues, to the extent expended, were applied solely to pay Expenses, or remain available to pay for future Expenses.

(d) Pursuant to New York City Administrative Code Section 18-134, Licensee shall provide to Parks, in a form that complies with the report attached as Exhibit F to this License Agreement or other form acceptable to Parks, data concerning any funds that Licensee has expended at the Licensed Premises for the preceding period of July 1st to June 30th no later than October 31st each year. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at the Licensed Premises.

(e) Licensee is, and shall cause any Sublicensee to be, solely responsible for the payment of all Federal, State and local taxes applicable to the operation of the Licensed Premises. With the exception of Federal, State and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts.

(f) In addition to the foregoing reports, Licensee shall furnish Parks with the following reports:

(i) Financial Statement: Licensee shall furnish to the Commissioner a detailed financial statement prepared in accordance with GAAP for each Fiscal Year during the Term and any renewal thereof, which shall include the aggregate amount of all salaries of all paid staff whose personnel costs are included in Expenses and shall be audited by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than one hundred twenty (120) days after the close of each Fiscal Year of the Term of this Agreement together with a supplemental unaudited statement setting forth an itemization of such salaries.

(ii) Form 990. Licensee shall make Licensee's form 990 filing for each year during the Term of this Agreement available to the Commissioner after such form has been filed with the Internal Revenue Service.

(iii) Monthly Operations Report: Licensee shall furnish to Parks a monthly report to be submitted within fifteen (15) days of the previous month's end that shall include, but not be limited to, operations activities (repairs, maintenance, etc.), capital projects and Alterations, Minor Alterations, tree inspection reports and tree pruning reports, upcoming public programs and events, future/ongoing initiatives, personnel, incidents/unusual activity, inquiries or publications from press or media, major accidents or unusual incidents occurring on the Licensed Premises.

(iv) Annual Operating Budget and Operating Plan: Prior to the start of each Fiscal Year, Licensee will submit to the Commissioner for review and approval (which shall not be unreasonably withheld) Licensee's ~~park~~Park operations budget and capital budget for the Licensed Premises, which shall include all costs associated with the maintenance and operations of the Licensed Premises. The Licensee shall set forth in reasonable detail the amounts proposed to be allocated, but not limited, to general maintenance, public art, public programs, concessions, and communications, including salaries and benefits of any employee primarily engaged in those activities.

(v) Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee or any Sublicensee, or of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

(vi) Board Meetings. Licensee will provide notice to the Commissioner of all meetings, hearings, and proceedings of Licensee's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this Agreement. Licensee shall invite Commissioner and his designee to all of Licensee's Board of Directors' meetings.

(vii) Other Reports: Licensee shall prepare and provide to Parks other reports as reasonably requested by the Commissioner and/or pursuant to this Agreement.

(viii) Account and Use of Excess Revenues: If Licensee derives Excess Revenues in a particular Fiscal Year, Licensee shall expend such Excess Revenue consistent with the requirements of Section 1.1 (f) and shall report such expenditures consistent with the requirements of 4.1(c). If Licensee is unable to make such a report, Licensee must immediately remit such Excess Revenues to the City. In addition, if there are any unexpended Excess Revenues at the end of the Term, or any renewal thereof, or upon the earlier termination of this License, Licensee may apply such Excess Revenues to any Expenses arising under this License provided that Licensee provides a certification from Licensee's Chief Financial Officer identifying the specific Expenses to which such Excess Revenues were applied and certifying that such Excess Revenues were applied solely to pay such Expenses and Licensee shall remit the remaining balance of such Excess Revenues to the City within six (6) months from the end of the Term, or any renewal thereof, or upon the earlier termination of this License. However, if Licensee provides the Commissioner with a certification from Licensee's Chief Financial Officer identifying the specific Expenses that cannot reasonably be determined within six (6) months of the termination of the License and the Commissioner reasonably agrees with such certification, Licensee can retain such Excess Revenues only so long as is reasonably necessary to determine the specific Expenses in question and must remit remaining balance of such Excess Revenues to the City immediately.

4.2 (a) During the Term, Licensee shall maintain, and shall cause each Sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues of Licensee, in a form and manner reasonably acceptable to the City. If Licensee's operations include the sale of food or other items by Licensee, this revenue control system shall 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, the item(s) sold, time, date of sale and price of the item sold. All accounting and internal control related records of Licensee shall be maintained for a minimum of ten (10) years from the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed

Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

(b) Licensee shall, and shall cause any Sublicensee to, use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee and any Sublicensee 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 the Licensee and any Sublicensee. Licensee shall, and shall cause any Sublicensee to, 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.

## **5. RIGHT TO AUDIT**

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any Sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall, and shall cause any Sublicensee to, also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee and any Sublicensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully with and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's or any Sublicensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee or such Sublicensee, as applicable, must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

5.2 Notwithstanding the foregoing, the parties 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.

## **6. CAPITAL IMPROVEMENTS**

6.1 The City has final authority over all capital projects and capital programs ("Capital Improvements") undertaken at the Licensed Premises, and the Licensee has final authority over deciding the Capital Improvements for which it will raise money from private sources and/or expend its own funds. Parks shall consult with the Licensee on all Capital Improvements at the Licensed Premises.

6.2 Licensee will regularly update Parks on any potential Capital Improvements the Licensee is contemplating advancing, including but not limited to any Capital Improvement stemming from any master plan.

6.3 In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks'

approval, the Licensee may enter into contracts for approved Parks Capital Improvements and may supplement Parks and/or other public capital funds with the Licensee funds for the development of such approved Parks projects.

6.4 Capital Improvements shall become property of the City, at its option, upon their attachment, installation or affixing.

## 7. ALTERATIONS AND MINOR ALTERATIONS

7.1 Licensee and any Sublicensee may perform Alterations to Licensed Premises only in accordance with the requirements of Section 7.2. Licensee and any Sublicensee may perform Minor Alterations to Licensed Premises only in accordance with the requirements of Section 7.6. Alterations and Minor Alterations shall become property of the City, at its option, upon their attachment, installation or affixing.

7.2 To perform an Alteration to the Licensed Premises, Licensee must:

(a) Obtain the Commissioner's written approval, which shall not be unreasonably withheld, for any designs, plans and specifications of the proposed Alteration. At the time the Commissioner issues its written approval of the plans and specifications for any Additional Fixed Equipment, the Commissioner shall notify Licensee whether the City shall accept title to such Additional Fixed Equipment upon substantial completion of the installation or affixing of such Additional Fixed Equipment;

(b) Insure that Alterations are undertaken and completed in accordance with submissions approved pursuant to Section 7.2(a), in a good and workmanlike manner, and within a reasonable time; and,

(c) Notify the Commissioner of the completion of and the date of final payment for such Alteration within ten (10) days after the occurrence of said completion and final payment.

(d) Licensee shall comply with the existing City and Parks procedures, as may be amended from time to time during the Term, for review of any proposed Alteration constituting a landscape redesign, renovation, and rehabilitation project in the Licensed Premises.

7.3 All Alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, Sublicensees or contractors shall be at the Licensee's (or its Sublicensee's) sole cost and expense (other than any agreed contribution from the City or Parks, and contributions from other public or private sector partners or donors) and such work shall not commence until the Licensee obtains written approval from the Commissioner, or his designee as well as any City or other governmental authorizations and approvals that may be necessary.

7.4 To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any Alteration with an estimated cost exceeding

two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Alteration. Notwithstanding the above, to the extent that an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable.

7.5 For any work performed by or on behalf of Licensee at the Licensed Premises, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before such work is performed, and the quality of such work shall meet Parks' standards.

7.6 Licensee may perform Minor Alterations without advanced written approval by Parks. However, Licensee must:

(a) Insure that Minor Alterations are undertaken and completed, in a good and workmanlike manner, and within a reasonable time; and,

(b) Notify the Commissioner of the completion of and the date of final payment for such Minor Alteration within ten (10) days after the occurrence of said completion and final payment. At the time the Commissioner receives notice of the completion of Minor Alterations, the Commissioner shall notify Licensee whether the City shall accept title to such Minor Alterations if they constitute Additional Fixed Equipment;

(c) For any Minor Alterations performed by or on behalf of Licensee at the Licensed Premises, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before such work is performed, and the quality of such work shall meet Parks' standards. In addition, Licensee shall comply with the existing City and Parks procedures, as may be amended from time to time during the Term, for any Minor Alteration in the Licensed Premises.

7.7 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 or any Sublicensee's obligation herein in any respect.

## **8. FIXED AND EXPENDABLE EQUIPMENT**

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

8.2 Licensee shall be responsible for the regular maintenance and repair of Fixed and Additional Fixed Equipment on the Licensed Premises and for keeping such Fixed and

Additional Fixed Equipment in good operating condition, normal wear and tear excepted. Notwithstanding the foregoing, Licensee is not responsible for damage or destruction of the Excluded Monuments (as defined in Section 20.5) from risks that are typically insured against under a comprehensive broad-form property insurance policy, but Licensee shall be responsible for damage to the Excluded Monuments caused by its acts or omissions (where there is a duty to act). The City hereby accepts title to all Fixed Equipment heretofore installed by Licensee in the Park.

8.3 The City retains title to all Fixed Equipment on the Licensed Premises as of the Commencement Date. As set forth in Section 7.2(a), at the time the City approves the plans and specifications for any Additional Fixed Equipment, the City shall notify Licensee whether the City shall accept title to such Additional Fixed Equipment. If the City determines to accept title to such Additional Fixed Equipment, then title to such Additional Fixed Equipment shall vest in and belong to the City upon the substantial completion of the installation or affixing of such Additional Fixed Equipment. If at the time the City approves the installation of Additional Fixed Equipment it determines not to accept title thereto, then Licensee shall be responsible to remove such Additional Fixed Equipment and restore the Licensed Premises to its condition prior to the installation of such Additional Fixed Equipment or otherwise to the satisfaction of Commissioner at the sole cost and expense of Licensee prior to the Removal Deadline.

8.4 Licensee shall supply and replace, or cause any Sublicensee to supply and replace, at its own cost and expense, all Expendable Equipment, materials and supplies required for the proper operation of this License.

8.5 Licensee shall, and shall cause any Sublicensee to, acquire, replace or repair, install or affix, at their sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein.

8.6 Title to all Expendable Equipment obtained by Licensee or any Sublicensee shall remain in Licensee or such Sublicensee, as applicable, and such equipment shall be removed by Licensee at the termination or expiration of this License.

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

8.8 The Expendable Equipment to be removed by Licensee shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Licensee shall remain liable to the City for any damage to the Licensed Premises caused by the removal of Expendable Equipment from the Licensed Premises.

## **9. UTILITIES**

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises.

9.2 Licensee has installed new valves and water meters in the park operations office that separately control and meter irrigation water versus potable water. Licensee shall be responsible for the continued maintenance and repair of said meters and the overall park plumbing and water distribution system.

9.3 Consistent with the operations of other public parks in the City, the Licensee shall not be charged for water consumption used specifically for the public use within the Premises, including drinking fountains, operation of the Lowell Fountain, lawn and horticultural irrigation, and operation of any temporary ice skating rink (but excluding any skate rental, event, food and/or beverage services operated in conjunction with, or as part of the ice skating rink), and the Public Restrooms that are situated within the Premises.

9.4 Licensee and any Sublicensee shall at its sole cost and expenses directly pay for all utility costs associated with any concession operations at the Licensed Premises, including but not limited to all DEP water and sewer charges and all charges for electricity.

9.5 Licensee shall, and shall cause any Sublicensee to, at their sole cost and expense, connect to and/or, if necessary, upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals, and/or install or cause to be installed, and maintained, all gas, electric, sewer and telephone utilities, service lines, conduits, pipes, meters and supplies of power necessary for the proper operation of this License. This includes establishing a dedicated meter and/or submeter that captures utility usage on the Licensed Premises and an account with the appropriate service providers. Utilities, as described in this License Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, data (Wi-Fi), and water and sewer charges.

9.6 Licensee shall, and shall cause any Sublicensee to, not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities as have jurisdiction over the construction and operation of the Licensed Premises.

9.7 Licensee shall, and shall cause any Sublicensee to, remove any unsuitable existing materials as required. Licensee shall, and shall cause any Sublicensee to, adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

## **10. OPERATIONS**

10.1 Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as Commissioner shall prescribe and in compliance with this Agreement and all applicable laws, rules, regulations and orders of government agencies having jurisdiction over the Licensed Premises.

10.2 The hours of operation of the Park and any Sublicensee shall be subject to the approval of Parks. In approving the hours of operation, the Commissioner may consider the hours of operation of other similar Parks facilities, the nature of the community and the environs of the concession, Parks Rules and Regulations of operations, the public health and safety, and other similar considerations. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations under the License Agreement.

10.3 Licensee shall or shall cause any Sublicensees to provide a public access seating area at the Licensed Premises approved by Parks and, if alcoholic beverages are served, they may only be served by Licensee in restricted areas designated by Parks. The design and color of all tables, chairs, and umbrellas are subject to Parks' prior written approval, which shall not be unreasonably withheld. The placement of all tables, chairs and umbrellas is subject to Licensee's discretion, but shall be changed if Parks objects. Alcoholic beverages may be served to complement the food service, provided that Licensee obtains the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction. All efforts must be made to keep alcohol consumption discrete. Licensee must keep in mind that this is a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

10.4 (a) Licensee shall not and shall cause any Sublicensee not to advertise, sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, or other tobacco products, or electronic cigarettes.

(b) Smoking anywhere on the Licensed Premises is strictly prohibited.

(c) Additionally, Licensee shall not, and shall cause any Sublicensee not to, use in their operations any polystyrene packaging or food containers.

(d) Licensee shall not, and shall cause any Sublicensee not to, sell any beverages in glass bottles. All beverages must be in non-glass, shatter-proof containers, except that Sublicensees may decant beverages into glassware, provided that such beverages are consumed in the restricted areas provided for in Section 10.3.

(e) Licensee shall, and shall cause any Sublicensee to, adhere to and strictly enforce the provisions of this Section 10.4.

10.5 Licensee shall, and shall cause any Sublicensee to, at their sole cost and expense, obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including, without limitation, certificates of occupancy, if applicable) from all Federal, State, and City agencies having jurisdiction that may be required for the operation, management and maintenance of all activities conducted or authorized by Licensee at the Licensed Premises and the maintenance of the Park in accordance with all applicable Federal, State and City laws, rules and regulations.

10.6 Licensee shall, and shall cause any Sublicensee to, obtain the prior written approval of Parks prior to entering into any marketing or Sponsorship agreement with respect

to operations at the Licensed Premises. In the event Licensee or any Sublicensee breaches this provision, Licensee shall or shall cause its Sublicensee, as applicable, to take any action that the City may deem necessary to protect the City's interest.

10.7 An officer of the Licensee shall personally operate this License or employ an operations manager who shall have supervisory authority over the Licensed Premises. The manager of the Licensed Premises for Licensee will meet with Parks' reasonable approval. All supervisory personnel at the Licensed Premises will meet with Parks' reasonable approval. During the Term, Licensee will designate an employee (the "Manager"), who will be charged with the duty to manage and administer the maintenance and operation of the Licensed Premises. The Manager or its designee must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager or its designee in the event of an emergency. The Manager shall maintain close liaison with the Parks Enforcement Patrol and New York City Police Department. The Manager shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

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

10.9 Licensee shall, and shall cause any Sublicensee to, 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; and (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

10.10 Licensee shall, and shall require Sublicensees to, include in their Advertising and promotion programs, described in Section 10.11 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the ADA and any other similarly applicable legislation.

10.11 Licensee and any Sublicensee may establish an Advertising and promotion program. Licensee and any Sublicensee shall have the right to print or to arrange for the printing of programs or brochures containing any Advertising matter except Advertising which contains tobacco, electronic cigarette or alcoholic beverage 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. Licensee and any Sublicensee may release news items to the media as they sees fit. If the Commissioner in

his or her discretion, however, determines any Advertising or other releases to be unacceptable, then Licensee shall, and shall cause such Sublicensee (as applicable) to, cease or alter such advertisements or releases as directed by the Commissioner. Notwithstanding anything to the contrary contained in this Agreement, the Commissioner shall have prior approval as to all Advertising and promotional materials, subject to the rights granted to Licensee regarding the Newsstands Panels.

10.12 (a) Licensee shall, and shall cause any Sublicensee to, prominently display signage at the Licensed Premises listing all prices and hours of days of operation. The placement, design and contents of all signage, including signage which includes the Licensee's or any Sublicensee's name, trade name(s) and/or logo(s), are subject to Parks' prior written approval. Signage shall also comply with Americans with Disabilities Act ("ADA") requirements. Licensee shall display such signs as may be needed to guide and inform the public as to the location, hours of operation, and related fees of the Licensed Premises. Such signs shall be maintained in good condition and repair. The signs shall include the Parks logo, only if specifically requested by Parks, consistent with Parks-approved design guidelines and may indicate that the Licensed Premises are maintained by the Licensee in cooperation with Parks through this License Agreement. Such signs shall be subject to the approval of Parks.

(b) Licensee shall not permit and shall cause any Sublicensee not to permit Advertising in the Park except for Advertising in the Newsstands Panels. In addition, the following is permitted: words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, that present a Sublicensee's brand or products on the kiosk, booth or mobile unit operated by such Sublicensee for those brands and products that are sold at such kiosk, booth or mobile unit ("Brand Presentation"). Except as set forth in the preceding two sentences, Licensee shall not permit and shall cause any Sublicensee not to permit the placing of Advertising or Brand Presentation on the exterior of the concession area or on any building or structure on the Licensed Premises. All Advertising or Brand Presentations located at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not, and shall cause any Sublicensee not to advertise any product brands without Parks' prior written approval. Licensee shall not and shall cause any Sublicensee not to display, place or permit the display or placement of Advertising in the Licensed Premises without the prior written approval of Parks.

