



NYC Parks

Alyssa Cobb Konon
Deputy Commissioner
Planning & Development

T 212.360.3402

E alyssa.cobb@parks.nyc.gov

City of New York
Parks & Recreation

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

MEMORANDUM

TO: Hon. Gale Brewer, President of the Borough of Manhattan
Angel Mescaín, District Manager, Manhattan Community Board 11

FROM: Phil Abramson, Director of Revenue Communications *PA*

SUBJECT: Notice of Joint Public Hearing, December 10, 2018: Intent to enter into an amended and restated license agreement between the City of New York, acting by and through the Department of Parks & Recreation (“Parks”); and Randall’s Island Park Alliance, Inc. (“RIPA”), formerly known as Randall’s Island Sports Foundation, Inc.; and Sportime Clubs LLC, formerly known as Island Tennis L.P., d/b/a Sportime (“Sportime”), for the construction, expansion, renovation, operation, maintenance, and management of a year-round tennis facility at Randall’s Island Park, Manhattan

DATE: November 23, 2018

NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Parks to be held on Monday, December 10, 2018 at 2 Lafayette Street, 14th Floor Auditorium, Borough of Manhattan, commencing at 2:30 p.m. relative to:

INTENT TO ENTER INTO an amended and restated license agreement (“License Agreement”) between the City of New York, acting by and through Parks; and RIPA; and Sportime for the construction, expansion, renovation, operation, maintenance, and management of a year-round tennis facility at Randall’s Island Park, Manhattan. The License Agreement, among other things, provides for the renovation and expansion of the current Licensed Premises to include, after construction, ten (10) additional full-size tennis courts adjacent to the current Licensed Premises, and related amenities, and extends the term by twenty-five (25) years from the date the expanded facility opens. Compensation under the License Agreement will be as follows:

Until the August 31st immediately following the Effective Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Three Hundred Thirty-Three Thousand Nine Hundred Twenty-Three Dollars (\$333,923), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts.

From the September 1st immediately following the Effective Date until the Phase II Commencement Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Five Hundred Thousand Dollars (\$500,000), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts. Notwithstanding the foregoing sentence in this paragraph, to ensure that there shall be no negative impact on the license fees during construction, at the end of each Operating Year during this period and to the extent that the above license fees equal less than One Million Dollars (\$1,000,000), Sportime additionally shall pay to RIPA the difference between the above license fees and One Million Dollars (\$1,000,000).

From the Phase II Commencement Date until the end of the term of the License Agreement, Sportime shall pay to RIPA license fees consisting of the greater of a minimum annual fee or the sum of the percentage of Gross Receipts, as follows:

| PHASE II OPERATING PERIOD OPERATING YEAR | MINIMUM ANNUAL FEE | Vs. % OF GROSS RECEIPTS |
|--|--------------------|---|
| 1 | \$1,000,000 | 20% of all Permitted Sponsorship Activity + 10% of all other Gross Receipts |
| 2 | \$1,050,000 | Same As Above |
| 3 | \$1,102,500 | Same As Above |
| 4 | \$1,157,625 | Same As Above |
| 5 | \$1,215,506 | Same As Above |
| 6 | \$1,276,282 | 20% of all Permitted Sponsorship Activity + 10.5% of all other Gross Receipts |
| 7 | \$1,340,096 | Same As Above |
| 8 | \$1,407,100 | Same As Above |
| 9 | \$1,477,455 | Same As Above |
| 10 | \$1,551,328 | Same As Above |
| 11 | \$1,628,895 | 20% of all Permitted Sponsorship Activity + 11% of all other Gross Receipts |
| 12 | \$1,710,339 | Same As Above |
| 13 | \$1,795,856 | Same As Above |
| 14 | \$1,885,649 | Same As Above |
| 15 | \$1,979,932 | Same As Above |
| 16 | \$2,078,928 | 20% of all Permitted Sponsorship Activity + 12% of all other Gross Receipts |
| 17 | \$2,182,875 | Same As Above |
| 18 | \$2,292,018 | Same As Above |
| 19 | \$2,406,619 | Same As Above |
| 20 | \$2,526,950 | Same As Above |
| 21 | \$2,653,298 | 20% of all Permitted Sponsorship Activity + 13.5% of all other Gross Receipts |
| 22 | \$2,785,963 | Same As Above |
| 23 | \$2,925,261 | Same As Above |
| 24 | \$3,071,524 | Same As Above |
| 25 | \$3,225,100 | Same As Above |

A draft copy of the License Agreement may be reviewed or obtained at no cost, commencing on Monday, December 3, 2018 through Monday, December 10, 2018, between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the New York City Department of Parks & Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

This location is accessible to individuals using wheelchairs or other mobility devices. For further information on accessibility or to make a request for accommodations, such as sign language interpretation services, please contact the Mayor's Office of Contract Services (MOCS) via e-mail at DisabilityAffairs@mocs.nyc.gov or via phone at (212) 788-0010. Any person requiring reasonable accommodation for the public hearing should contact MOCS at least three (3) business days in advance of the hearing to ensure availability. ☒

TELECOMMUNICATION DEVICE FOR THE DEAF (TDD) 212-504-4115

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. __)

RESOLVED, that the Franchise and Concession Review Committee (“FCRC”) hereby approves and authorizes the New York City Department of Parks & Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amended and restated license agreement (“License Agreement”) between the City of New York, acting by and through the Department of Parks & Recreation (“Parks”); and Randall’s Island Park Alliance, Inc. (“RIPA”), formerly known as Randall’s Island Sports Foundation, Inc.; and Sportime Clubs LLC, formerly known as Island Tennis L.P., d/b/a Sportime (“Sportime”), for the construction, expansion, renovation, operation, maintenance, and management of a year-round tennis facility at Randall’s Island Park, Manhattan. The License Agreement, among other things, provides for the renovation and expansion of the current Licensed Premises to include, after construction, ten (10) additional full-size tennis courts adjacent to the current Licensed Premises, and related amenities, and extends the term by twenty-five (25) years from the date the expanded facility opens.

Compensation under the License Agreement will be as follows:

Until the August 31st immediately following the Effective Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Three Hundred Thirty-Three Thousand Nine Hundred Twenty-Three Dollars (\$333,923), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts.

From the September 1st immediately following the Effective Date until the Phase II Commencement Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Five Hundred Thousand Dollars (\$500,000), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts. Notwithstanding the foregoing sentence in this paragraph, to ensure that there shall be no negative impact on the license fees during construction, Sportime shall pay to RIPA no less than \$1,000,000 annually during this period.

From the Phase II Commencement Date until the end of the term of the License Agreement, Sportime shall pay to RIPA license fees consisting of the greater of a minimum annual fee or the sum of the percentage of Gross Receipts, as follows:

| PHASE II OPERATING PERIOD OPERATING YEAR | MINIMUM ANNUAL FEE | Vs. % OF GROSS RECEIPTS |
|--|--------------------|---|
| 1 | \$1,000,000 | 20% of all Permitted Sponsorship Activity + 10% of all other Gross Receipts |
| 2 | \$1,050,000 | Same As Above |
| 3 | \$1,102,500 | Same As Above |
| 4 | \$1,157,625 | Same As Above |

| | | |
|----|-------------|---|
| 5 | \$1,215,506 | Same As Above |
| 6 | \$1,276,282 | 20% of all Permitted Sponsorship Activity + 10.5% of all other Gross Receipts |
| 7 | \$1,340,096 | Same As Above |
| 8 | \$1,407,100 | Same As Above |
| 9 | \$1,477,455 | Same As Above |
| 10 | \$1,551,328 | Same As Above |
| 11 | \$1,628,895 | 20% of all Permitted Sponsorship Activity + 11% of all other Gross Receipts |
| 12 | \$1,710,339 | Same As Above |
| 13 | \$1,795,856 | Same As Above |
| 14 | \$1,885,649 | Same As Above |
| 15 | \$1,979,932 | Same As Above |
| 16 | \$2,078,928 | 20% of all Permitted Sponsorship Activity + 12% of all other Gross Receipts |
| 17 | \$2,182,875 | Same As Above |
| 18 | \$2,292,018 | Same As Above |
| 19 | \$2,406,619 | Same As Above |
| 20 | \$2,526,950 | Same As Above |
| 21 | \$2,653,298 | 20% of all Permitted Sponsorship Activity + 13.5% of all other Gross Receipts |
| 22 | \$2,785,963 | Same As Above |
| 23 | \$2,925,261 | Same As Above |
| 24 | \$3,071,524 | Same As Above |
| 25 | \$3,225,100 | Same As Above |