(c) The display or placement of tobacco or electronic cigarette Advertising shall not be permitted. For the purpose of this section "tobacco advertising" shall mean Advertising, which bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes; cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product. "Electronic cigarette advertising" shall mean Advertising of an electronic device that delivers vapor for inhalation. For the purpose of this section "electronic cigarette" shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device. Similarly, the display or placement of Advertising of alcoholic beverages shall not be permitted, but Licensee or any Sublicensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. For the purpose of this section "alcohol advertising" shall

mean Advertising, the purpose or effect of which is to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or to promote the use or sale of an alcohol product.

(d) 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. Licensee shall, and shall cause its Sublicensees to, immediately remove any such prohibited material displayed or placed upon notice from Parks at Licensee's sole cost and expense.

(e) Electronic media will be permitted in connection with Advertising on a case by case basis subject to applicable City laws, rules, and regulations and subject to the sole discretion of the Commissioner. Audio Advertising will not be permitted on the Premises.

(f) Parks further agrees that any Advertising, Sponsorship Recognition, Brand Presentations, or promotional material approved by Parks under this Agreement shall constitute any required approval or permit within the meaning of clause 13 of Section 18-146 of the New York City Administrative Code or Title 56 of the Rules of the City of New York Section 1-04(s) for such Advertising, Sponsorship Recognition, Brand Presentations, or promotional material.

10.13 Should Commissioner, in Commissioner's sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.14 Licensee shall not, and shall cause any Sublicensee not to, block any sidewalk, pathway, park entrance or other pedestrian walkway with Licensee's equipment or supplies. Licensee shall, and shall cause any Sublicensee to, place their equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times, unless a lesser width is approved in writing by Parks. However, all walkways must meet the applicable accessibility requirements.

10.15 Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall, and shall cause any Sublicensee to, be responsible for, at their sole cost and expense, obtaining any additional storage space required for the operation of the concession. Licensee shall, and shall cause any Sublicensee to, store all outdoor equipment on a nightly basis and anytime the concession is closed.

10.16 Licensee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider annexed hereto as Exhibit G.

10.17 Licensee shall, and shall cause any Sublicensee to, comply with all national safety guidelines and Federal, State and City laws, rules and regulations related to the management and operation of the Licensed Premises.

10.18 Inspectors from Parks will visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies Licensee will be obligated to rectify in a timely fashion.

10.19 (a) Licensee recognizes that this License Agreement does not grant it or any Sublicensee the exclusive rights to sell in the park in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or any Sublicensee or operate near the Licensed Premises.

(b) Notwithstanding the foregoing, Parks agrees that while this License Agreement is in effect, Parks will not authorize another person to operate Food Concessions in the Premises, including the perimeter sidewalk, except as required by Federal, State, or City Law.

## **11. MAINTENANCE, SANITATION AND REPAIRS**

11.1 (a) Licensee, at its sole cost and expense, will maintain and operate the Licensed Premises in a good and safe condition consistent with the Licensee obligations set forth in this Article. To ensure Parks' satisfaction with Licensee's compliance with the standards set forth in this Article 11 Licensee shall provide Parks with full and free access to the Licensed Premises. All such maintenance and repair shall be performed in a good and worker-like manner and in accordance with the following standards:

(i) Dirt, waste, garbage, refuse, rubbish, litter and obstructions shall be removed as needed, and trash and leaves collected and removed as needed, so as to maintain the Licensed Premises in a clean, neat and good condition.

(ii) All walkways, sidewalks and all other improvements and facilities in the Licensed Premises shall be routinely cleaned so as to keep such improvements and facilities in a clean, neat and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.

(iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(v) Power washing, as needed.

(vi) Snow and ice shall be removed within a reasonable period of time after each snowfall or accumulation of ice to the extent necessary to provide a walkway for safe passage. Sand and/or salt shall be spread as needed for such walkway.

(vii) Maintenance of all turf, trees, plants, flower beds and landscaped areas shall include, but not be limited to, watering, seeding, pruning, sodding and fertilizing.

(viii) Licensee shall maintain and repair all Park furniture and equipment, including work that is required as a result of vandalism, provided, however, that with respect to any statuary located in the Park, Licensee's routine maintenance responsibilities shall include non-chemical cleaning only, unless otherwise approved in writing by Parks. Licensee shall make reasonable accommodation for any Parks' program for the restoration of such statuary.

(ix) The Public Restrooms shall be cleaned, maintained and stocked on a daily basis.

(x) The maintenance and upkeep of the two marble lions known as Patience and Virtue, and the sculptures of Truth and Beauty in the lower New York Public Library façade fountains, shall not be the responsibility of Licensee.

(xi) All façade elements, bronze park lampposts, flagstuffs, and limestone balustrades, with the exception of 11.1(a)(x), shall be maintained in accordance with direction from Parks' Art and Antiquities division. Licensee shall perform annual care of all decorative bronzes and marble bases for the John Purroy Mitchel Memorial Flagstuffs.

(xii) With respect to the José Bonifacio de Andrada e Silva monument, the sculpture and pedestal shall be cleaned periodically of soiling and environmental particulates. The monument shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing Inralac lacquer coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary. Stone repairs to the pedestal or repairs to the bronze casting shall be conducted as necessary. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Art & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xiii) With respect to the William Cullen Bryant Memorial, the sculpture and pedestal shall be cleaned periodically of soiling and environmental particulates. Annual maintenance shall include a condition assessment, an over-all washing with an anionic

detergent of the lower portions of the monument and bronze sculpture, necessary repairs to the existing hot wax coating, and a cold wax application on the bronze. Every third year, or as necessary, a lift will be procured to fully examine and treat the upper portions of the monument. The inscription shall be highlighted for legibility following mutually agreed methods between Licensee and Parks. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. The pedestal and canopy's masonry shall be pointed as necessary. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Arts and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Arts & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards. In 2017 the monument underwent an in depth restoration which included cleaning, installation of lead weather caps, selective repatination, and re-mortaring all compromised joints. This work was performed pursuant to the Parks Citywide Monuments Conservation Program and supported by the Licensee. Under no circumstances shall any equipment or supplies or park furniture used by the Licensee or its Sublicensees be stored in such a way as to make contact with the monument or impede public access and appreciation.

(xiv) With respect to the William Earl Dodge Monument, the sculpture and pedestal shall be cleaned periodically of soiling and environmental particulates. The monument shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing Inralac coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary (the E at the end of Earl is ungolded on purpose to account for a spelling error in the carving). Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Art & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xv) With respect to the Johann Wolfgang von Goethe Monument, the bust and pedestal shall be cleaned periodically of soiling. The monument shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing Inralac coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary. Additional work may be required to remove graffiti and selectively re-polish the granite pedestal. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified

firm selected by Licensee but subject to Parks Art & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xvi) With respect to the Gertrude Stein Monument, the sculpture and pedestal shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing hot wax coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Monuments Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Art & Antiquities Division's approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xvii) The maintenance and upkeep of the Benito Juarez Monument, shall not be the responsibility of Licensee.

(xviii) Licensee shall provide necessary protections for all monuments from obstructions, park furniture and appurtenances, tree pruning, and any other obstructions or impediments caused by park activities.

(b) Licensee 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. Licensee acknowledges receipt of the PIP Manual.

11.2 Trees. Licensee shall water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition. Licensee shall provide additional seasonal plantings to supplement Parks' plantings at the Licensed Premises. Certain major landscaping work constituting Alterations shall require the approval of Parks as set forth in Article 7. Licensee shall also comply with the following with respect to trees in the Licensed Premises:

(a) Branches or trees damaged or felled by excessive winds, ice, vandalism, or by any other reasons whatsoever shall be promptly removed.

(b) Licensee may not cut down, replant or remove any tree from the Park without prior written approval from the Commissioner, except that Licensee may replace potted trees as needed without prior approval. Any plans developed by Licensee for gardens or other

horticultural installations in the Park shall be submitted for the Commissioner's approval in advance of any planting.

(c) Within the first year of the Term, Licensee shall engage the services of a certified arborist to conduct an initial aerial inspection of the trees in the Park, i.e. by climbing or use of a bucket/lift, (also known as a Level 3 Inspection as defined by the International Society of Arboriculture) and to generate a report of the findings. A copy of the inspection report shall be provided to Parks.

(d) On an annual basis, Licensee shall engage the services of a certified arborist to conduct a diagnostic inspection (also known as a Level 2 Inspection as defined by the International Society of Arboriculture) of the trees in the Park for potential defects and to generate a report of the findings. A copy of the report shall be provided to Parks. In the event there are any conditions warranting further inspection, Licensee shall conduct a Level 3 Inspection.

(e) Licensee shall conduct visual inspections of the trees in the Park on a monthly basis to identify any potential defects (also known as a Level 1 Inspection as defined by the International Society of Arboriculture). Any such potential defects shall be promptly reported to the Director of Manhattan Forestry.

11.3 This paragraph describes Licensee's current security services for the Park. These security services are intended to supplement any services provided by the City, including services provided by the New York City Police Department and Emergency Medical Services provided by the New York City Fire Department, it being agreed, however, that nothing in this Agreement obligates the City to provide any such services. Nine security officers of the Licensee provide twenty-four-hour security within the park. The post are as follows: Bryant Park East, Bryant Park West, and Special Post, which patrols the exterior of the park and the New York Public Library Terrace. There is a dedicated park supervisor scheduled from 7:30 a.m. to 2:30 p.m., Monday through Friday. Rotating security supervisors cover the park from 3:00 p.m. to 11:00 p.m., seven days per week and on weekends from 7:00 a.m. to 3:00 p.m. Security coverage for any Special Events is determined by the executive staff and the park supervisor. The needs for coverage can be provided by overtime assignments (full tour and extended tour), the hiring of contract security services, and utilizing the NYPD Paid Detail Unit. The Paid Detail Unit supplies an off-duty uniformed police officer for high visibility and police presence. Each security officer of Licensee possesses a New York State security license and has received annual training certified by New York State. In addition, each officer receives daily "roll call" instructions, during which the officers are given instructions for the day, particularly if the area will be the location of a Special Event (such as a parade or protest). Security officers are unarmed and have no authority to arrest persons. Security officers are equipped with two-way radios, which allows them to notify Licensee's security operations center of unusual events, for which a response from New York Police Department or Emergency Medical Service is recommended. Security officers are expected to enforce rules of the Park (e.g., patrons are forbidden to remove alcohol from the Park or to sit on the monuments), interact with people and intervene to prevent or de-escalate disputes, patrol the toilet facilities to reduce illegal behavior inside the toilet facilities, and observe the conduct of people who may be

emotionally disturbed or whose conduct may be influenced by the consumption of alcohol or illegal drugs to intervene in the event their conduct interferes with the enjoyment of the Park by others. Licensee shall continue to provide security services generally consistent with the foregoing during the Term.

11.4 At the expiration or sooner termination of this License, consistent with the maintenance responsibility required of Licensee by this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted.

11.5 Licensee will be responsible for regular pest control inspections and extermination as needed. To the extent that Licensee applies pesticides to the Licensed Premises or any portion thereof, Licensee or any subcontractor hired by Licensee shall comply with applicable laws, including Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

11.6 For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall maintain up-to-date Petroleum Bulk Storage (“PBS”) registrations with New York State Department of Environmental Conservation and register such tanks with the DEP. Licensee will assume all registration and update costs. Licensee must keep a copy of the PBS Certificate on site and provide copies to Parks’ 5-Boro Office on Randall’s Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks.

11.7 Licensee shall have no responsibility for maintaining the two 5<sup>th</sup> Avenue bus shelters, nor any LinksNYC kiosks should they be installed on the Licensed Premises.

## **12. APPROVALS**

12.1 Licensee is solely responsible for obtaining all approvals, permits and licenses required by Federal, State and City laws, regulations, rules and orders for the lawful operation, management and maintenance of the concession granted by this License.

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

12.3 Parks shall use reasonable efforts to respond to Licensee’s request for a Parks Approval within 21 days following Parks’ receipt of such request. For those matters as to which Parks has agreed in this Agreement not to unreasonably withhold its approval, if Parks rejects Licensee’s request for a Parks Approval, Parks shall use reasonable efforts to provide specific reasons for such rejection, and if following a rejection by Parks, Licensee revises its

submission to address the specific reasons for such rejection and resubmits such request to Parks, Parks shall use reasonable efforts to respond to Licensee's resubmitted request for a Parks Approval within ten (10) days following receipt of such resubmission. Issuance by Parks of a permit for an event, including Special Events permit for a Licensee's Special Event shall constitute approval by Parks of such Licensee's Special Event. Licensee's submission of an application for a Special Events permit for a Licensee's Special Event, with all relevant back-up information, shall constitute notice by Licensee to Parks of Licensee's Special Event for purposes of this Agreement. Notwithstanding the review period prescribed above or elsewhere in this Agreement, the parties acknowledge there will be occasions in which Licensee requires a significantly shorter response period than the period prescribed herein (e.g., a proposal for a promotional Licensee's Special Event is made to Licensee three (3) days prior to the proposed date of the promotional Licensee's Special Event). Parks shall use reasonable efforts to accommodate Licensee's shorter approval requests. Further, notwithstanding the foregoing, the Commissioner in his sole discretion may entertain an appeal of a denial submitted by Licensee within five (5) days of such denial.

12.4 Kate Spellman (kate.spellman@parks.nyc.gov) or her designee is the Parks representative who has, as of the date hereof, authority to issue an approval by Parks for the various types of approvals that are contemplated by this License Agreement. Reasonably promptly after any personnel change results in a change in the Parks representatives, Parks shall update the name and email address of the new Parks representative.

### **13. PARKS' SPECIAL EVENTS**

13.1 For the purposes of this Section 13 the term "Parks' Special Event(s)" shall mean any Special Event at the Licensed Premises sponsored by Parks. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use of the Licensed Premises or any portion thereof. For each Parks Special Event, Parks shall comply with the following conditions: (a) Parks shall give Licensee not less than thirty (30) days (or such lesser period as agreed by the parties) advance notice of any Parks' Special Event, and any annual event will be on a date mutually agreed to by Parks and Licensee, (b) Parks shall not sponsor or permit a Parks' Special Event on a date that will conflict with a Licensee's Special Event for which Licensee has submitted to Parks an application for a Special Event Permit and such Special Event Permit has been approved by Parks, (c) Parks shall be responsible for maintenance and clean-up associated with any such Parks' Special Event and may delegate such maintenance and clean-up obligation to a third-party, but such delegation shall not relieve Parks of primary responsibility to Licensee for such maintenance and clean-up, and (d) each Sublicensee, in its own discretion, may elect to operate or not to operate during any Parks' Special Event. Subject to the foregoing conditions, Licensee shall, and shall require that each Sublicensee, cooperate with Parks in connection with Parks' Special Events. Such events shall not, without the prior written consent of Licensee, prohibit the Licensee or any Sublicensee from reasonable access to the Licensed Premises. Furthermore, Parks reserves the right to grant permits for "Demonstrations" as defined in Section 1-02 of Parks' Rules and Regulations at the Licensed Premises where appropriate under Parks' Rules and Regulations and where such Demonstrations do not unreasonably interfere with previously scheduled and Parks-approved Licensee's Special Events as reasonably determined by Parks.

**14. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES**

14.1 Except for Sublicenses approved by Parks, 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 (unless it is agreed to, in writing, by Parks and signed by the Commissioner or Commissioner's designee), or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

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

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than ten percent in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee may be made under any circumstance if such sale will result in a change of control of Licensee violative of the intent of this Section 14, without the prior written consent of Commissioner.

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent (10%) 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.

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

14.4 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.

## **15. PARKS CONSTRUCTION**

15.1 Parks reserves the right to make repairs, alterations, decorations, additions or improvements to Licensed Premises (“Parks Construction”) at Parks’ expense as Parks deems necessary in its discretion at any time during the Term, subject to the following conditions: (a) except for Parks Construction in response to an emergency, as determined by Parks, Parks shall give Licensee not less than sixty (60) days’ notice of any Parks Construction, which notice shall set forth the scope and schedule of the Parks Construction, (b) Parks shall consult with Licensee about the proposed schedule for any Parks Construction if such Parks Construction will interfere with any Parks-approved Licensee’s Special Events, (c) Parks shall use reasonable efforts to minimize interference with the operations of any Sublicensee and with the operations of Licensee, (d) if any Parks Construction results in the temporary removal of any improvements in the Licensed Premises, Parks shall restore such improvements to their condition prior to such temporary removal promptly following completion of such Parks Construction, (e) Parks Construction shall be performed in a good and worker-like manner, (f) Parks shall contain all equipment and supplies for any Parks Construction in a reasonably confined area, and Parks shall not store overnight in the Licensed Premises any debris (except in response to an emergency), and (g) Parks shall take reasonable steps to minimize construction dust and residue, and Parks shall be responsible for cleaning such dust and residue on a daily basis. Licensee shall, and shall cause any Sublicensee to, reasonably cooperate with Parks to accommodate any Parks Construction and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks may temporarily close a part or all of the Licensed Premises for a Parks Construction as determined by the Commissioner. In the event that Parks does temporarily close a part of or all of the Licensed Premises for a Parks Construction, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Licensee shall, and cause any Sublicensee to, be responsible for the security of all Licensee's property or Sublicensee's property, as applicable on the Licensed Premises at all times, but Parks shall be responsible for any damage to any such property to the extent arising from the performance of any Parks Construction, and Parks shall be solely responsible for claims, damages, or injury resulting from Parks Construction, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee or any Sublicensee.

## **16. COMPLIANCE WITH LAWS**

16.1 Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and Sublicensees 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 the Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and shall 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., New York City Administrative Code §18-137, 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.

16.2 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"). Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, 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.

16.3 Licensee shall not use or allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner that violates a certificate pertaining to occupancy or use during the Term.

**17. NON-DISCRIMINATION**

17.1 No Licensee or Sublicensee shall unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

17.2 All advertising for employment for Licensee or any Sublicensee shall indicate that Licensee or such Sublicensee, as applicable, is an Equal Opportunity Employer.

**18. NO WAIVER OF RIGHTS**

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

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

19.1 (a) Licensee shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, Sublicensees, contractors, and subcontractors while they are on the Licensed Premises involved in the operations under this License.