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

December 12th, 2018

Date: _____

Signed: _____

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

CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

(Attach, in the following order, applicable CRFA Memo, Responsibility Determination Form, approved CPSR Cover Sheet and, if the selection procedure was not CSB, the CPSR Memo and CCPO Memo (if applicable))

| | | |
|---|---|--|
| AGENCY: New York City Department of Parks & Recreation ("Parks") | RECOMMENDED CONCESSIONAIRE Name: Sportime Clubs, LLC Address: PO Box 778, Abrahams Path, Amagansett, NY 11930 Telephone # (212) 427-6150 <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN #11-3388490 Not-for-Profit Organization <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | CONCESSION TITLE/ DESCRIPTION: Amended and restated license agreement between the City of New York, acting by and through the Department of Parks & Recreation ("Parks"); and Randall's Island Park Alliance, Inc. ("RIPA"), formerly known as Randall's Island Sports Foundation, Inc.; and Sportime Clubs LLC, formerly known as Island Tennis L.P., d/b/a Sportime ("Sportime"), for the construction, expansion, renovation, operation, maintenance, and management of a year-round tennis facility at Randall's Island Park, Manhattan. |
| # VOTES required for proposed action = 4 <input type="checkbox"/> N/A | CONCESSION I.D.# M104-IT | |

LOCATION OF CONCESSION SITE(S*)
Address 1 Randall's Island; New York, NY 10035 N/A
 *Attach additional sheet
Borough Manhattan C.B. 11 Block # 1819 Lot # 50

SELECTION PROCEDURE
 (*CCPO approval of CRFA required)

Competitive Sealed Bids
 Competitive Sealed Proposals* (FCRC approved Agency request to deviate from final recommendation of the Selection Committee on ___/___/___.)
 Different Selection Procedure: * (Sole Source Agreement Other: Amended and restated license agreement)
 > FCRC approved different selection procedure on 06/13/2018.
 Negotiated Concession*

| | |
|--|---|
| CONCESSION AGREEMENT TERM Initial Term: Twenty (20) years (July 1, 2009 – June 30, 2029) Extension Term: Twenty five (25) years from the date the expanded facility opens Total Potential Term: Thirty six (36) years* (assuming a one-year interim construction period) | <p align="center">ANNUAL REVENUE (Check all that apply) (<input type="checkbox"/> Additional sheet (<input type="checkbox"/>s) attached)</p> <p> <input type="checkbox"/> Annual Fee(s) \$ _____ <input type="checkbox"/> % Gross Receipts _____% <input checked="" type="checkbox"/> The Greater of Annual Minimum Fee(s) of </p> <p>Until the August 31st immediately following the Effective Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Three Hundred Thirty-Three Thousand Nine Hundred Twenty-Three Dollars (\$333,923), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts.</p> <p>From the September 1st immediately following the Effective Date until the Phase II Commencement Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Five Hundred Thousand Dollars (\$500,000), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts. Notwithstanding the foregoing sentence in this paragraph, to ensure that there shall be no negative impact on the license fees during construction, at the end of each Operating Year during this period and to the extent that the above license fees equal less than One Million Dollars (\$1,000,000), Sportime additionally shall pay to RIPA the difference between the above license fees and One Million Dollars (\$1,000,000).</p> <p>From the Phase II Commencement Date until the end of the term of the License Agreement, Sportime shall pay to RIPA license fees consisting of the greater of a minimum annual fee or the sum of the percentage of Gross Receipts, as follows:</p> |
|--|---|

| PHASE II OPERATING PERIOD OPERATING YEAR | MINIMUM ANNUAL FEE | Vs. % OF GROSS RECEIPTS |
|--|--------------------|---|
| 1 | \$1,000,000 | 20% of all Permitted Sponsorship Activity + 10% of all other Gross Receipts |
| 2 | \$1,050,000 | Same As Above |
| 3 | \$1,102,500 | Same As Above |
| 4 | \$1,157,625 | Same As Above |
| 5 | \$1,215,506 | Same As Above |
| 6 | \$1,276,282 | 20% of all Permitted Sponsorship Activity + 10.5% of all other Gross Receipts |
| 7 | \$1,340,096 | Same As Above |
| 8 | \$1,407,100 | Same As Above |
| 9 | \$1,477,455 | Same As Above |
| 10 | \$1,551,328 | Same As Above |
| 11 | \$1,628,895 | 20% of all Permitted Sponsorship Activity + 11% of all other Gross Receipts |
| 12 | \$1,710,339 | Same As Above |
| 13 | \$1,795,856 | Same As Above |
| 14 | \$1,885,649 | Same As Above |
| 15 | \$1,979,932 | Same As Above |
| 16 | \$2,078,928 | 20% of all Permitted Sponsorship Activity + 12% of all other Gross Receipts |
| 17 | \$2,182,875 | Same As Above |
| 18 | \$2,292,018 | Same As Above |
| 19 | \$2,406,619 | Same As Above |
| 20 | \$2,526,950 | Same As Above |
| 21 | \$2,653,298 | 20% of all Permitted Sponsorship Activity + 13.5% of all other Gross Receipts |
| 22 | \$2,785,963 | Same As Above |
| 23 | \$2,925,261 | Same As Above |
| 24 | \$3,071,524 | Same As Above |
| 25 | \$3,225,100 | Same As Above |

Other

NOTIFICATION REQUIREMENTS

Subject concession was awarded by CSB or CSP.

YES NO

If YES, check the applicable box(es) below:

- The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by __/__/__, which was at least 30 days prior to its issuance.
- The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.
- The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by __/__/__, which was at least 40 days prior to issuance of the solicitation.

If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP received written notice by 12/01/2017, which was at least 40 days

in advance of the FCRC meeting on 06/13/2018 at which the agency sought and received approval to use a different selection procedure.

- The Agency certifies that each affected CB/BP received written notice on __/__/__, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on __/__/__.
- The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on __/__/__.

Law Department approved concession agreement on _____

Award is a major concession. YES NO

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

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

AUTHORIZED AGENCY STAFF

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

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

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

Name Alexander Han

Title Director of Concessions

Signature _____ **Date** __/__/__

CERTIFICATE OF PROCEDURAL REQUISITES

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

Signature _____ **Date** __/__/__

City Chief Procurement Officer

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

SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)

The New York City Department of Parks & Recreation ("Parks") intends to seek Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into an amended and restated license agreement (the "License Agreement") between the City of New York, acting by and through the Department of Parks & Recreation ("Parks"); and Randall's Island Park Alliance, Inc. ("RIPA"), formerly known as Randall's Island Sports Foundation; and Sportime Clubs LLC, formerly known as Island Tennis L.P., d/b/a Sportime ("Sportime"), for the construction, expansion, renovation, operation, maintenance, and management of a year-round tennis facility at Randall's Island Park, Manhattan.

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

A. SELECTION PROCEDURE

Sole Source

Other *Describe:* Amended and restated license agreement.

B. NEGOTIATIONS

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

The License Agreement, among other things, provides for the renovation and expansion of the current Licensed Premises to include, after construction, ten (10) additional full-size tennis courts adjacent to the current Licensed Premises and related amenities, and extends the term by twenty-five (25) years from the date the expanded facility opens. Importantly, as outlined, below, the License Agreement conforms with the key considerations set forth in the Concession Agreement Pre-Solicitation Review Memorandum ("Pre-Solicitation Memo"), submitted to the FCRC ahead of the June 13, 2018 unanimous vote of approval.