(b) Licensee shall take 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.

19.2 (a) To the fullest extent permitted by law, subject to Section 19.2(c), Licensee shall indemnify, defend and hold the City and its officials and employees (an “Indemnified Party”) harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of operations under this License Agreement (“Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any Claims (together with Claims, “Liabilities”), arising out of the (i) the condition of the Park, (ii) the acts or omissions (where there is a duty to act) of Licensee or any Sublicensee or any of their respective employees, servants, contractors, subcontractors or agents, in any operations under this License, or (iii) Licensee’s or any Sublicensee’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with applicable law or any of the requirements of this License, regardless of whether any of the foregoing have been negligent. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the Indemnified Party shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee shall include the following indemnification (or a substantially comparable provision) in each Sublicense entered into during the Term of this Agreement:

To the fullest extent permitted by law, Sublicensee shall indemnify, defend and hold the City and its officials and employees (an “Indemnified Party”) harmless against any and all claims and demands of third parties for injury (including death) or property damage arising out of operations under this Sublicense (“Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any Claims (together with Claims, “Liabilities”), arising out of (i) the condition of the Sublicensed Premises, (ii) the acts or omissions (where there is a duty to act) of Sublicensee or any of its employees, servants, contractors, subcontractors or agents, in any operations under this Sublicense, or (iii) Sublicensee’s or any of its employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with applicable law or any of the requirements of its Sublicense, regardless of whether any of the foregoing have been negligent. To the extent Liabilities arise from the following, they shall be excluded from Sublicensee’s indemnification and defense obligations under this paragraph: (i) any construction performed by Parks or Parks’ contractors, (ii) any Parks’ Special Event, or (iii) the negligence or willful misconduct of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement). Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the

Indemnified Party shall be partially indemnified by Sublicensee to the fullest extent permitted by law.

(c) To the extent Liabilities arise from the following, they shall be excluded from Licensee's indemnification and defense obligations under Section 19.2(a): (i) any construction performed by Parks or Parks' contractors, (ii) any Parks' Special Event, or (iii) the negligence or willful misconduct of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement).

(d) To the fullest extent permitted by law, the Licensee shall defend, indemnify, and hold harmless the Indemnified Parties against any and all Claims and Liabilities that the Indemnified Parties may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Licensee, any Sublicensee or any of their respective employees, agents, servants, contractors or subcontractors in the operations under this License including any such infringement, violation, or unauthorized use arising while Licensee is in compliance with the License. Insofar as the facts or law relating to any of the foregoing would preclude an Indemnified Party from being completely indemnified by the Licensee, the Indemnified Party shall be partially indemnified by the Licensee to the fullest extent permitted by law.

(e) Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with Sections 19.2 (a) or (d), Parks shall give prompt notice of such Claim to Licensee. Licensee shall assume and prosecute the defense of such Claim at the sole cost and expense of Licensee. Licensee may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

19.3 Licensee's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this Licensee, nor (ii) adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

## **20. INSURANCE**

20.1 (a) Throughout the Term, Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, any change in Licensee's operations after the date hereof warrant the foregoing.

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

20.2 (a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury

(including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury and not less than Five Million Dollars (\$5,000,000) in the aggregate on a per location basis, and Five Million Dollars products completed operations coverage, which amounts may be obtained by a combination of primary and umbrella coverage carried by Licensee. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury 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) Licensee shall require that each Sublicensee and each of its construction contractors maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death), One Million Dollars (\$1,000,000) for personal and advertising injury, One Million Dollars (\$1,000,000) in the aggregate, and One Million Dollars (\$1,000,000) products completed operations coverage. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury 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.”

(c) Such Commercial General Liability insurance maintained by Licensee and each Sublicensee and construction contractor shall list the City, together with its officials and employees, as an Additional Insured for claims arising out of any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37. “Blanket” or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(d) If Licensee or a Sublicensee of Licensee or a contractor of either serves alcoholic beverages anywhere on the Licensed Premises, Licensee and its Sublicensee and contractor shall carry or cause to be carried liquor law liability coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and list the City, together with its officials and employees, as an additional insured. Such insurance shall be effective prior to the commencement of any operations in which alcoholic beverages are sold and continue for the duration of such operations. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

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

20.4 (a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial 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.

(b) If vehicles are used for transporting hazardous materials, such Commercial 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.

20.5 (a) Licensee shall maintain commercial property insurance on a special causes of loss form covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the Commencement Date or built at any time before the Termination Date. Licensee’s property insurance requirements expressly exclude the sculptures and pedestals at Bryant Park (collectively, the “Excluded Monuments”). Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Loss Payee as their interests may appear. If the Excluded Monuments are damaged by any event that would be covered by commercial property insurance on a special causes of loss form of the type that Licensee is required to carry for the Concession Structures, then Parks shall be responsible for the repair and restoration of the Excluded Monuments, if Parks chooses to repair or restore the Excluded Monuments.

(b) This section does not require coverage for damage caused by flooding.

(c) The limit of such property insurance shall be no less than the full Replacement Cost of all Concession Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by a commercial property insurance policy on a special causes of loss form. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

(d) In the event of any loss to any of the Concession Structures, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim.

20.6 Licensee represents and warrants that its operations at the Licensed Premises will not involve asbestos, lead, PCB’s or any other hazardous materials.

20.7 (a) Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII”, a Standard and Poor’s rating of at least A, a Moody’s Investor Service rating of at least A3, a Fitch Ratings’ rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

(b) Except with respect to Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance, policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) Wherever this Article 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 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 unless approved in writing by the Commissioner. Under no circumstances shall the City 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 with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

(f) 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.

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

(b) For Workers’ Compensation, Employer’s Liability Insurance, and Disability Benefits insurance policies, 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

(v) 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 other than Workers Compensation, Employer's Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form annexed hereto as Exhibit H or as otherwise required by the Commissioner 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 Concession. 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 Concessionaire's obligation to ensure that insurance fully consistent with the requirements of this Article 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 upon request by the Commissioner or the New York City Law Department.

20.9 (a) Licensee may satisfy its insurance obligations under this Article 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 list Licensee as an Additional Insured thereunder, Licensee shall ensure that such contractor also list the City, including its officials and employees, as an Additional Insured. For commercial general liability insurance, such coverage must be 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 or self-insured retentions to which they are subject, whether or not the City 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, Licensee shall, and/or shall cause its Sublicensees and construction contractors, as applicable, to, notify in writing all

insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured, including its officials and employees, as well as the Named Insured." For any policy where the City is a Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Loss Payee as its interests may appear." 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.

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

(f) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License Agreement 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, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(h) In the event Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article 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 Commissioner, the City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 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.

## **21. WAIVER OF COMPENSATION**

21.1 Licensee hereby expressly waives any and all claims for compensation from the Commissioner, his or her agents, and the City for any and all loss or damage sustained by reason of any defects, including but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or electric current which may

occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges the Commissioner, his or her agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, except to the extent any of the foregoing arise from the gross negligence or willful misconduct of the City or any officer, official, employee or contractor thereof.

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

## **22. INVESTIGATIONS**

22.1 (a) The parties to this license shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or a City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

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

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

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

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

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this license, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

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

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

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

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

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

party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

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

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

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

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

## **23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

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

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

(c) With respect to any action between the City and the Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise

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

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

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

**24. WAIVER OF TRIAL BY JURY**

24.1 (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

(b) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and City are adverse parties, Licensee and the City shall reasonably cooperate with each other without additional compensation to the extent that either party may reasonably require of the other.

**25. CUMULATIVE REMEDIES - NO WAIVER**

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

**26. EMPLOYEES**

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

**27. INDEPENDENT STATUS OF LICENSEE**

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

**28. CONFLICT OF INTEREST**

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

**29. PROCUREMENT OF AGREEMENT**

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

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

**30. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

**31. ALL LEGAL PROVISIONS DEEMED INCLUDED**

31.1 Each and every provision of law required to be inserted in this License shall be inserted herein. 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 expressly amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**32. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

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

**33. JUDICIAL INTERPRETATION**

33.1 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.

**34. MODIFICATION OF AGREEMENT**

34.1 This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may only be modified by an agreement in writing and duly executed by the party or parties affected by said modification.

**35. NOTICES**

35.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to the Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by facsimile transmission to the fax numbers for each party provided at the beginning of this License Agreement. Notices to Licensee shall also be given to Licensee at the following address: Bryant Park Corporation, 1065 Avenue of the Americas, Suite 2400, New York, New York 10018, Attention: Dan Pisark (Fax No. (212) 719-3499). Notwithstanding the foregoing, notices seeking or relating to a Parks Approval may be sent by email to the applicable Parks representative set forth in Section 12.4, as updated from time to time.

**36. LICENSEE ORGANIZATION, POWER AND AUTHORITY**

36.1 Licensee and the individual executing this License Agreement on behalf of Licensee each represents and warrants that 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 the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

**37. MISCELLANEOUS**

37.1 The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

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

CITY OF NEW YORK DEPARTMENT OF  
PARKS & RECREATION

BRYANT PARK CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

\_\_\_\_\_  
Acting Corporation Counsel





**LICENSE AGREEMENT**

**BETWEEN**

**BRYANT PARK CORPORATION**

**AND**

**CITY OF NEW YORK  
DEPARTMENT OF  
PARKS & RECREATION**

*for*

**THE OPERATION AND MAINTENANCE OF BRYANT PARK**

**MANHATTAN, NEW YORK**

**M8-O**

**DATED: \_\_\_\_\_, 2018**

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LICENSE AGREEMENT (this “License Agreement,” “Agreement” or “License”) made this \_\_\_ day of \_\_\_\_\_, 2018 between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 (Fax No. 212-360-3434), and Bryant Park Corporation (“Licensee “or “BPC”), formerly the Bryant Park Restoration Corporation, a New York not-for-profit corporation, whose address is 1065 Avenue of the Americas, Suite 2400, New York, NY 10018 (Fax No. (212) 719-3499).

**WHEREAS**, Parks has jurisdiction over parklands of the City and facilities therein pursuant to Section 533(a) of the City Charter and is charged with the duty to manage, maintain and operate City parks facilities; and

**WHEREAS**, Bryant Park located between 40<sup>th</sup> and 42<sup>nd</sup> Streets and Fifth and Sixth Avenues, in Manhattan, New York is a property under the jurisdiction of Parks; and

**WHEREAS**, pursuant to its Certificate of Incorporation, as amended, Licensee was formed in 1980 for the purpose of aiding and supplementing the activities of the City and the New York Public Library Astor, Lenox and Tilden Foundations with respect to the restoration, maintenance and utilization of Bryant Park (also referred to herein as the “Park,” “Licensed Premises” or “Premises” and are further denoted and described in Exhibit A attached hereto; the portion of the Park, Licensed Premises, or Premises enclosed by the broken red line on Exhibit A is referred to as the West Terrace; and

**WHEREAS**, the Bryant Park Management Corp. (“BPMC”) manages the Bryant Park Business Improvement District (“BID”), an area that includes the Licensed Premises, and by that certain Contract with the City of New York, Department of Small Business Services, dated as of July 1, 2017 (“SBS Contract”), BPMC agrees to provide supplemental sanitation, security, public programming, as well as capital improvements and maintenance thereof for the BID and BPMC provides funds to Licensee to fulfill its obligations under the SBS Contract regarding the Licensed Premises; and

**WHEREAS**, the City desires to encourage the participation of interested not-for-profit organizations in providing supplemental services, including maintenance, recreational and educational programs, for the benefit of the public; and

**WHEREAS**, Licensee and Parks have developed an effective public/private partnership through which Licensee, under the review and approval of the Commissioner, has undertaken substantial responsibility for public programming, specific maintenance, and capital improvements at the Park pursuant to that certain agreement dated as of July 29, 1985 between Parks and Licensee pursuant to which Licensee has operated and maintained the Park since that date; and

**WHEREAS**, at the time of BPC’s founding in 1980, the Park had suffered a severe decline in conditions and was substantially underused, caused by rampant crime and other social problems; and

**WHEREAS**, BPC was established to reverse the Park’s decline and transform the Park into a urban amenity to realize its potential to enhance the quality of life in the City; and

**WHEREAS**, beginning in 1988, BPC, working with the City, implemented a master plan for the Park, under which the Park’s infrastructure was overhauled, its monuments and landscaping were restored, and a restaurant pavilion, two newsstands (on the 42<sup>nd</sup> Street sidewalk bordering the Park) and four concessions kiosks were constructed; and

**WHEREAS**, with the reopening of the Park in April, 1992, BPC, in cooperation with the City, instituted a comprehensive program of activities in the Park, including high-level entertainment, educational and cultural events for people of all ages, to encourage use and enjoyment of the Park by the public while contributing to the cultural life of the City; and

**WHEREAS**, under BPC’s stewardship, the Park has been transformed into a world-class public space; and

**WHEREAS**, Licensee has made in excess of \$19 million in capital improvements to the Park; and

**WHEREAS**, Licensee is party to a lease agreement dated July 29, 1985, as amended, amongst the City and the New York Public Library (“the Terrace Agreement”) regarding the area depicted in Exhibit A as the West Terrace Demarcation; and

**WHEREAS**, the Terrace Agreement, as amended, provides that, pursuant to State alienation legislation as codified in the New York City Administrative Code Title 18, Section 18-128.2, Licensee be granted the right to enter into a lease to operate a restaurant or restaurants on the West Terrace and use the revenues from lease(s) for the benefit of the Park, which would include, but not be limited to, Licensee obligation under this License Agreement, Licensee’s administrative expenses, and Licensee’s Special Events and projects at the Park; and

**WHEREAS**, the Terrace Agreement is not a part of this Agreement, except that any revenues that Licensee receives pursuant to rights granted to Licensee from the Terrace Agreement, will be accounted for under this Agreement in order that all funds earned within the Licensed Premises are properly accounted for and used to benefit the Licensed Premises, and

**WHEREAS**, Parks desires to provide for the continued operation of food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks at the Park and the maintenance of the Park for the accommodation of and use by the public; and

**WHEREAS**, Licensee has extensive experience operating food concessions and special events, providing amenities and performing maintenance activities in the Park; and

**WHEREAS**, Licensee is willing to continue to perform responsibilities associated with maintaining and repairing the parkland comprising the Park for the benefit of the public, including the provision of programs, amenities and activities that will increase public interest in and awareness of the parkland; and

**WHEREAS**, the Franchise and Concession Review Committee (“FCRC”) authorized Parks to enter into a Sole Source License Agreement with Licensee for the operation of food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and

other visitor services and events authorized by Parks at the Park and for the revenue therefrom to be used exclusively for the maintenance and operation of the Park as set forth herein for the accommodation of and use by the public; and

**WHEREAS**, Licensee desires to operate food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks and maintain and operate the Park in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the operation of food concessions, special events, a carousel, newsstands, seasonal markets, an ice-skating rink and other visitor services and events authorized by Parks at the Park and the maintenance and operation of the Park;

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

**1. GRANT OF LICENSE**

1.1 (a) Parks hereby grants to Licensee and Licensee hereby accepts from the Commissioner this License and the rights and obligations contained herein to operate and maintain the Licensed Premises for the use and enjoyment of the general public in accordance with the terms herein and to the reasonable satisfaction of the Commissioner.

(b) (1) Licensee is hereby authorized and agrees to provide food concessions approved by Parks (“Food Concessions”), from mobile food units, kiosks and/or booths, subject to the approval of Parks. Parks has heretofore approved five (5) food kiosks and three (3) mobile food carts in the Park. Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain Food Concessions in the Park.

(2) Licensee is hereby authorized to provide the following:

(i) Temporary or seasonal markets for food or other Parks appropriate items (e.g., holiday market, farmers’ market and food kiosks) for sale approved by Parks (“Temporary Markets”). Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain, Temporary Markets in the Park. Food Concessions and Temporary Markets may take the form of mobile food units, kiosks and/or booths. The design and placement of all Food Concessions and Temporary Markets are subject to Parks’ written approval;

(ii) Special Events (as defined in 56 RCNY Section 1-02) permitted by Parks at the Park. Subject to this Section 1 and Section 13, Licensee shall have the right to host its own Special Events, or contract with third parties to operate Special Events in the Park (together, “Licensee’s Special Event(s)”);

(iii) Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain newsstands located along the south side of West 42<sup>nd</sup> Street, west of Fifth Avenue, adjacent to the Park (“Newsstands”).

(iv) Licensee shall have the right to operate and maintain, or to grant sublicense to a third party to operate and maintain a carousel in the Park (“Carousel”);

(v) Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain a seasonal ice rink and related amenities in the Park (“Seasonal Rink”);

(vi) Advertising (as set forth in this subdivision (vi) and as defined in Section 2): Licensee shall have the exclusive right to sell and display Advertising on the newsstands panels located along the south side of West 42<sup>nd</sup> Street, west of Fifth Avenue, adjacent to the Park (“the Newsstand Panels”), subject to the prohibitions contained in Section 10.12 (c), (d), and (e) and the following conditions: Advertising shall only be placed on the Newsstands Panels (or any replacement thereof) during the term of this License. No Advertising shall be placed on any fences, park furniture or free standing structures of any kind other than the Newsstands. In addition, notwithstanding the restriction that Advertising be contained in the Newsstands Panels and the prohibitions contained in Section 10.12 regarding signage, for Licensee’s Special Events in which a product or service is being promoted, temporary promotional signage may be permitted in the Licensed Premises for the duration of the applicable Licensee’s Special Event, subject to approval by Parks of such Licensee’s Special Event and the relevant signage.

(c) (i) Licensee may sublicense portions of the Park (the “Sublicensed Premises”) for the operation of Food Concessions or Temporary Markets, a carousel, newsstands, an ice-skating rink and other visitor services and events authorized by Parks to sublicensees approved in advance in writing by Parks (the “Sublicensees”). The terms and conditions of any such sublicense (“Sublicenses”) shall be subject to the prior written approval of Parks. Any Sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation of any Sublicense shall be equally applicable to any Sublicensee except as may be otherwise expressly noted in this Agreement. Licensee shall require any Sublicensee to agree in writing that it will comply with Parks’ directives and the provisions of this License applicable to Licensee and shall be responsible for assuring such compliance. If any Sublicensee does not comply with this License insofar as applicable to it, such Sublicensee’s operations shall be terminated by Licensee upon direction of Parks. No Sublicense may be assigned without the prior written consent of Parks.