Pursuant to a license agreement between Parks and RIPA, dated December 24, 2012, the payment of fees shall be made to RIPA for projects located in Randall's Island Park and which funds shall be used by RIPA for the operation and maintenance of Randall's Island Park. Sportime will pay license fees to RIPA as follows:

Until the August 31st immediately following the Effective Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Three Hundred Thirty-Three Thousand Nine Hundred Twenty-Three Dollars (\$333,923), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts.

From the September 1st immediately following the Effective Date until the Phase II Commencement Date, Sportime shall pay to RIPA license fees consisting of the higher of a minimum annual fee of Five Hundred Thousand Dollars (\$500,000), or the sum of twenty percent (20%) of Gross Receipts derived from Permitted Sponsorship Activity plus ten percent (10%) of all other Gross Receipts. Notwithstanding the foregoing sentence in this paragraph, to ensure that there shall be no negative impact on the license fees during construction, at the end of each Operating Year during this period and to the extent that the above license fees equal less than One Million Dollars (\$1,000,000), Sportime additionally shall pay to RIPA the difference between the above license fees and One Million Dollars (\$1,000,000).

From the Phase II Commencement Date until the end of the term of the License Agreement, Sportime shall pay to RIPA license fees consisting of the greater of a minimum annual fee or the sum of the percentage of Gross Receipts, as follows:

| PHASE II OPERATING PERIOD OPERATING YEAR | MINIMUM ANNUAL FEE | Vs. % OF GROSS RECEIPTS |
|--|--------------------|---|
| 1 | \$1,000,000 | 20% of all Permitted Sponsorship Activity + 10% of all other Gross Receipts |
| 2 | \$1,050,000 | Same As Above |
| 3 | \$1,102,500 | Same As Above |
| 4 | \$1,157,625 | Same As Above |
| 5 | \$1,215,506 | Same As Above |
| 6 | \$1,276,282 | 20% of all Permitted Sponsorship Activity + 10.5% of all other Gross Receipts |
| 7 | \$1,340,096 | Same As Above |
| 8 | \$1,407,100 | Same As Above |
| 9 | \$1,477,455 | Same As Above |
| 10 | \$1,551,328 | Same As Above |
| 11 | \$1,628,895 | 20% of all Permitted Sponsorship Activity + 11% of all other Gross Receipts |
| 12 | \$1,710,339 | Same As Above |
| 13 | \$1,795,856 | Same As Above |
| 14 | \$1,885,649 | Same As Above |
| 15 | \$1,979,932 | Same As Above |
| 16 | \$2,078,928 | 20% of all Permitted Sponsorship Activity + 12% of all other Gross Receipts |
| 17 | \$2,182,875 | Same As Above |
| 18 | \$2,292,018 | Same As Above |
| 19 | \$2,406,619 | Same As Above |
| 20 | \$2,526,950 | Same As Above |
| 21 | \$2,653,298 | 20% of all Permitted Sponsorship Activity + 13.5% of all other Gross Receipts |
| 22 | \$2,785,963 | Same As Above |
| 23 | \$2,925,261 | Same As Above |
| 24 | \$3,071,524 | Same As Above |
| 25 | \$3,225,100 | Same As Above |

Over the 20-year term of the Original License Agreement, as hereinafter defined, minimum annual fees payable to RIPA would be just over \$7,000,000. Under the License Agreement, July 2009 through the proposed 25-year extension term, minimum annual fees payable to RIPA will be just under \$51,000,000.

C. BASIS FOR AWARD

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

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

Parks, RIPA, and Sportime entered into a license agreement, dated October 6, 2005, for the construction, operation, maintenance, and management of a year-round tennis facility at Randall’s Island Park, Manhattan, as amended on November 13, 2007 and June 30, 2009 (collectively, the “Original License Agreement”). Sportime invested \$18 million in private funds to build the current 20-court facility, far exceeding its minimum capital requirement of \$7.5 million (no public funds or taxpayer dollars were used

for the project). At the conclusion of the current facility's construction, the Original License Agreement commenced on July 1, 2009 for a 20-year term, expiring on June 30, 2029.