(ii) In selecting a Sublicensee, Licensee shall comply with the written procedures, established by the Licensee and approved by Parks, for soliciting requests for proposals (“RFP”) from qualified proposers and for selecting a qualified proposer with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee in accordance with Parks’ usual procedures and

requirements and subject to Parks' approval. Parks' disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check.

(iii) Licensee has granted a sublicense to JAGR BRYANT PARK LLC d/b/a Joe Coffee, a New York limited liability company, to operate a Food Concession using the food kiosk at the Park under the name Joe Coffee pursuant to a License Agreement dated as of April 17, 2017. Parks hereby approves such Food Concession.

(iv) Licensee has granted a sublicense to BREAD OF BRYANT PARK, LLC, a New York limited liability company to operate a Food Concession using the food kiosk at the Park under the name Breads Bakery pursuant to a License Agreement dated as of March 26, 2015. Parks hereby approves such Food Concession.

(v) Licensee has granted a sublicense to Belgo BRO LLC, a New York limited liability corporation, to operate a Food Concession using the food kiosk at the Park under the name Wafels and Dinges pursuant to a License Agreement dated as of March 27, 2015. Parks hereby approves such Food Concession.

(vi) Licensee has granted a sublicense to Bryant Park Southwest LLC, a Delaware limited liability corporation, to operate a Food Concession using the food kiosk at the Park under the name Southwest Porch pursuant to a License Agreement dated as of March 27, 2015. Parks hereby approves such Food Concession.

(vii) Licensee has granted a sublicense to LPQ WEST 40TH ST., INC., a Delaware limited liability corporation, to operate a Food Concession using the food kiosk at the Park under the name Le Pain Quotidien pursuant to a License Agreement dated as of March 18, 2015. Parks hereby approves such Food Concession.

(viii) Licensee has granted a sublicense to MOVE SYSTEMS INTERNATIONAL, LLC, a Delaware limited liability corporation, to operate three (3) mobile food carts at the perimeter sidewalks adjacent to Park pursuant to a License Agreement dated as of June 19, 2017. Parks hereby approves such Food Concession.

(ix) Licensee has granted a sublicense to URBAN SPACE HOLDINGS, INC., to operate a Temporary Market at the Park under the name Holiday Shops pursuant to a License Agreement dated as of April 16, 2016. Parks hereby approves such Temporary Market concession.

(x) Licensee has granted a sublicense to RINK MANAGEMENT SERVICES CORPORATION, a Virginia Corporation, to operate a seasonal skating rink at the Park ("Park Rink") and to provide a concession for skate rentals and supplies, dated August 9, 2016. Parks hereby approves such concession

(xi) Licensee has granted a sublicense to HUDSON YARDS SPORTS & ENTERTAINMENT LLC., D/B/A Union Square Events, a New York limited liability company, to operate food, beverage, and event concessions as part of the seasonal Park Rink, dated May 31, 2016. Parks hereby approves such concession.

(xii) Licensee has granted a sublicense to Zashim Uddin, to operate two newsstands located along the south side of West 42<sup>nd</sup> Street, west of Fifth Avenue, adjacent to the Park, dated July 14, 2014. Parks hereby approves such concession.

(d) Licensee may operate the Licensed Premises for Licensee's Special Events. All Licensee's Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner's designee, which approval shall not be unreasonably withheld. Licensee shall give the Commissioner at least twenty-one (21) days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee's Special Event. Licensee's Special Events may not restrict public access to the Licensed Premises without Parks' prior written consent. Licensee's Special Events shall not require a sublicense, but the sponsor or host of the event must enter into an agreement with Licensee that is acceptable to Parks before the commencement of load-in for such Licensee's Special Event.

(e) Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI, or other entities as may be required for any music or music programming during its programming.

(f) All Gross Receipts (as hereinafter defined) received by Licensee from any Advertising, Sponsorships (as defined below), Restaurant Leases (as defined below) and from any of Licensee's Special Events, or the operation of, or the Sublicense of any Food Concessions, Temporary Markets, carousel, newsstands, ice-skating rink and other visitor services and events authorized by Parks shall be accounted for within the general ledger accounts of Licensee in a clearly identifiable manner and will be used by Licensee exclusively to pay Expenses (as hereinafter defined). Any Excess Revenues (as hereinafter defined in Section 2.1(f)) for any Fiscal Year and any disbursements therefrom shall be accounted for by Licensee in the general ledger accounts referenced above in a clearly identifiable manner, and any Excess Revenues shall be used exclusively to pay: i) accumulated Expenses incurred in the prior Fiscal Year that exceed Gross Receipts for that Fiscal Year; or ii) Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the report described in Section 4.1(c).

(g) (i) Subject to the approval of the Commissioner, Licensee, as part of its mission and in connection with Licensee's Special Events, may provide free services and programming open to the public in the Licensed Premises, including, without limitation, horticulture, education, athletics, maintenance, tours, food, products, programs, and concerts. All the events and programs listed on Exhibit B are approved. Licensee may make non-substantive changes to the Exhibit B without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee that it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in advance in writing by Parks. To the extent Licensee has, prior to March 1 of any year of the Term, set the schedule of the Licensee's Special Events for the balance of that year, then Licensee agrees to provide Parks with any update or change to Exhibit B for that year no later than March 1 of that year. The foregoing shall not restrict Licensee's right to update or change Exhibit B after March 1.

(ii) All aspects of Licensee's Special Events shall comply with the Parks Department Rules and Regulations, including, but not limited to obtaining Parks permits where applicable. Licensee is responsible for securing any/all ancillary permits required as they pertain to outside agency regulations. These may include, but not be limited to NYPD Amplified Sound permits, Department of Buildings' structural or temporary place of assembly permits, Department of Health permits and Fire Department permits. 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), the Administrative Code of the City of New York, §24-et seq., and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises 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. A cabaret license will be strictly prohibited at the Licensed Premises.

(h) No Advertising is permitted in the Licensed Premises, except for the Advertising on the Newsstands Panels.

(i) All menus, merchandise, and other services (items and prices), which are attached hereto as Exhibit C are approved by Parks. Licensee may make non-substantive change to the Exhibit C without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in advance in writing by Parks. Licensee may increase any previously approved price by up to 3% a year by submission of written notice to Parks. Unless Parks objects, within twenty (20) days after receipt of written notice from Licensee, the increase is approved. However, if Parks objects then the parties will negotiate in good faith to resolve the dispute during which time the increase will not go into effect. In addition, Licensee may increase any previously approved price by more than 3% per year subject to Parks' prior written approval. If any changes are made to Exhibit C, Licensee shall update Exhibit C accordingly and promptly provide a revised Exhibit C to Parks.

(j) All Sponsorships and acknowledgment of Sponsorships, which are attached hereto as Exhibit D are approved by Parks. Licensee may make non-substantive changes to the Exhibit D without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee that it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in writing by Parks. If any changes are made to Exhibit D, Licensee shall update Exhibit D accordingly and promptly provide a revised Exhibit D to Parks.

(k) All hours of operation of Licensee and any Sublicensee, which are attached hereto as Exhibit E are approved by Parks. Licensee may make non-substantive change to the Exhibit E without seeking Parks approval, but Licensee must provide Parks with written notice within twenty (20) days of the non-substantive changes and Parks has twenty (20) days

after receipt of such notice to review and, if Parks disagrees, Parks shall notify Licensee it believes that the changes are substantive. In those instances, the changes shall immediately cease and the parties will enter into good faith negotiations to resolve the dispute; in addition, all substantive changes must be approved in writing by Parks. If any changes are made to Exhibit E, Licensee shall update Exhibit E accordingly and promptly provide a revised Exhibit E to Parks.

(l) Parks must approve in writing all prices for goods or services, or activities authorized in this Section 1.1.

1.2 All menus, merchandise, and other services for Sublicensees or Licensee's operations must be approved in advance in writing by Parks, other than what has already been approved pursuant to Section 1.1 (i) and Exhibit C. Licensee, if it is selling food to the public, and any Sublicensee, shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by Licensee or any Sublicensee, as applicable, to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene ("DOHMH") permits. A person may operate a Food Concession only if it has obtained the permits and authorizations required by DOHMH. At all times that a Food Concession is operating, a staff person with a valid DOHMH food handler's license must be present. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

1.3 The operation of a mobile food unit in the Park shall require a DOHMH Vendor License for each person designated as an operator of a mobile food unit and a DOHMH Mobile Food Vending Unit Permit for each mobile food unit. All persons designated as mobile food unit operators must have a valid DOHMH Vendor License in order to operate. All mobile food units must pass a DOHMH inspection in order to receive a DOHMH Mobile Food Vending Unit Permit. All mobile food units operating under this Agreement or a Sublicense must first pass a DOHMH inspection. Licensee or any Food Sublicensee, as applicable, must submit to Parks a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit before the operation of a mobile food unit can commence. Licensee or any Sublicensee, as applicable, must provide Parks with documentation that it has been issued a valid DOHMH Vendor License and DOHMH Mobile Food Vending Unit Permit for each mobile food unit. If Licensee or any Sublicensee operates a mobile food unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Parks will instruct the operator thereof to cease operations and such operator will be subject to fines. When warranted, Officers of the Parks Enforcement Police, New York City Police Department, FDNY and DOHMH may confiscate the mobile food units, including goods. In the case of any third-party not operating under Licensee's auspices or as otherwise authorized to operate pursuant to Federal, State, or City law, Parks will take reasonable steps to instruct the operator thereof to cease operations and such operator will be subject to fines.

1.4 The design, dimensions, and placement of any mobile food unit operating in the Park is subject to Parks' prior written approval.

1.5 It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee or to any Sublicensee pursuant to this License Agreement, but that, during the Term of this License, Licensee and any Sublicensee shall have the use of the Licensed Premises for the purposes herein provided. Notwithstanding the foregoing, the parties acknowledge and agree that the West Terrace and the improvements thereon are leased to Licensee pursuant to the Terrace Agreement and are not licensed to Licensee pursuant to this Agreement. However, the parties further agree that Licensee's operations and activities on the West Terrace are subject to the terms and provisions of this License Agreement for so long as this License Agreement is in full force and effect, but the operations and activities of Restaurant Lessee (as defined below) on the West Terrace and the improvements operated by Restaurant Lessee on the West Terrace are not subject to the terms and provisions of this License Agreement, notwithstanding anything to the contrary contained in this License Agreement, except Licensee shall comply with Section 4.1(b) as it relates to Restaurant Lessee for so long as this License Agreement is in full force and effect. Similarly, Restaurant Lessee is not a Sublicensee, the Restaurant Lease is not a Food Concession, and no other food or beverage operation conducted by Restaurant Lessee on the West Terrace shall constitute a Food Concession under this License Agreement.

1.6 Licensee shall, and shall cause any Sublicensee to, provide at all times full and free access to the Licensed Premises to the Commissioner or his representatives and to other City, State and Federal officials having jurisdiction for inspection purposes and to ensure Parks' satisfaction with Licensee's and any Sublicensee's compliance with the terms of this License or any sublicense.

1.7 (a) Licensee may enter into Sponsorships with a Sponsor, and may install Sponsorship Recognition for such Sponsor, all subject to the prior written approval of Parks, including, but not limited to, approval over the size, quantity and location of Sponsorship Recognition and other forms of recognition and subject to applicable laws, rules and regulations Licensee may submit to Parks for its approval proposed plans or mock-ups for Sponsorship Recognition, and if Parks approves any such proposed plans or mock-ups, then Licensee shall be entitled to use Sponsorship Recognition without any further approval of Parks so long as such Sponsorship Recognition is not materially different from the proposed plans or mock-ups theretofore approved by Parks, or from Exhibit D. In recognition of the commercial exigencies of product promotions, Licensee shall submit to Parks for its approval Sponsorship Recognition or related plans or mock-ups promptly after any of the foregoing is available, and Parks shall endeavor in good faith to review any submissions and respond with its approval or comments as expeditiously as practical, notwithstanding anything to the contrary contained in Section 12.3 or elsewhere in this Agreement.

(b) (i) Except as set forth in subparagraph (ii) below, all intellectual property rights in the Park name, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to the Park and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on behalf of the City, or (ii) in the case of trademarks, used by the City in commerce, unless Licensee is a prior user of any trademark in commerce, are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-

profit activities , Licensee shall obtain the prior written permission and approval from Parks for such use. If Parks permits Licensee to use the City IP for non-commercial purposes, such use will be non-exclusive, royalty-free, world-wide, non-transferrable and non-sublicensable and any revenue generated by Licensee therefrom will be for not-for-profit purposes and will be used by Licensee only in support of the Park. To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require the prior, written agreement of Parks, on terms to be agreed by the parties, and any revenue derived by Licensee shall be used exclusively to benefit the Park. Upon Parks' request, Licensee shall provide Parks with an accounting reasonably satisfactory to Parks of revenue derived from and expenditures made from any use of City IP. To the extent that prior permission and approval of Parks has already been obtained to use City IP (whether for non-commercial or commercial purposes, as the case may be), it is hereby continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (i). Nothing in this subparagraph (i) prohibits Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from using the words "Bryant Park" as part of the business address thereof or in the ordinary course of business thereof, and nothing in this subparagraph (i) requires Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from obtaining permission from Parks to use the words "Bryant Park" as provided in this sentence; provided, however, that Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee specifically acknowledge that the Bryant Park name or words as described in this subparagraph (i) are included within the definition of City IP and no permitted use by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall result in any ownership interest, title or other right on the part of Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee in such words or name, and further provided that any permitted use of such City IP by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall immediately terminate when such person ceases to operate in the Park.

(ii) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements ("Licensee Specific IP") are the property of Licensee: such intellectual property (1) was created by or on behalf of Licensee, any Sublicensee, their respective employees, contractors, or others, other than at the specific direction of the City or Parks, and (2) includes no City IP (as defined in subparagraph (i) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee's activities, as shall Licensee's ability to use any City IP that is incorporated into Licensee Specific IP with the City's permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this License Agreement exclusively in connection with Licensee's activities, but such restriction shall terminate on the expiration or termination of this License Agreement. Licensee hereby grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicensable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise

sales, licensing or other use intended to or which does generate revenue) without the prior written approval of Licensee.

(iii) All goodwill associated with the City IP or the Licensee Specific IP shall be the exclusive property of its respective owner and neither party shall take any actions inconsistent with such rights. Each party recognizes and acknowledges that the City IP and Licensee IP are the exclusive property of the other and they communicate in the public, worldwide, a reputation for high standards of quality and services, which reputation and goodwill have been and continue to be unique to the owner. Each party further recognizes and acknowledges that all trademarks, service marks, trade names, and service names included in the City IP and Licensee Specific IP have acquired secondary meaning in the mind of the public. Neither the City IP, nor the Licensee Specific IP shall be used in connection with any illegal, illicit, or immoral purpose or activity, or in any manner which could be inconsistent with or damaging to the owner's name and reputation. Either party shall have the right to terminate this Agreement, upon written notice, in the event that any part of the City IP or Licensee Specific IP is used by the other party in connection with any illegal, illicit, or immoral purpose or activity. In the event that any of the City IP or Licensee Specific IP is used by the other party in any way which, in the reasonable judgment of the owner, is inconsistent with or damaging to the owner's name or reputation, the owner shall notify the other party in writing and, prior to exercising the right of termination provided for in this paragraph, shall provide three (3) business days following receipt of such notice to the other party to immediately cease and halt all such uses.

(A) During the Term of this License Agreement, each party may make only the uses described in subparagraphs (i) and (ii) above. Each party acknowledges and agrees that all use of and goodwill in the City IP or Licensee Specific IP shall inure to the benefit of its owner. Neither the City, nor Licensee shall acquire any rights in the Licensee Specific IP or City IP, respectively, by virtue of any use it makes of it or any portion of it.

(B) The parties will not use the name or logos 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, conditioned, or delayed.

(C) All provisions of this section will survive any expiration or termination of this License Agreement, except as otherwise set forth in this section.

1.8 In addition to the requirements of Sections 1.1(d) and (g) above concerning Licensee's Special Events, Licensee and any Sublicensee, as applicable, must obtain a Parks permit for any Special Event attended by over twenty (20) people or any Special Event pursuant to which Licensee derives or retains revenues through fees or other charges. The Licensee shall use reasonable effort to provide Parks with no less than thirty (21) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed Special Event.

## 2. DEFINITIONS

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

(a) “Advertising” shall mean any words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, promoting or soliciting the sale or the use of a product or service or providing other forms of textual or visual messages or information for the sale or the use of a product or service.

(b) “Alteration” shall mean (excepting ordinary repair and maintenance) (i) any restoration, rehabilitation, modification, renovation, or improvement to the Licensed Premises; (ii) any work or construction which would or might affect in any manner or have any impact whatsoever upon the character, appearance, or design of any portion of the Licensed Premises or its adjacent areas; (iii) any work affecting the plumbing, heating, electrical, mechanical, ventilating, or other systems of the Licensed Premises or any major component of such systems; (iv) affixing or installing any equipment to any area of the Licensed Premises; (v) any seasonal landscaping that constitutes a significant departure from landscaping previously done by Licensee. The following do not constitute an Alteration: (A) landscaping that does not involve the installation, replacement, modification or relocation of Fixed and Additional Fixed Equipment and that is similar to landscaping previously done by Licensee, including, without limitation, planting, maintaining and removing grass, trees, flowers, beds or shrubbery, (B) installation of Expendable Equipment, (C) repair and maintenance of Expendable Equipment or Fixed and Additional Fixed Equipment, including painting any such equipment, and (D) replacement of Fixed and Additional Equipment in kind.

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

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

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

(f) “Excess Revenues” means, for any Fiscal Year, the positive difference, if any, between Licensee’s Gross Receipts for such Fiscal Year and Expenses for such Fiscal Year.

(g) “Expendable Equipment” or “Personal Equipment” shall mean all equipment and property, other than Fixed and Additional Fixed Equipment.

(h) “Expenses” means all costs incurred by Licensee in operating, repairing, maintaining and managing the Park and in performing Licensee obligations and providing services required or permitted by this Agreement, including sanitation, security, programming, Licensee’s Special Events and horticulture, performing Alterations, Minor Alterations, installing Additional Fixed Equipment and Expendable Equipment, and performing other work that does not constitute an Alteration, as well as any overhead and administrative costs solely incurred in

providing those services. Such costs include, but are not limited to, personnel costs, third-party contract costs, cost of debt service related to Capital Improvement for the Licensed Premises financed by Licensee, insurance, costs of supplies and depreciation of Capital Improvements, Fixed and Additional Fixed Equipment and Expendable Equipment, if the foregoing have been installed by Licensee. The personnel whose cost is included as an Expense includes those persons performing services at the Licensed Premises, such as sanitation and security, horticultural, programming and Licensee's Special Events, as well as those persons responsible for the supervision of the Park and responsible for supervision of persons performing the aforementioned services. The categories and amount of expenses, including the salaries of administrators, managers and supervisors, for each Fiscal Year shall be consistent with the line items set forth in the Annual Operating Budget and Operating Plan for such Fiscal Year to be submitted by Licensee to the Commissioner for review and approval pursuant to clause (iv) of Section 4.1(f) and will only cover any salary related to work performed in or on behalf of the Premises. Expenses shall exclude the salary of the President of Licensee or any successor title and the costs and expenses attributable to Licensee's charitable fund-raising staff.

(i) "Fiscal Year" shall mean the period beginning each July 1 during the Term and ending June 30 of the following calendar year.

(j) "Fixed Equipment" shall mean any property affixed in any way to the Licensed Premises at the time notice to proceed is given, whether or not removal of said equipment would damage Licensed Premises. Fixed Equipment includes, without limitation, walls, structures, monuments, light poles, paving stones and concrete and similar ground surfaces, benches affixed to the ground, chairs affixed to the ground, fences and gates affixed to the ground, and the Public Restrooms, as defined below.

(i) "Additional Fixed Equipment" shall mean property affixed to the Licensed Premises subsequent to the date notice to proceed is given. Additional Fixed Equipment may include, without limitation, walls, structures, light poles, paving stones and concrete and similar ground surfaces, benches affixed to the ground, chairs affixed to the ground, and fences and gates affixed to the ground.

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

(k) (i) "Gross Receipts" shall include without limitation all funds or other consideration received by Licensee and any Sublicensee, without deduction or set-off of any kind, from Advertising, Sponsorship (as defined below), Restaurant Leases (as defined below) and from any of Licensee's Special Events, or from the sale of food and beverages, wares, merchandise or services of any kind from any Sublicensee, or operation by Licensee of any Food Concessions, Temporary Markets, carousel, newsstands, ice-skating rink and other visitor services and events authorized by Parks, 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 or any Sublicensee. 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 any Sublicensee for services to be rendered or orders taken at the Licensed

Premises for services to be rendered by Licensee or any Sublicensee outside thereof. For example, if Licensee or any Sublicensee 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 also include receipts from all Sponsors, whether in cash or as discounts against the purchase price of materials, equipment or commodities. Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises under a properly authorized Sublicense or subcontract agreement, as provided in Section 1.1(c), provided that Gross Receipts shall also include Licensee's income from rental and sublicense or subcontracting fees and commissions received by Licensee in connection with all services provided by Licensee's subcontractors or Sublicensees. Gross Receipts shall also include all fees and other consideration received by Licensee in connection with Licensee's Special Events.

(iii) 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 received by Licensee or any Sublicensee from all sources from the operation of the Food Concessions, Temporary Markets, Licensee's Special Events, the carousel, newsstands (including any funds received from Advertising on the Newstands), the ice-skating rink, and other visitor services and events authorized by Parks shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee or any Sublicensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iii):

(A) With respect to non-catered food and beverage service, a "Gratuity" shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee's or any Food Sublicensee's customer, or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee or any Food Sublicensee receives and pays over in total to its employees (other than management) 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 who are paid a cash wage as a "food service worker" pursuant to NY Labor Law §652(4). Licensee and any Food Sublicensee 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 or any Food Sublicensee, as applicable. "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 or any Food Sublicensee's customer, (ii) is specifically designated as a gratuity, or

purports to be a gratuity, and (iii) is paid over by Licensee or any Food Sublicensee 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 or any Food Sublicensee (as applicable) 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 or any Food Sublicensee (as applicable). "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.

(C) Gross Receipts shall include without limitation all funds or other consideration received by Licensee from any lessee under (i) the lease granted to ARK BRYANT PARK CORP., a New York Corporation ("Restaurant Lessee"), dated August 1, 1993, as amended ("Grill Lease"), or (ii) the lease granted to Restaurant Lessee, as authorized in the Grill Lease, dated February 18, 2005, as amended ("Café Lease")<sup>1</sup> or any successor leases to the Grill Lease or the Café Lease, without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Grill Lease and the Café Lease, 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 regarding the Grill Lease or the Café Lease (collectively, and as may be amended, extended, supplemented or restated from time to time, the "Restaurant Leases;" the term "Restaurant Leases" also includes any other lease for a restaurant on any portion of the West Terrace entered into by Licensee after the date hereof and authorized by the Terrace Agreement; and the term "Restaurant Lessee" also includes any lessee under any such other Restaurant Lease).

(l) "Licensed Premises" or "Premises" shall have the meaning as ascribed to them in the preamble to this Agreement and shall include the structures, as well as any improvements constructed thereon, including the Public Restroom, all walkways, curbs, trees, and landscaping.

(m) "Licensee's Gross Receipts" shall mean the Gross Receipts received by Licensee, but expressly excluding Gross Receipts received only by any Sublicensee

(n) "Minor Alterations" shall mean the following, provided the work does not have an estimated cost of two hundred fifty thousand dollars (\$250,000), or greater,:

(i) Below ground modifications, alterations, or maintenance of utility lines servicing the Premises as may reasonably be necessary for the operations thereof (provided that there is no permanent, or longer than six (6) month change to any above ground feature at Premises, and the work does not last more than six (6) months).

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<sup>1</sup> Both the Grill Lease and Café Lease are authorized by the Terrace Agreement.

(ii) In-kind improvements to exterior of any kiosks in the Premises, or interior improvements to such kiosks, including, but not limited to heating, air conditioning, ventilation, electrical service, water service, or utility relocation.

(iii) In-kind improvements to the interior of the Public Restroom, including, but not limited to the ceiling, appliances and fixtures, lighting and in-kind improvements to the waiting area outside of the Public Restroom.

(iv) Painting and general refurbishment of the perimeter fence of the Premises and any other metal elements within the Premises, but excluding any monuments or works of art.

(v) Cleaning, pointing, in-kind stone replacement and other related work associated with the perimeter wall for the Premises upon which the iron fence is situated.

(vi) Maintenance of bronze torchieres at the stairs of the perimeter of the Premises.

(vii) On-going maintenance of bluestone, granite, and brick pavers throughout the Premises.

(viii) Maintenance and in-kind repair of stone elements, including, but not limited to the balustrades, stone benches, and inscribed commemorative pavers.

(ix) Maintenance and in-kind repair of two (2) newsstands on south side of 42<sup>nd</sup> Street at the perimeter of the Premises, including the Advertising panels attached to the newsstands.

(x) Maintenance and in-kind repair of drinking fountains and maintenance of Lowell architectural fountain.

(xi) Maintenance and repair of wayfinding signs and plaques within the Premises.

(xii) Painting, staining, and other similar methods of preservation of wood elements within the Premises, including, but not limited to trellises, pergolas, doors, and gates.

(o) “Public Restrooms” shall mean the restroom indicated on Exhibit A.

(p) “Sponsor” shall mean a person contributing money to Licensee in exchange for acknowledgment of its contribution.

(q) “Sponsorship or “Sponsorships” shall mean an arrangement pursuant to which, in connection with a payment or payments that will be used to help defray the costs of operating and maintaining the Park, a Licensee’s Special Event or other program within the Park, the person contributing such payment or payments is acknowledged by Licensee for such contribution.

(r) “Sponsorship Recognition” shall mean a sign, graphic or other display that recognizes the financial contribution of the Sponsor identified therein to Licensee, the Park, a Licensee’s Special Event or other program at the Park.

(s) “Sublicensee’s Gross Receipts” shall mean the Gross Receipts received only by any Sublicensee, but not received by Licensee.

### **3. TERM OF LICENSE**

3.1 This License shall become effective upon Parks giving written notice to proceed to Licensee (“Commencement Date”) and, unless terminated sooner in accordance with this License Agreement, shall terminate ten years from the Commencement Date or on the last day of any subsequent renewal periods that are exercised pursuant to this License (“Termination Date” or “Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the “Term.” The parties hereto, by mutual agreement, shall have the option to renew this License for up to two (2) additional five-year periods. Each such option must be exercised by either party at least 12 months before what would otherwise be the Termination Date. If either party timely exercises a renewal option, the other party shall use best efforts to respond to such exercise by written notice given within thirty (30) days of such exercise, which notice shall state whether the other party accepts or rejects such exercise or requests additional time to make a decision.

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

3.3 Parks may terminate this License for cause as follows:

(a) Should Licensee or any Sublicensee 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 this License, such Sublicensee or the Licensed Premises, the Commissioner shall in writing order Licensee to remedy such breach or failure. If Licensee fails to remedy such breach or failure within thirty (30) days following the mailing or other transmission of such written order, then the Commissioner shall have the right to terminate this Agreement. Notwithstanding the foregoing, if such breach or failure cannot be remedied within such thirty (30) day period

given the nature and scope of such breach or failure or due to reasons beyond Licensee's control, as reasonably determined by Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's reasonable judgment to cure such breach. If such breach or failure arises from the acts or omissions of a Sublicensee, as reasonably determined by Commissioner, the cure period shall be reasonably extended by Commissioner beyond such thirty (30) days (not to exceed an additional 30 days) to give Licensee time to induce such Sublicensee to comply with such breach or failure or, if such Sublicensee fails to remedy such breach or failure in a timely manner, for Licensee to terminate the applicable Sublicense and regain possession of the Sublicensed Premises. If a breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing or other transmission thereof.

(b) The following shall constitute events of default for which this License may be terminated on one day's notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors by Licensee; 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 this License; and the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

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

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

3.6 Licensee shall, on or prior to the date that is fifteen (15) days following the expiration or sooner termination of this License (the fifteen (15) day period beginning on the expiration or sooner termination of this License being the "Removal Period," and the last day of the Removal Period being the "Removal Deadline"), remove from the Licensed Premises and shall cause any Sublicensee to remove, all Personal Equipment, all Capital Improvements and Alterations or Minor Alterations that are not Additional Fixed Equipment, and Additional Fixed Equipment to which the City has not taken title pursuant to Section 7.2(a) and Section 8.3 (such equipment being "Removal Equipment"). Licensee acknowledges that any Removal Equipment remaining on the Licensed Premises after the Removal Deadline shall be deemed to be abandoned. Licensee shall remain liable to the City for the cost of removal or disposal of Removal Equipment, should Licensee fail to remove all Removal Equipment from the Licensed Premises by the Removal Deadline. During the

Removal Period, Licensee shall have the right to enter the Licensed Premises to remove any Removal Equipment, provided that Licensee shall maintain the insurance required by Article 20 hereof during the Removal Period and shall indemnify, defend and hold the City and its officials harmless against and all claims and demands of third parties for injury, including death, or property damage, arising out of any such entry and removal, and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements), arising from any such claims and demands. In addition, if the removal of Removal Equipment results in damage to the Park and Licensee or such Sublicensee fails to repair such damage to the Commissioner's reasonable satisfaction and upon such deadline as reasonably determined by the Commissioner, then Licensee shall be responsible for the cost of such repair which shall be promptly paid to Parks upon Parks' written demand to Licensee (the cost of such removal and the cost of such repair being collectively, "Removal Costs").

3.7 In addition to Removal Costs, Licensee shall be liable to Parks for the following damages if Parks terminates this Agreement pursuant to Section 3.3: (i) if Parks terminates this Agreement pursuant to Section 3.3 on account of the failure of Licensee to comply with Licensee's maintenance obligations under this Agreement, the reasonable costs borne by Parks to perform the specific maintenance obligations that Licensee failed to perform in accordance with this Agreement, and (ii) if at the time of any such termination, Licensee commenced an Alteration or Minor Alteration and fails to complete such Alteration or Minor Alteration, Licensee shall be liable for the cost to complete such Alteration or Minor Alteration which shall be promptly paid to Parks upon Parks' written demand to Licensee; provided, however, that unless the performance by Licensee of such Alteration or Minor Alteration was the basis for Parks terminating this Agreement pursuant to Section 3.3, at the parties' mutual election Licensee shall have the right to complete such Alteration or Minor Alteration at Licensee's expense and the termination of this Agreement on account thereof shall be suspended until such Alteration or Minor Alteration is completed to the extent necessary for the purposes of completing such Alteration or Minor Alteration. During such time, the Insurance and Indemnification requirements of this Agreement shall remain in force. Except for Removal Costs and such other damages and other sums as are set forth in Sections 3.6 and 3.7, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.3. Except for Removal Costs, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.2.

3.8 If this License is terminated as provided in Section 3.2 or 3.3 hereof, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises without being liable to indictment, prosecution or damages therefor and may dispossess Licensee and any Sublicensee by summary proceedings or other legal means.

3.9 Except as otherwise provided in Section 3.7, if this License is terminated as provided in Section 3.3 hereof, Parks may complete all repair, maintenance and construction work required to be performed by Licensee or any Sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable, which will not be at Licensee's expense, and Parks may relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for

a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

3.10 No receipt of moneys by Parks from Licensee or any Sublicensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee or any Sublicensee, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy.

3.11 In the event this License Agreement is terminated, Parks will not reimburse Licensee's or any Sublicensee's unamortized capital improvement cost.

#### **4. FINANCIAL RECORDS AND REPORTS**

4.1 (a) On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Licensee's Gross Receipts, signed and verified by an officer of Licensee, reporting any Licensee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Licensee's Gross Receipts shall survive the termination of this License. Licensee shall indicate on its statement of Licensee's Gross Receipts whether or not these amounts are inclusive of sales tax collected.

(b) On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement, from each Sublicensee and each Restaurant Lessee, of such Sublicensee's or Restaurant Lessee's Gross Receipts, signed and verified by an officer of such Sublicensee, or Restaurant Lessee, reporting such Sublicensee's or Restaurant Lessee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Sublicensee's or Restaurant Lessee's Gross Receipts shall survive the termination of this License. Each such Sublicensee or Restaurant Lessee shall indicate on its statement of Sublicensee's or Restaurant Lessee's Gross Receipts whether or not such Sublicensee's or Restaurant Lessee's Gross Receipts are inclusive of sales tax collected. Notwithstanding anything to the contrary in the foregoing, the statement of Gross Receipt for any Sublicensee or Restaurant Lessee may be for its fiscal or operating year rather than the Fiscal Year.

(c) Within one hundred twenty (120) days after the end of each Fiscal Year, Licensee shall submit detailed income and expense statements for itself for operating the Park during the preceding Fiscal Year. Such statements shall be in sufficient detail to show that Licensee is in full compliance with Section 1.1(f) hereof. Such report must contain a certification from Licensee's Chief Financial Officer certifying that all of Licensee's Gross Receipts, including any Excess Revenues, to the extent expended, were applied solely to pay Expenses, or remain available to pay for future Expenses.

(d) Pursuant to New York City Administrative Code Section 18-134, Licensee shall provide to Parks, in a form that complies with the report attached as Exhibit F to this License Agreement or other form acceptable to Parks, data concerning any funds that Licensee has expended at the Licensed Premises for the preceding period of July 1st to June 30th no later than October 31st each year. All information to be furnished to Parks shall be accurate and correct in all material respects and sufficient to give Parks a true and accurate picture of the funds expended by Licensee at the Licensed Premises.

(e) Licensee is, and shall cause any Sublicensee to be, solely responsible for the payment of all Federal, State and local taxes applicable to the operation of the Licensed Premises. With the exception of Federal, State and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax, may be deducted from Gross Receipts.

(f) In addition to the foregoing reports, Licensee shall furnish Parks with the following reports:

(i) Financial Statement: Licensee shall furnish to the Commissioner a detailed financial statement prepared in accordance with GAAP for each Fiscal Year during the Term and any renewal thereof, which shall include the aggregate amount of all salaries of all paid staff whose personnel costs are included in Expenses and shall be audited by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than one hundred twenty (120) days after the close of each Fiscal Year of the Term of this Agreement together with a supplemental unaudited statement setting forth an itemization of such salaries.

(ii) Form 990. Licensee shall make Licensee's form 990 filing for each year during the Term of this Agreement available to the Commissioner after such form has been filed with the Internal Revenue Service.

(iii) Monthly Operations Report: Licensee shall furnish to Parks a monthly report to be submitted within fifteen (15) days of the previous month's end that shall include, but not be limited to, operations activities (repairs, maintenance, etc.), capital projects and Alterations, Minor Alterations, tree inspection reports and tree pruning reports, upcoming public programs and events, future/ongoing initiatives, personnel, incidents/unusual activity, inquiries or publications from press or media, major accidents or unusual incidents occurring on the Licensed Premises.

(iv) Annual Operating Budget and Operating Plan: Prior to the start of each Fiscal Year, Licensee will submit to the Commissioner for review and approval (which shall not be unreasonably withheld) Licensee's Park operations budget and capital budget for the Licensed Premises, which shall include all costs associated with the maintenance and operations of the Licensed Premises. The Licensee shall set forth in reasonable detail the amounts proposed to be allocated, but not limited, to general maintenance, public art, public programs, concessions, and communications, including salaries and benefits of any employee primarily engaged in those activities.