The existing Sportime Tennis Center ("Tennis Center") is a state-of-the-art tennis facility where all New Yorkers are welcome to play on 10 Deco-Turf hard tennis courts and 10 Har-Tru clay tennis courts. Court reservations, group and private instructional programs, and competitive programs and tournaments are offered for adults and juniors alike. Five of the Deco-Turf hard courts are housed in a year-round permanent building, and the other 15 courts are indoor/outdoor courts, bubbled during the winter/indoor season and outdoors during the summer/outdoor season. Half of the facility's courts are available for use by Parks tennis permit holders during the outdoor season. The facility includes an athletic training center, locker rooms, a pro shop, a café, and classroom and meeting spaces. The Tennis Center is also the home of the John McEnroe Tennis Academy ("JMTA").

Sportime/JMTA introduces tennis to thousands of local youth from the New York City area, including those who, in many cases, would not otherwise have access to the sport. Their youth engagement and intensive outreach efforts are heavily focused on East Harlem and the South Bronx, the two neighborhoods closest to Randall's Island. To date, Sportime has provided more than 15,000 hours of free group tennis instruction in partnership with local schools and Community Based Organizations ("CBOs"), valued at more than \$1 million to more than 5,000 local youth, plus free tennis lessons for local youth participating in the RIPA summer camp, and has participated in numerous community health fairs and other neighborhood events. These school and CBO programs provide the same world-class tennis instructors, curricula and infrastructure offered to all Sportime/JMTA players.

For their most committed young athletes, Sportime/JMTA provides a pathway to success through competitive tennis, often leading to college scholarships, careers in the industry and, for a few, professional tennis careers. Since 2012, Sportime and JMTA have awarded more than 256 scholarships to its students, valued at more than \$5 million. These Sportime/JMTA scholarships underwrite group and individual tennis and athletic instruction by Sportime and JMTA world-class coaches, as well as equipment, transportation, and tournament travel. A growing number of Sportime's scholarship recipients are youth residing in the communities that border Randall's Island. In 2017, Sportime awarded 51 scholarships citywide and, of these, 26 of the students lived and/or attended school in East Harlem or the South Bronx.

Since 2009, Sportime has paid in excess of \$9 million in license fees to RIPA, with the fees used by RIPA for maintenance and programming across Randall's Island. All operating expenses of the Tennis Center, including maintenance, utilities, and ongoing capital improvements, are borne fully by Sportime. Sportime also employs an approximately 100-person workforce – approximately 50% of whom (excluding tennis pros) reside in the communities surrounding Randall's Island, particularly East Harlem and the South Bronx.

Sportime's increasing popularity has caused the facility to operate at full capacity during prime time hours. Its 20 courts are intensely utilized, with waiting lists during peak weekday and weekend hours. Due to this level of demand, and to the related commitment to grow Sportime's charitable mission of changing the lives of underserved youth through tennis, Sportime has, for the past several years, been engaging in discussions with Parks, RIPA, Manhattan Community Board 11, Bronx Community Board 1, and the area's elected officials, regarding a proposal to expand the Tennis Center.

In order to best serve the diverse array of New Yorkers who benefit from its offerings and opportunities, Sportime has proposed and will be required by the License Agreement to expand the Tennis Center on Randall's Island with a minimum additional investment of \$20 million in private funds (no public funds will be utilized for the project).