(v) Licensee shall promptly notify Parks, in writing, of any claim for injury, death, property damage or theft which shall be asserted against Licensee or any Sublicensee, or of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty and substantial damage of any character.

(vi) Board Meetings. Licensee will provide notice to the Commissioner of all meetings, hearings, and proceedings of Licensee's Board of Directors, and will make available for consultation any of its officers and employees whose work relates to the performance of this Agreement. Licensee shall invite Commissioner and his designee to all of Licensee's Board of Directors' meetings.

(vii) Other Reports: Licensee shall prepare and provide to Parks other reports as reasonably requested by the Commissioner and/or pursuant to this Agreement.

(viii) Account and Use of Excess Revenues: If Licensee derives Excess Revenues in a particular Fiscal Year, Licensee shall expend such Excess Revenue consistent with the requirements of Section 1.1 (f) and shall report such expenditures consistent with the requirements of 4.1(c). If Licensee is unable to make such a report, Licensee must immediately remit such Excess Revenues to the City. In addition, if there are any unexpended Excess Revenues at the end of the Term, or any renewal thereof, or upon the earlier termination of this License, Licensee may apply such Excess Revenues to any Expenses arising under this License provided that Licensee provides a certification from Licensee's Chief Financial Officer identifying the specific Expenses to which such Excess Revenues were applied and certifying that such Excess Revenues were applied solely to pay such Expenses and Licensee shall remit the remaining balance of such Excess Revenues to the City within six (6) months from the end of the Term, or any renewal thereof, or upon the earlier termination of this License. However, if Licensee provides the Commissioner with a certification from Licensee's Chief Financial Officer identifying the specific Expenses that cannot reasonably be determined within six (6) months of the termination of the License and the Commissioner reasonably agrees with such certification, Licensee can retain such Excess Revenues only so long as is reasonably necessary to determine the specific Expenses in question and must remit remaining balance of such Excess Revenues to the City immediately.

4.2 (a) During the Term, Licensee shall maintain, and shall cause each Sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues of Licensee, in a form and manner reasonably acceptable to the City. If Licensee's operations include the sale of food or other items by Licensee, this revenue control system shall 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, the item(s) sold, time, date of sale and price of the item sold. All accounting and internal control related records of Licensee shall be maintained for a minimum of ten (10) years from the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed

Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

(b) Licensee shall, and shall cause any Sublicensee to, use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee and any Sublicensee 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 the Licensee and any Sublicensee. Licensee shall, and shall cause any Sublicensee to, 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.

## **5. RIGHT TO AUDIT**

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any Sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall, and shall cause any Sublicensee to, also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee and any Sublicensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully with and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's or any Sublicensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee or such Sublicensee, as applicable, must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

5.2 Notwithstanding the foregoing, the parties 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.

## **6. CAPITAL IMPROVEMENTS**

6.1 The City has final authority over all capital projects and capital programs ("Capital Improvements") undertaken at the Licensed Premises, and the Licensee has final authority over deciding the Capital Improvements for which it will raise money from private sources and/or expend its own funds. Parks shall consult with the Licensee on all Capital Improvements at the Licensed Premises.

6.2 Licensee will regularly update Parks on any potential Capital Improvements the Licensee is contemplating advancing, including but not limited to any Capital Improvement stemming from any master plan.

6.3 In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks'

approval, the Licensee may enter into contracts for approved Parks Capital Improvements and may supplement Parks and/or other public capital funds with the Licensee funds for the development of such approved Parks projects.

6.4 Capital Improvements shall become property of the City, at its option, upon their attachment, installation or affixing.

**7. ALTERATIONS AND MINOR ALTERATIONS**

7.1 Licensee and any Sublicensee may perform Alterations to Licensed Premises only in accordance with the requirements of Section 7.2. Licensee and any Sublicensee may perform Minor Alterations to Licensed Premises only in accordance with the requirements of Section 7.6. Alterations and Minor Alterations shall become property of the City, at its option, upon their attachment, installation or affixing.

7.2 To perform an Alteration to the Licensed Premises, Licensee must:

(a) Obtain the Commissioner's written approval, which shall not be unreasonably withheld, for any designs, plans and specifications of the proposed Alteration. At the time the Commissioner issues its written approval of the plans and specifications for any Additional Fixed Equipment, the Commissioner shall notify Licensee whether the City shall accept title to such Additional Fixed Equipment upon substantial completion of the installation or affixing of such Additional Fixed Equipment;

(b) Insure that Alterations are undertaken and completed in accordance with submissions approved pursuant to Section 7.2(a), in a good and workmanlike manner, and within a reasonable time; and,

(c) Notify the Commissioner of the completion of and the date of final payment for such Alteration within ten (10) days after the occurrence of said completion and final payment.

(d) Licensee shall comply with the existing City and Parks procedures, as may be amended from time to time during the Term, for review of any proposed Alteration constituting a landscape redesign, renovation, and rehabilitation project in the Licensed Premises.

7.3 All Alterations to the Licenses Premises undertaken by the Licensee, its agents, employees, Sublicensees or contractors shall be at the Licensee's (or its Sublicensee's) sole cost and expense (other than any agreed contribution from the City or Parks, and contributions from other public or private sector partners or donors) and such work shall not commence until the Licensee obtains written approval from the Commissioner, or his designee as well as any City or other governmental authorizations and approvals that may be necessary.

7.4 To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any Alteration with an estimated cost exceeding

two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Alteration. Notwithstanding the above, to the extent that an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable.

7.5 For any work performed by or on behalf of Licensee at the Licensed Premises, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before such work is performed, and the quality of such work shall meet Parks' standards.

7.6 Licensee may perform Minor Alterations without advanced written approval by Parks. However, Licensee must:

(a) Insure that Minor Alterations are undertaken and completed, in a good and workmanlike manner, and within a reasonable time; and,

(b) Notify the Commissioner of the completion of and the date of final payment for such Minor Alteration within ten (10) days after the occurrence of said completion and final payment. At the time the Commissioner receives notice of the completion of Minor Alterations, the Commissioner shall notify Licensee whether the City shall accept title to such Minor Alterations if they constitute Additional Fixed Equipment;

(c) For any Minor Alterations performed by or on behalf of Licensee at the Licensed Premises, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed Premises before such work is performed, and the quality of such work shall meet Parks' standards. In addition, Licensee shall comply with the existing City and Parks procedures, as may be amended from time to time during the Term, for any Minor Alteration in the Licensed Premises.

7.7 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 or any Sublicensee's obligation herein in any respect.

## **8. FIXED AND EXPENDABLE EQUIPMENT**

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

8.2 Licensee shall be responsible for the regular maintenance and repair of Fixed and Additional Fixed Equipment on the Licensed Premises and for keeping such Fixed and

Additional Fixed Equipment in good operating condition, normal wear and tear excepted. Notwithstanding the foregoing, Licensee is not responsible for damage or destruction of the Excluded Monuments (as defined in Section 20.5) from risks that are typically insured against under a comprehensive broad-form property insurance policy, but Licensee shall be responsible for damage to the Excluded Monuments caused by its acts or omissions (where there is a duty to act). The City hereby accepts title to all Fixed Equipment heretofore installed by Licensee in the Park.

8.3 The City retains title to all Fixed Equipment on the Licensed Premises as of the Commencement Date. As set forth in Section 7.2(a), at the time the City approves the plans and specifications for any Additional Fixed Equipment, the City shall notify Licensee whether the City shall accept title to such Additional Fixed Equipment. If the City determines to accept title to such Additional Fixed Equipment, then title to such Additional Fixed Equipment shall vest in and belong to the City upon the substantial completion of the installation or affixing of such Additional Fixed Equipment. If at the time the City approves the installation of Additional Fixed Equipment it determines not to accept title thereto, then Licensee shall be responsible to remove such Additional Fixed Equipment and restore the Licensed Premises to its condition prior to the installation of such Additional Fixed Equipment or otherwise to the satisfaction of Commissioner at the sole cost and expense of Licensee prior to the Removal Deadline.

8.4 Licensee shall supply and replace, or cause any Sublicensee to supply and replace, at its own cost and expense, all Expendable Equipment, materials and supplies required for the proper operation of this License.

8.5 Licensee shall, and shall cause any Sublicensee to, acquire, replace or repair, install or affix, at their sole cost and expense, any equipment, materials and supplies required for the proper operation of the Licensed Premises as described herein.

8.6 Title to all Expendable Equipment obtained by Licensee or any Sublicensee shall remain in Licensee or such Sublicensee, as applicable, and such equipment shall be removed by Licensee at the termination or expiration of this License.

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

8.8 The Expendable Equipment to be removed by Licensee shall be removed from the Licensed Premises in such a way as shall cause no damage to the Licensed Premises. Licensee shall remain liable to the City for any damage to the Licensed Premises caused by the removal of Expendable Equipment from the Licensed Premises.

## **9. UTILITIES**

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises.

9.2 Licensee has installed new valves and water meters in the park operations office that separately control and meter irrigation water versus potable water. Licensee shall be responsible for the continued maintenance and repair of said meters and the overall park plumbing and water distribution system.

9.3 Consistent with the operations of other public parks in the City, the Licensee shall not be charged for water consumption used specifically for the public use within the Premises, including drinking fountains, operation of the Lowell Fountain, lawn and horticultural irrigation, and operation of any temporary ice skating rink (but excluding any skate rental, event, food and/or beverage services operated in conjunction with, or as part of the ice skating rink), and the Public Restrooms that are situated within the Premises.

9.4 Licensee and any Sublicensee shall at its sole cost and expenses directly pay for all utility costs associated with any concession operations at the Licensed Premises, including but not limited to all DEP water and sewer charges and all charges for electricity.

9.5 Licensee shall, and shall cause any Sublicensee to, at their sole cost and expense, connect to and/or, if necessary, upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals, and/or install or cause to be installed, and maintained, all gas, electric, sewer and telephone utilities, service lines, conduits, pipes, meters and supplies of power necessary for the proper operation of this License. This includes establishing a dedicated meter and/or submeter that captures utility usage on the Licensed Premises and an account with the appropriate service providers. Utilities, as described in this License Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, data (Wi-Fi), and water and sewer charges.

9.6 Licensee shall, and shall cause any Sublicensee to, not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities as have jurisdiction over the construction and operation of the Licensed Premises.

9.7 Licensee shall, and shall cause any Sublicensee to, remove any unsuitable existing materials as required. Licensee shall, and shall cause any Sublicensee to, adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

## **10. OPERATIONS**

10.1 Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public and in such manner as Commissioner shall prescribe and in compliance with this Agreement and all applicable laws, rules, regulations and orders of government agencies having jurisdiction over the Licensed Premises.

10.2 The hours of operation of the Park and any Sublicensee shall be subject to the approval of Parks. In approving the hours of operation, the Commissioner may consider the hours of operation of other similar Parks facilities, the nature of the community and the environs of the concession, Parks Rules and Regulations of operations, the public health and safety, and other similar considerations. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations under the License Agreement.

10.3 Licensee shall or shall cause any Sublicensees to provide a public access seating area at the Licensed Premises approved by Parks and, if alcoholic beverages are served, they may only be served by Licensee in restricted areas designated by Parks. The design and color of all tables, chairs, and umbrellas are subject to Parks' prior written approval, which shall not be unreasonably withheld. The placement of all tables, chairs and umbrellas is subject to Licensee's discretion, but shall be changed if Parks objects. Alcoholic beverages may be served to complement the food service, provided that Licensee obtains the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction. All efforts must be made to keep alcohol consumption discrete. Licensee must keep in mind that this is a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

10.4 (a) Licensee shall not and shall cause any Sublicensee not to advertise, sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, or other tobacco products, or electronic cigarettes.

(b) Smoking anywhere on the Licensed Premises is strictly prohibited.

(c) Additionally, Licensee shall not, and shall cause any Sublicensee not to, use in their operations any polystyrene packaging or food containers.

(d) Licensee shall not, and shall cause any Sublicensee not to, sell any beverages in glass bottles. All beverages must be in non-glass, shatter-proof containers, except that Sublicensees may decant beverages into glassware, provided that such beverages are consumed in the restricted areas provided for in Section 10.3.

(e) Licensee shall, and shall cause any Sublicensee to, adhere to and strictly enforce the provisions of this Section 10.4.

10.5 Licensee shall, and shall cause any Sublicensee to, at their sole cost and expense, obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including, without limitation, certificates of occupancy, if applicable) from all Federal, State, and City agencies having jurisdiction that may be required for the operation, management and maintenance of all activities conducted or authorized by Licensee at the Licensed Premises and the maintenance of the Park in accordance with all applicable Federal, State and City laws, rules and regulations.

10.6 Licensee shall, and shall cause any Sublicensee to, obtain the prior written approval of Parks prior to entering into any marketing or Sponsorship agreement with respect

to operations at the Licensed Premises. In the event Licensee or any Sublicensee breaches this provision, Licensee shall or shall cause its Sublicensee, as applicable, to take any action that the City may deem necessary to protect the City's interest.

10.7 An officer of the Licensee shall personally operate this License or employ an operations manager who shall have supervisory authority over the Licensed Premises. The manager of the Licensed Premises for Licensee will meet with Parks' reasonable approval. All supervisory personnel at the Licensed Premises will meet with Parks' reasonable approval. During the Term, Licensee will designate an employee (the "Manager"), who will be charged with the duty to manage and administer the maintenance and operation of the Licensed Premises. The Manager or its designee must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the Manager or its designee in the event of an emergency. The Manager shall maintain close liaison with the Parks Enforcement Patrol and New York City Police Department. The Manager shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

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

10.9 Licensee shall, and shall cause any Sublicensee to, 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; and (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

10.10 Licensee shall, and shall require Sublicensees to, include in their Advertising and promotion programs, described in Section 10.11 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the ADA and any other similarly applicable legislation.

10.11 Licensee and any Sublicensee may establish an Advertising and promotion program. Licensee and any Sublicensee shall have the right to print or to arrange for the printing of programs or brochures containing any Advertising matter except Advertising which contains tobacco, electronic cigarette or alcoholic beverage 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. Licensee and any Sublicensee may release news items to the media as they sees fit. If the Commissioner in

his or her discretion, however, determines any Advertising or other releases to be unacceptable, then Licensee shall, and shall cause such Sublicensee (as applicable) to, cease or alter such advertisements or releases as directed by the Commissioner. Notwithstanding anything to the contrary contained in this Agreement, the Commissioner shall have prior approval as to all Advertising and promotional materials, subject to the rights granted to Licensee regarding the Newsstands Panels.

10.12 (a) Licensee shall, and shall cause any Sublicensee to, prominently display signage at the Licensed Premises listing all prices and hours of days of operation. The placement, design and contents of all signage, including signage which includes the Licensee's or any Sublicensee's name, trade name(s) and/or logo(s), are subject to Parks' prior written approval. Signage shall also comply with Americans with Disabilities Act ("ADA") requirements. Licensee shall display such signs as may be needed to guide and inform the public as to the location, hours of operation, and related fees of the Licensed Premises. Such signs shall be maintained in good condition and repair. The signs shall include the Parks logo, only if specifically requested by Parks, consistent with Parks-approved design guidelines and may indicate that the Licensed Premises are maintained by the Licensee in cooperation with Parks through this License Agreement. Such signs shall be subject to the approval of Parks.

(b) Licensee shall not permit and shall cause any Sublicensee not to permit Advertising in the Park except for Advertising in the Newsstands Panels. In addition, the following is permitted: words, pictures, photographs, symbols, graphics or visual images of any kind, or any combination thereof, that present a Sublicensee's brand or products on the kiosk, booth or mobile unit operated by such Sublicensee for those brands and products that are sold at such kiosk, booth or mobile unit ("Brand Presentation"). Except as set forth in the preceding two sentences, Licensee shall not permit and shall cause any Sublicensee not to permit the placing of Advertising or Brand Presentation on the exterior of the concession area or on any building or structure on the Licensed Premises. All Advertising or Brand Presentations located at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not, and shall cause any Sublicensee not to advertise any product brands without Parks' prior written approval. Licensee shall not and shall cause any Sublicensee not to display, place or permit the display or placement of Advertising in the Licensed Premises without the prior written approval of Parks.

(c) The display or placement of tobacco or electronic cigarette Advertising shall not be permitted. For the purpose of this section "tobacco advertising" shall mean Advertising, which bears a health warning required by federal statute, the purpose or effect of which is to identify a brand of a tobacco product (any substance which contains tobacco, including, but not limited to, cigarettes; cigars, pipe tobacco and chewing tobacco), a trademark of a tobacco product or a trade name associated exclusively with a tobacco product, or to promote the use or sale of a tobacco product. "Electronic cigarette advertising" shall mean Advertising of an electronic device that delivers vapor for inhalation. For the purpose of this section "electronic cigarette" shall include any refill, cartridge, and any other component of an electronic cigarette. Electronic cigarette shall not include any product approved by the food and drug administration for sale as a drug or medical device. Similarly, the display or placement of Advertising of alcoholic beverages shall not be permitted, but Licensee or any Sublicensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. For the purpose of this section "alcohol advertising" shall

mean Advertising, the purpose or effect of which is to identify a brand of an alcohol product, a trademark of an alcohol product or a trade name associated exclusively with an alcohol product, or to promote the use or sale of an alcohol product.

(d) 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. Licensee shall, and shall cause its Sublicensees to, immediately remove any such prohibited material displayed or placed upon notice from Parks at Licensee's sole cost and expense.

(e) Electronic media will be permitted in connection with Advertising on a case by case basis subject to applicable City laws, rules, and regulations and subject to the sole discretion of the Commissioner. Audio Advertising will not be permitted on the Premises.

(f) Parks further agrees that any Advertising, Sponsorship Recognition, Brand Presentations, or promotional material approved by Parks under this Agreement shall constitute any required approval or permit within the meaning of clause 13 of Section 18-146 of the New York City Administrative Code or Title 56 of the Rules of the City of New York Section 1-04(s) for such Advertising, Sponsorship Recognition, Brand Presentations, or promotional material.

10.13 Should Commissioner, in Commissioner's sole judgment, determine that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have 24 hours to correct such unsafe or emergency condition. During any period where the Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then the Commissioner may require a partial or complete suspension of operation in the area affected by the unsafe or emergency condition. If Licensee believes that such unsafe or emergency condition cannot be corrected within said period of time, the Licensee shall notify the Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.14 Licensee shall not, and shall cause any Sublicensee not to, block any sidewalk, pathway, park entrance or other pedestrian walkway with Licensee's equipment or supplies. Licensee shall, and shall cause any Sublicensee to, place their equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times, unless a lesser width is approved in writing by Parks. However, all walkways must meet the applicable accessibility requirements.

10.15 Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall, and shall cause any Sublicensee to, be responsible for, at their sole cost and expense, obtaining any additional storage space required for the operation of the concession. Licensee shall, and shall cause any Sublicensee to, store all outdoor equipment on a nightly basis and anytime the concession is closed.

10.16 Licensee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider annexed hereto as Exhibit G.

10.17 Licensee shall, and shall cause any Sublicensee to, comply with all national safety guidelines and Federal, State and City laws, rules and regulations related to the management and operation of the Licensed Premises.

10.18 Inspectors from Parks will visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies Licensee will be obligated to rectify in a timely fashion.

10.19 (a) Licensee recognizes that this License Agreement does not grant it or any Sublicensee the exclusive rights to sell in the park in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks or disabled veteran vendors will not compete with Licensee or any Sublicensee or operate near the Licensed Premises.

(b) Notwithstanding the foregoing, Parks agrees that while this License Agreement is in effect, Parks will not authorize another person to operate Food Concessions in the Premises, including the perimeter sidewalk, except as required by Federal, State, or City Law.

## **11. MAINTENANCE, SANITATION AND REPAIRS**

11.1 (a) Licensee, at its sole cost and expense, will maintain and operate the Licensed Premises in a good and safe condition consistent with the Licensee obligations set forth in this Article. To ensure Parks' satisfaction with Licensee's compliance with the standards set forth in this Article 11 Licensee shall provide Parks with full and free access to the Licensed Premises. All such maintenance and repair shall be performed in a good and worker-like manner and in accordance with the following standards:

(i) Dirt, waste, garbage, refuse, rubbish, litter and obstructions shall be removed as needed, and trash and leaves collected and removed as needed, so as to maintain the Licensed Premises in a clean, neat and good condition.

(ii) All walkways, sidewalks and all other improvements and facilities in the Licensed Premises shall be routinely cleaned so as to keep such improvements and facilities in a clean, neat and good condition.

(iii) Graffiti shall be regularly painted over or removed, as appropriate to the nature of the surface.

(iv) Drains, sewers and catch basins shall be cleaned regularly to prevent clogging.

(v) Power washing, as needed.

(vi) Snow and ice shall be removed within a reasonable period of time after each snowfall or accumulation of ice to the extent necessary to provide a walkway for safe passage. Sand and/or salt shall be spread as needed for such walkway.

(vii) Maintenance of all turf, trees, plants, flower beds and landscaped areas shall include, but not be limited to, watering, seeding, pruning, sodding and fertilizing.

(viii) Licensee shall maintain and repair all Park furniture and equipment, including work that is required as a result of vandalism, provided, however, that with respect to any statuary located in the Park, Licensee's routine maintenance responsibilities shall include non-chemical cleaning only, unless otherwise approved in writing by Parks. Licensee shall make reasonable accommodation for any Parks' program for the restoration of such statuary.

(ix) The Public Restrooms shall be cleaned, maintained and stocked on a daily basis.

(x) The maintenance and upkeep of the two marble lions known as Patience and Virtue, and the sculptures of Truth and Beauty in the lower New York Public Library façade fountains, shall not be the responsibility of Licensee.

(xi) All façade elements, bronze park lampposts, flagstaffs, and limestone balustrades, with the exception of 11.1(a)(x), shall be maintained in accordance with direction from Parks' Art and Antiquities division. Licensee shall perform annual care of all decorative bronzes and marble bases for the John Purroy Mitchel Memorial Flagstaffs.

(xii) With respect to the José Bonifacio de Andrada e Silva monument, the sculpture and pedestal shall be cleaned periodically of soiling and environmental particulates. The monument shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing Inralac lacquer coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary. Stone repairs to the pedestal or repairs to the bronze casting shall be conducted as necessary. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Art & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xiii) With respect to the William Cullen Bryant Memorial, the sculpture and pedestal shall be cleaned periodically of soiling and environmental particulates. Annual maintenance shall include a condition assessment, an over-all washing with an anionic

detergent of the lower portions of the monument and bronze sculpture, necessary repairs to the existing hot wax coating, and a cold wax application on the bronze. Every third year, or as necessary, a lift will be procured to fully examine and treat the upper portions of the monument. The inscription shall be highlighted for legibility following mutually agreed methods between Licensee and Parks. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. The pedestal and canopy's masonry shall be pointed as necessary. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Arts and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Arts & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards. In 2017 the monument underwent an in depth restoration which included cleaning, installation of lead weather caps, selective repatination, and re-mortaring all compromised joints. This work was performed pursuant to the Parks Citywide Monuments Conservation Program and supported by the Licensee. Under no circumstances shall any equipment or supplies or park furniture used by the Licensee or its Sublicensees be stored in such a way as to make contact with the monument or impede public access and appreciation.

(xiv) With respect to the William Earl Dodge Monument, the sculpture and pedestal shall be cleaned periodically of soiling and environmental particulates. The monument shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing Inralac coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary (the E at the end of Earl is ungolded on purpose to account for a spelling error in the carving). Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Art & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xv) With respect to the Johann Wolfgang von Goethe Monument, the bust and pedestal shall be cleaned periodically of soiling. The monument shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing Inralac coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary. Additional work may be required to remove graffiti and selectively re-polish the granite pedestal. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified

firm selected by Licensee but subject to Parks Art & Antiquities Division's written approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xvi) With respect to the Gertrude Stein Monument, the sculpture and pedestal shall be monitored and undergo annual maintenance which includes a condition assessment, an over-all washing with an anionic detergent, necessary repairs to the existing hot wax coating, and a cold wax application for the bronze. The inscription shall be renewed as necessary. Documentation with digital photos shall be kept and shared with Parks Art & Antiquities Division to track ongoing conditions. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Art and Antiquities Monuments Division and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Art & Antiquities Division's approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xvii) The maintenance and upkeep of the Benito Juarez Monument, shall not be the responsibility of Licensee.

(xviii) Licensee shall provide necessary protections for all monuments from obstructions, park furniture and appurtenances, tree pruning, and any other obstructions or impediments caused by park activities.

(b) Licensee 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. Licensee acknowledges receipt of the PIP Manual.

11.2 Trees. Licensee shall water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition. Licensee shall provide additional seasonal plantings to supplement Parks' plantings at the Licensed Premises. Certain major landscaping work constituting Alterations shall require the approval of Parks as set forth in Article 7. Licensee shall also comply with the following with respect to trees in the Licensed Premises:

(a) Branches or trees damaged or felled by excessive winds, ice, vandalism, or by any other reasons whatsoever shall be promptly removed.

(b) Licensee may not cut down, replant or remove any tree from the Park without prior written approval from the Commissioner, except that Licensee may replace potted trees as needed without prior approval. Any plans developed by Licensee for gardens or other

horticultural installations in the Park shall be submitted for the Commissioner's approval in advance of any planting.

(c) Within the first year of the Term, Licensee shall engage the services of a certified arborist to conduct an initial aerial inspection of the trees in the Park, i.e. by climbing or use of a bucket/lift, (also known as a Level 3 Inspection as defined by the International Society of Arboriculture) and to generate a report of the findings. A copy of the inspection report shall be provided to Parks.

(d) On an annual basis, Licensee shall engage the services of a certified arborist to conduct a diagnostic inspection (also known as a Level 2 Inspection as defined by the International Society of Arboriculture) of the trees in the Park for potential defects and to generate a report of the findings. A copy of the report shall be provided to Parks. In the event there are any conditions warranting further inspection, Licensee shall conduct a Level 3 Inspection.

(e) Licensee shall conduct visual inspections of the trees in the Park on a monthly basis to identify any potential defects (also known as a Level 1 Inspection as defined by the International Society of Arboriculture). Any such potential defects shall be promptly reported to the Director of Manhattan Forestry.

11.3 This paragraph describes Licensee's current security services for the Park. These security services are intended to supplement any services provided by the City, including services provided by the New York City Police Department and Emergency Medical Services provided by the New York City Fire Department, it being agreed, however, that nothing in this Agreement obligates the City to provide any such services. Nine security officers of the Licensee provide twenty-four-hour security within the park. The post are as follows: Bryant Park East, Bryant Park West, and Special Post, which patrols the exterior of the park and the New York Public Library Terrace. There is a dedicated park supervisor scheduled from 7:30 a.m. to 2:30 p.m., Monday through Friday. Rotating security supervisors cover the park from 3:00 p.m. to 11:00 p.m., seven days per week and on weekends from 7:00 a.m. to 3:00 p.m. Security coverage for any Special Events is determined by the executive staff and the park supervisor. The needs for coverage can be provided by overtime assignments (full tour and extended tour), the hiring of contract security services, and utilizing the NYPD Paid Detail Unit. The Paid Detail Unit supplies an off-duty uniformed police officer for high visibility and police presence. Each security officer of Licensee possesses a New York State security license and has received annual training certified by New York State. In addition, each officer receives daily "roll call" instructions, during which the officers are given instructions for the day, particularly if the area will be the location of a Special Event (such as a parade or protest). Security officers are unarmed and have no authority to arrest persons. Security officers are equipped with two-way radios, which allows them to notify Licensee's security operations center of unusual events, for which a response from New York Police Department or Emergency Medical Service is recommended. Security officers are expected to enforce rules of the Park (e.g., patrons are forbidden to remove alcohol from the Park or to sit on the monuments), interact with people and intervene to prevent or de-escalate disputes, patrol the toilet facilities to reduce illegal behavior inside the toilet facilities, and observe the conduct of people who may be

emotionally disturbed or whose conduct may be influenced by the consumption of alcohol or illegal drugs to intervene in the event their conduct interferes with the enjoyment of the Park by others. Licensee shall continue to provide security services generally consistent with the foregoing during the Term.

11.4 At the expiration or sooner termination of this License, consistent with the maintenance responsibility required of Licensee by this License, Licensee shall turn over the Licensed Premises to Parks in a well maintained state, in good repair, ordinary wear and tear excepted.

11.5 Licensee will be responsible for regular pest control inspections and extermination as needed. To the extent that Licensee applies pesticides to the Licensed Premises or any portion thereof, Licensee or any subcontractor hired by Licensee shall comply with applicable laws, including Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

11.6 For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall maintain up-to-date Petroleum Bulk Storage (“PBS”) registrations with New York State Department of Environmental Conservation and register such tanks with the DEP. Licensee will assume all registration and update costs. Licensee must keep a copy of the PBS Certificate on site and provide copies to Parks’ 5-Boro Office on Randall’s Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks.

11.7 Licensee shall have no responsibility for maintaining the two 5<sup>th</sup> Avenue bus shelters, nor any LinksNYC kiosks should they be installed on the Licensed Premises.

## **12. APPROVALS**

12.1 Licensee is solely responsible for obtaining all approvals, permits and licenses required by Federal, State and City laws, regulations, rules and orders for the lawful operation, management and maintenance of the concession granted by this License.

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

12.3 Parks shall use reasonable efforts to respond to Licensee’s request for a Parks Approval within 21 days following Parks’ receipt of such request. For those matters as to which Parks has agreed in this Agreement not to unreasonably withhold its approval, if Parks rejects Licensee’s request for a Parks Approval, Parks shall use reasonable efforts to provide specific reasons for such rejection, and if following a rejection by Parks, Licensee revises its

submission to address the specific reasons for such rejection and resubmits such request to Parks, Parks shall use reasonable efforts to respond to Licensee's resubmitted request for a Parks Approval within ten (10) days following receipt of such resubmission. Issuance by Parks of a permit for an event, including Special Events permit for a Licensee's Special Event shall constitute approval by Parks of such Licensee's Special Event. Licensee's submission of an application for a Special Events permit for a Licensee's Special Event, with all relevant back-up information, shall constitute notice by Licensee to Parks of Licensee's Special Event for purposes of this Agreement. Notwithstanding the review period prescribed above or elsewhere in this Agreement, the parties acknowledge there will be occasions in which Licensee requires a significantly shorter response period than the period prescribed herein (e.g., a proposal for a promotional Licensee's Special Event is made to Licensee three (3) days prior to the proposed date of the promotional Licensee's Special Event). Parks shall use reasonable efforts to accommodate Licensee's shorter approval requests. Further, notwithstanding the foregoing, the Commissioner in his sole discretion may entertain an appeal of a denial submitted by Licensee within five (5) days of such denial.

12.4 Kate Spellman (kate.spellman@parks.nyc.gov) or her designee is the Parks representative who has, as of the date hereof, authority to issue an approval by Parks for the various types of approvals that are contemplated by this License Agreement. Reasonably promptly after any personnel change results in a change in the Parks representatives, Parks shall update the name and email address of the new Parks representative.

### **13. PARKS' SPECIAL EVENTS**

13.1 For the purposes of this Section 13 the term "Parks' Special Event(s)" shall mean any Special Event at the Licensed Premises sponsored by Parks. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use of the Licensed Premises or any portion thereof. For each Parks Special Event, Parks shall comply with the following conditions: (a) Parks shall give Licensee not less than thirty (30) days (or such lesser period as agreed by the parties) advance notice of any Parks' Special Event, and any annual event will be on a date mutually agreed to by Parks and Licensee, (b) Parks shall not sponsor or permit a Parks' Special Event on a date that will conflict with a Licensee's Special Event for which Licensee has submitted to Parks an application for a Special Event Permit and such Special Event Permit has been approved by Parks, (c) Parks shall be responsible for maintenance and clean-up associated with any such Parks' Special Event and may delegate such maintenance and clean-up obligation to a third-party, but such delegation shall not relieve Parks of primary responsibility to Licensee for such maintenance and clean-up, and (d) each Sublicensee, in its own discretion, may elect to operate or not to operate during any Parks' Special Event. Subject to the foregoing conditions, Licensee shall, and shall require that each Sublicensee, cooperate with Parks in connection with Parks' Special Events. Such events shall not, without the prior written consent of Licensee, prohibit the Licensee or any Sublicensee from reasonable access to the Licensed Premises. Furthermore, Parks reserves the right to grant permits for "Demonstrations" as defined in Section 1-02 of Parks' Rules and Regulations at the Licensed Premises where appropriate under Parks' Rules and Regulations and where such Demonstrations do not unreasonably interfere with previously scheduled and Parks-approved Licensee's Special Events as reasonably determined by Parks.

**14. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES**

14.1 Except for Sublicenses approved by Parks, 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 (unless it is agreed to, in writing, by Parks and signed by the Commissioner or Commissioner's designee), or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

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

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in more than ten percent in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee may be made under any circumstance if such sale will result in a change of control of Licensee violative of the intent of this Section 14, without the prior written consent of Commissioner.

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent (10%) 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.

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

14.4 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.

## **15. PARKS CONSTRUCTION**

15.1 Parks reserves the right to make repairs, alterations, decorations, additions or improvements to Licensed Premises (“Parks Construction”) at Parks’ expense as Parks deems necessary in its discretion at any time during the Term, subject to the following conditions: (a) except for Parks Construction in response to an emergency, as determined by Parks, Parks shall give Licensee not less than sixty (60) days’ notice of any Parks Construction, which notice shall set forth the scope and schedule of the Parks Construction, (b) Parks shall consult with Licensee about the proposed schedule for any Parks Construction if such Parks Construction will interfere with any Parks-approved Licensee’s Special Events, (c) Parks shall use reasonable efforts to minimize interference with the operations of any Sublicensee and with the operations of Licensee, (d) if any Parks Construction results in the temporary removal of any improvements in the Licensed Premises, Parks shall restore such improvements to their condition prior to such temporary removal promptly following completion of such Parks Construction, (e) Parks Construction shall be performed in a good and worker-like manner, (f) Parks shall contain all equipment and supplies for any Parks Construction in a reasonably confined area, and Parks shall not store overnight in the Licensed Premises any debris (except in response to an emergency), and (g) Parks shall take reasonable steps to minimize construction dust and residue, and Parks shall be responsible for cleaning such dust and residue on a daily basis. Licensee shall, and shall cause any Sublicensee to, reasonably cooperate with Parks to accommodate any Parks Construction and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks may temporarily close a part or all of the Licensed Premises for a Parks Construction as determined by the Commissioner. In the event that Parks does temporarily close a part of or all of the Licensed Premises for a Parks Construction, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Licensee shall, and cause any Sublicensee to, be responsible for the security of all Licensee's property or Sublicensee’s property, as applicable on the Licensed Premises at all times, but Parks shall be responsible for any damage to any such property to the extent arising from the performance of any Parks Construction, and Parks shall be solely responsible for claims, damages, or injury resulting from Parks Construction, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee or any Sublicensee.

## **16. COMPLIANCE WITH LAWS**

16.1 Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and Sublicensees 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 the Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and shall 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., New York City Administrative Code §18-137, 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.

16.2 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"). Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, 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.

16.3 Licensee shall not use or allow the Licensed Premises, or any portion thereof, to be used or occupied for any unlawful purpose or in any manner that violates a certificate pertaining to occupancy or use during the Term.

**17. NON-DISCRIMINATION**

17.1 No Licensee or Sublicensee shall unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation.

17.2 All advertising for employment for Licensee or any Sublicensee shall indicate that Licensee or such Sublicensee, as applicable, is an Equal Opportunity Employer.

**18. NO WAIVER OF RIGHTS**

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

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

19.1 (a) Licensee shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, Sublicensees, contractors, and subcontractors while they are on the Licensed Premises involved in the operations under this License.

(b) Licensee shall take 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.

19.2 (a) To the fullest extent permitted by law, subject to Section 19.2(c), Licensee shall indemnify, defend and hold the City and its officials and employees (an “Indemnified Party”) harmless against any and all claims and demands of third parties for injury, including death, or property damage arising out of operations under this License Agreement (“Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any Claims (together with Claims, “Liabilities”), arising out of the (i) the condition of the Park, (ii) the acts or omissions (where there is a duty to act) of Licensee or any Sublicensee or any of their respective employees, servants, contractors, subcontractors or agents, in any operations under this License, or (iii) Licensee’s or any Sublicensee’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with applicable law or any of the requirements of this License, regardless of whether any of the foregoing have been negligent. Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the Indemnified Party shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee shall include the following indemnification (or a substantially comparable provision) in each Sublicense entered into during the Term of this Agreement:

To the fullest extent permitted by law, Sublicensee shall indemnify, defend and hold the City and its officials and employees (an “Indemnified Party”) harmless against any and all claims and demands of third parties for injury (including death) or property damage arising out of operations under this Sublicense (“Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys’ fees and disbursements) arising from any Claims (together with Claims, “Liabilities”), arising out of (i) the condition of the Sublicensed Premises, (ii) the acts or omissions (where there is a duty to act) of Sublicensee or any of its employees, servants, contractors, subcontractors or agents, in any operations under this Sublicense, or (iii) Sublicensee’s or any of its employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with applicable law or any of the requirements of its Sublicense, regardless of whether any of the foregoing have been negligent. To the extent Liabilities arise from the following, they shall be excluded from Sublicensee’s indemnification and defense obligations under this paragraph: (i) any construction performed by Parks or Parks’ contractors, (ii) any Parks’ Special Event, or (iii) the negligence or willful misconduct of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement). Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the

Indemnified Party shall be partially indemnified by Sublicensee to the fullest extent permitted by law.

(c) To the extent Liabilities arise from the following, they shall be excluded from Licensee's indemnification and defense obligations under Section 19.2(a): (i) any construction performed by Parks or Parks' contractors, (ii) any Parks' Special Event, or (iii) the negligence or willful misconduct of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement).

(d) To the fullest extent permitted by law, the Licensee shall defend, indemnify, and hold harmless the Indemnified Parties against any and all Claims and Liabilities that the Indemnified Parties may be subject to or which they may suffer or incur allegedly arising out of any infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party by the Licensee, any Sublicensee or any of their respective employees, agents, servants, contractors or subcontractors in the operations under this License including any such infringement, violation, or unauthorized use arising while Licensee is in compliance with the License. Insofar as the facts or law relating to any of the foregoing would preclude an Indemnified Party from being completely indemnified by the Licensee, the Indemnified Party shall be partially indemnified by the Licensee to the fullest extent permitted by law.

(e) Upon receipt by any Indemnified Party of actual notice of a Claim to which such Indemnified Party is entitled to indemnification in accordance with Sections 19.2 (a) or (d), Parks shall give prompt notice of such Claim to Licensee. Licensee shall assume and prosecute the defense of such Claim at the sole cost and expense of Licensee. Licensee may settle any such Claim in its discretion so long as such settlement includes an unconditional release of the Indemnified Party.

19.3 Licensee's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this Licensee, nor (ii) adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

## **20. INSURANCE**

20.1 (a) Throughout the Term, Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, any change in Licensee's operations after the date hereof warrant the foregoing.

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

20.2 (a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury

(including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury and not less than Five Million Dollars (\$5,000,000) in the aggregate on a per location basis, and Five Million Dollars products completed operations coverage, which amounts may be obtained by a combination of primary and umbrella coverage carried by Licensee. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury 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) Licensee shall require that each Sublicensee and each of its construction contractors maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death), One Million Dollars (\$1,000,000) for personal and advertising injury, One Million Dollars (\$1,000,000) in the aggregate, and One Million Dollars (\$1,000,000) products completed operations coverage. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury 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.”

(c) Such Commercial General Liability insurance maintained by Licensee and each Sublicensee and construction contractor shall list the City, together with its officials and employees, as an Additional Insured for claims arising out of any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37. “Blanket” or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(d) If Licensee or a Sublicensee of Licensee or a contractor of either serves alcoholic beverages anywhere on the Licensed Premises, Licensee and its Sublicensee and contractor shall carry or cause to be carried liquor law liability coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and list the City, together with its officials and employees, as an additional insured. Such insurance shall be effective prior to the commencement of any operations in which alcoholic beverages are sold and continue for the duration of such operations. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

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

20.4 (a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial 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.

(b) If vehicles are used for transporting hazardous materials, such Commercial 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.

20.5 (a) Licensee shall maintain commercial property insurance on a special causes of loss form covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the Commencement Date or built at any time before the Termination Date. Licensee’s property insurance requirements expressly exclude the sculptures and pedestals at Bryant Park (collectively, the “Excluded Monuments”). Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Loss Payee as their interests may appear. If the Excluded Monuments are damaged by any event that would be covered by commercial property insurance on a special causes of loss form of the type that Licensee is required to carry for the Concession Structures, then Parks shall be responsible for the repair and restoration of the Excluded Monuments, if Parks chooses to repair or restore the Excluded Monuments.

(b) This section does not require coverage for damage caused by flooding.

(c) The limit of such property insurance shall be no less than the full Replacement Cost of all Concession Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by a commercial property insurance policy on a special causes of loss form. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

(d) In the event of any loss to any of the Concession Structures, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With regard to any Concession Structure that the City owns or in which the City has an interest, Licensee shall also (i) take all appropriate actions in a timely manner to adjust such claim on terms that provide the City with the maximum possible payment for the loss, and (ii) either provide the City with the opportunity to participate in any negotiations with the insurer regarding adjustments for claims or, at the Commissioner’s discretion, allow the City itself to adjust such claim.

20.6 Licensee represents and warrants that its operations at the Licensed Premises will not involve asbestos, lead, PCB’s or any other hazardous materials.

20.7 (a) Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / “VII”, a Standard and Poor’s rating of at least A, a Moody’s Investor Service rating of at least A3, a Fitch Ratings’ rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

(b) Except with respect to Workers’ Compensation, Employers’ Liability, and Disability Benefits Insurance, policies of insurance required under this Article shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(c) Wherever this Article 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 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 unless approved in writing by the Commissioner. Under no circumstances shall the City 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 with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

(f) 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.

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

(b) For Workers’ Compensation, Employer’s Liability Insurance, and Disability Benefits insurance policies, 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

(v) 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 other than Workers Compensation, Employer's Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form annexed hereto as Exhibit H or as otherwise required by the Commissioner 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 Concession. 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 Concessionaire's obligation to ensure that insurance fully consistent with the requirements of this Article 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 upon request by the Commissioner or the New York City Law Department.

20.9 (a) Licensee may satisfy its insurance obligations under this Article 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 list Licensee as an Additional Insured thereunder, Licensee shall ensure that such contractor also list the City, including its officials and employees, as an Additional Insured. For commercial general liability insurance, such coverage must be 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 or self-insured retentions to which they are subject, whether or not the City 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, Licensee shall, and/or shall cause its Sublicensees and construction contractors, as applicable, to, notify in writing all

insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured, including its officials and employees, as well as the Named Insured." For any policy where the City is a Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Loss Payee as its interests may appear." 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.

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

(f) Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License Agreement, nor shall it preclude the City from exercising any rights or taking such other actions as are available to it under any other provisions of this License Agreement 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, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

(h) In the event Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Article 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 Commissioner, the City of New York Department of Parks and Recreation, Arsenal, 830 Fifth Avenue, New York, NY 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.

## **21. WAIVER OF COMPENSATION**

21.1 Licensee hereby expressly waives any and all claims for compensation from the Commissioner, his or her agents, and the City for any and all loss or damage sustained by reason of any defects, including but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or electric current which may

occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges the Commissioner, his or her agents, and the City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid, except to the extent any of the foregoing arise from the gross negligence or willful misconduct of the City or any officer, official, employee or contractor thereof.

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

## **22. INVESTIGATIONS**

22.1 (a) The parties to this license shall cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State of New York (hereinafter "State") or a City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or conducted by the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license that is the subject of the investigation, audit or inquiry.

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

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

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

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

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

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

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this license, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

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

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

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

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

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

party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

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

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

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

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

## **23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

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

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

(c) With respect to any action between the City and the Licensee in New York State Court, the Licensee hereby expressly waives and relinquishes any rights it might otherwise

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

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

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

**24. WAIVER OF TRIAL BY JURY**

24.1 (a) Licensee hereby waives trial by jury in any action, proceeding, or counterclaim brought by the City against Licensee in any matter related to this License.

(b) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and City are adverse parties, Licensee and the City shall reasonably cooperate with each other without additional compensation to the extent that either party may reasonably require of the other.

**25. CUMULATIVE REMEDIES - NO WAIVER**

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

**26. EMPLOYEES**

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

**27. INDEPENDENT STATUS OF LICENSEE**

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

**28. CONFLICT OF INTEREST**

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

**29. PROCUREMENT OF AGREEMENT**

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

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

**30. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

**31. ALL LEGAL PROVISIONS DEEMED INCLUDED**

31.1 Each and every provision of law required to be inserted in this License shall be inserted herein. 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 expressly amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**32. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

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

**33. JUDICIAL INTERPRETATION**

33.1 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.

**34. MODIFICATION OF AGREEMENT**

34.1 This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may only be modified by an agreement in writing and duly executed by the party or parties affected by said modification.

**35. NOTICES**

35.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to the Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by facsimile transmission to the fax numbers for each party provided at the beginning of this License Agreement. Notices to Licensee shall also be given to Licensee at the following address: Bryant Park Corporation, 1065 Avenue of the Americas, Suite 2400, New York, New York 10018, Attention: Dan Pisark (Fax No. (212) 719-3499). Notwithstanding the foregoing, notices seeking or relating to a Parks Approval may be sent by email to the applicable Parks representative set forth in Section 12.4, as updated from time to time.

**36. LICENSEE ORGANIZATION, POWER AND AUTHORITY**

36.1 Licensee and the individual executing this License Agreement on behalf of Licensee each represents and warrants that 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 the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

**37. MISCELLANEOUS**

37.1 The headings of sections and paragraphs are inserted for convenience only and shall not be deemed to constitute part of this License Agreement or to affect the construction thereof. The use in this License Agreement of singular, plural, masculine, feminine and neuter pronouns shall include the others as the context may require.

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

CITY OF NEW YORK DEPARTMENT OF  
PARKS & RECREATION

BRYANT PARK CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Dated: \_\_\_\_\_

Dated: \_\_\_\_\_

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

\_\_\_\_\_  
Acting Corporation Counsel





# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

**A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS**  N/A

**Instructions:** Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):**

The New York City Department of Transportation ("DOT") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedures") for the reasons listed in section (B)(2).

**B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS**  N/A

1. **Briefly summarize the terms and conditions of the concession.** Add additional sheet(s), if necessary.

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with the Grand Central District Management Association, Inc. ("Grand Central Partnership") for the operation, management and maintenance of a pedestrian plaza located at Park Avenue (west) and Pershing Square East between East 41st Street and East 42nd Street, in the borough of Manhattan ("Licensed Plaza").

It should be noted that DOT previously received FCRC Step 1 approval on April 14, 2010 to enter into negotiations with the Grand Central Partnership for a portion of the Licensed Plaza located on Park Avenue (west) between East 41st Street and East 42nd Street. However, as part of the Greater East Midtown Rezoning, Pershing Square East between East 41<sup>st</sup> and East 42<sup>nd</sup> Street was identified as a location that would receive funding for enhanced pedestrian amenities. Accordingly, DOT is seeking to combine both spaces into one cohesive pedestrian plaza managed, operated and maintain by a single entity.

The Grand Central Partnership would have the right to provide for the operation and management of the Licensed Plaza in exchange for ongoing maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Grand Central Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Grand Central Partnership in the basic form of Request for Proposals or Request for Bids, and subject to DOT's prior written approval of both solicitation and award.

2. **Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.**

The intent of the Agreement is that all revenue received by the Grand Central Partnership from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to the Grand Central Partnership, a determination was made to not solicit Competitive Sealed Proposals.

It is in the City's best interest to enter into the Agreement using a different procedure with the Grand Central Partnership because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. The Grand Central Partnership was created and is funded by the property owners surrounding the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a specific interest in the Licensed Plaza.

3a. ***Briefly explain the selection procedure that will be utilized.***

On May 29, 2018, DOT intends to seek FCRC authorization to negotiate the Agreement with the Grand Central Partnership for the operation, management and maintenance of the Licensed Plaza ("Step 1"). Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with the Grand Central Partnership.

Once negotiated and if determined by DOT to be a significant concession, DOT and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with the Grand Central Partnership to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box:  N/A***

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances.  **N/A**

# CONCESSION PRE-SOLICITATION REVIEW MEMORANDUM

## A. DETERMINATION TO UTILIZE OTHER THAN COMPETITIVE SEALED BIDS N/A

*Instructions: Attach copy of draft RFP or other solicitation document, and check all applicable box(es) below.*

The Agency has determined that it is not practicable or advantageous to use Competitive Sealed Bids because:

- Specifications cannot be made sufficiently definite and certain to permit selection based on revenue to the City alone.
- Judgment is required in evaluating competing proposals, and it is in the best interest of the City to require a balancing of revenue to the City, quality and other factors.
- The agency will be pursuing a negotiated concession for the reasons listed in section (B)(3)(b)
- Other (Describe):**

The New York City Department of Transportation ("DOT") will be pursuing a Sole Source License Agreement ("Agreement") pursuant to Section 1-16 of the Concession Rules ("different procedures") for the reasons listed in section (B)(2).

## B. DETERMINATION TO USE OTHER THAN COMPETITIVE SEALED PROPOSALS N/A

1. ***Briefly summarize the terms and conditions of the concession. Add additional sheet(s), if necessary.***

Subject to Franchise and Concession Review Committee ("FCRC") Step 1 authorization, DOT intends to negotiate the Agreement with the Grand Central District Management Association, Inc. ("Grand Central Partnership") for the operation, management and maintenance of a pedestrian plaza located at Park Avenue (west) and Pershing Square East between East 41st Street and East 42nd Street, in the borough of Manhattan ("Licensed Plaza").

It should be noted that DOT previously received FCRC Step 1 approval on April 14, 2010 to enter into negotiations with the Grand Central Partnership for a portion of the Licensed Plaza located on Park Avenue (west) between East 41st Street and East 42nd Street. However, as part of the Greater East Midtown Rezoning, Pershing Square East between East 41<sup>st</sup> and East 42<sup>nd</sup> Street was identified as a location that would receive funding for enhanced pedestrian amenities. Accordingly, DOT is seeking to combine both spaces into one cohesive pedestrian plaza managed, operated and maintain by a single entity.

The Grand Central Partnership would have the right to provide for the operation and management of the Licensed Plaza in exchange for ongoing maintenance of the Licensed Plaza, including through DOT-approved events, sponsorships and subconcessions including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or the Grand Central Partnership, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Grand Central Partnership in the basic form of Request for Proposals or Request for Bids, and subject to DOT's prior written approval of both solicitation and award.

2. ***Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.***

The intent of the Agreement is that all revenue received by the Grand Central Partnership from the operation and management of the concession will go toward maintaining the Licensed Plaza. Since the concession will not yield a profit to the Grand Central Partnership, a determination was made to not solicit Competitive Sealed Proposals.

It is in the City's best interest to enter into the Agreement using a different procedure with the Grand Central Partnership because this not-for-profit organization's mission is to improve and enhance the neighborhood in which the Licensed Plaza is located. The Grand Central Partnership was created and is funded by the property owners surrounding the Licensed Plaza. This organization directly represents the neighborhood that it will serve and has a specific interest in the Licensed Plaza.

3a. ***Briefly explain the selection procedure that will be utilized.***

On May 29, 2018, DOT intends to seek FCRC authorization to negotiate the Agreement with the Grand Central Partnership for the operation, management and maintenance of the Licensed Plaza ("Step 1"). Pending FCRC Step 1 approval, DOT intends to negotiate the terms of the Agreement with the Grand Central Partnership.

Once negotiated and if determined by DOT to be a significant concession, DOT and the FCRC will hold a joint Public Hearing on the proposed Agreement before presenting the proposed concession to the FCRC for "Step 2" approval at a second Meeting. If DOT determines the concession to be non-significant, DOT will present the fully negotiated Agreement with the Grand Central Partnership to the FCRC and request the required FCRC authorization to enter into the Agreement directly (without the need for an initial public hearing).

3b. ***If the selection procedure is a negotiated concession, check the applicable box:  N/A***

*The Agency made a determination that it is not practicable and/or advantageous to award a concession by competitive sealed bidding or competitive sealed proposals due to the existence of a time-sensitive situation where a concession must be awarded quickly because:*

- The agency has an opportunity to obtain significant revenues that would be lost or substantially diminished should the agency be required to solicit the concession by competitive sealed bids or competitive sealed proposals and the diminished revenue does not relate only to the present value of the revenue because of the additional time needed to solicit competitive sealed bids or competitive sealed proposals; *[Explain]*
- An existing concessionaire has been terminated, has defaulted, has withdrawn from, or has repudiated a concession agreement, or has become otherwise unavailable; *[Explain]*
- The agency has decided, for unanticipated reasons, not to renew an existing concession in the best interest of the City and requires a substitute/successor concessionaire. *[Explain]*
- DCAS is awarding a concession to an owner of property adjacent to the concession property, or to a business located on such adjacent property, and has determined that it is not in the best interest of the City to award the concession pursuant to a competitive process because of the layout or some other characteristic of the property, or because of a unique service that can be performed only by the proposed concessionaire. *[Explain]*

**Approved by CCPO:** \_\_\_\_\_ **on** \_\_\_/\_\_\_/\_\_\_.

4. If the agency has/will request unanimous FCRC approval to waive advance written notice to affected CB(s) that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances.  **N/A**