Capital improvements include the following elements:

- The construction of 10 additional full-size tennis courts with six of those courts being Deco-Turf hard courts. These six Deco-Turf hard courts will be housed in a new pre-fabricated permanent indoor metal building. The other four courts will be Har-Tru clay courts and will be indoor/outdoor courts, bubbled during the winter/indoor season.
- An additional support building will be constructed. The support building will house bathrooms, and lounge areas that will allow viewing into the courts in the new indoor building and onto the clay courts, year-round.
- A connector structure will be constructed to provide seamless, enclosed pedestrian circulation throughout the facility and to comply with code requirements for the seasonal bubbles. The connector will create a direct path between the existing clubhouse and the support building.
- Renovations to the existing clubhouse will be included. On its second floor, the existing outdoor bleachers will be removed and converted into an indoor space that will be connected to the existing clubhouse by a glass walkway. The new second floor space will have a substantial lounge/viewing area looking out to the exhibition court with an adjoining pantry, bathrooms, and a conference room.
- To accommodate the expansion of the clubhouse, the existing bleacher seating will be dismantled. New bleachers will be permanently located on the north side of the exhibition court, on an existing asphalt pad, and will seat approximately 473 people.
- U10 Learning Courts will be constructed. These will be four smaller sized courts, which are optimal for new players under 10 years of age learning to play tennis, and for seniors and others with limited mobility. The U10 Learning Courts will be used by Randall's Island Park visitors, and for Sportime's free youth programming, but will not be used to generate revenue.
- An overlook will be constructed on the site of an existing berm, transforming it from a rarely visited landscape feature into an inviting, shaded lawn, and a great vantage point for watching tennis.¹
- Increased parking will be included along the southern end of the site, by extending the driveway to include 19 new parking spaces to accommodate the anticipated increased number of visitors to the Tennis Center.
- An existing basketball court will be relocated to the immediate east of its current location.

Each of these elements is part of a comprehensive design that builds on prior designs for the Tennis Center and the master plan of Randall's Island Park. These elements will help maintain the open atmosphere of the Island's publicly accessible spaces and encourage engagement with the outdoors through sports, all while creating an improved tennis facility that people of all ages and skill levels can enjoy. The minimum \$20 million that these elements are likely to cost is based on detailed budget projections prepared by Sportime's construction management and engineering consultant.

It is important to note the following factors when considering why Sportime's initial construction of the 20-court facility cost about \$18 million and this proposed expansion, including 10 new courts, is anticipated to cost, at minimum, \$20 million.

- The expansion project includes not only the 10 new courts – 6 in a permanent building, the U10 Learning Courts, the support building, and related infrastructure, but also substantial renovations to the existing site to accommodate the expanded facility, including the elements described above.
- The existing facility uses three air structures, which cover, seasonally, 15 of the existing 20 courts and are less expensive to install than permanent buildings. Currently, only 5 of the existing courts are in a permanent building. This expansion project will include as much permanent structure, if not more, than the existing Tennis Center, including the building housing the 6 new Deco-Turf hard courts, the connector structure, the support building, additions to the clubhouse, and

¹ The Pre-Solicitation Review Memorandum inadvertently included a duplicative reference to this "overlook" as "[a] viewing slope, which will abut the new indoor building, will provide a gentle incline for families and park visitors to sit and watch tennis on the U10 Learning Courts." Both sentences refer to the same new feature, which is included in the Capital Improvements required by the amendment.

extensive renovations. Advantages of constructing a permanent building, versus an inflatable air structure, include that permanent buildings are more environmentally sustainable, use less energy and offer a lower carbon footprint, they create a valuable and permanent asset, they are less vulnerable to weather conditions, and they offer a better playing environment for tennis players.

- Construction costs have escalated since 2008-2009. The projection also includes a 20% design contingency, making allowances for further architecture and engineering work that may be required during the construction process, and a 4% mid-year escalation, due to the phasing of improvements over the course of 18-24 months, all of which are included in the \$20 million minimum capital expenditure required.

The construction of these anticipated improvements is projected to take between 18 and 24 months, and Sportime will be required to make best efforts to create as little disruption (including to the existing tennis courts) and inconvenience to the public as possible. As a result, the construction is anticipated to result in minimal to no reductions in available tennis courts. Sportime's patrons are will be able to continue utilizing the facility throughout the construction, and Parks tennis permit holders will continue to have access to 50% of the available courts during the designated outdoor season, throughout the construction period. A minimal reduction in court availability may occur when some of the existing Har-Tru clay courts are temporarily unavailable, however, these periods are anticipated to be short in duration, and likely contained to one single outdoor season. By phasing this construction period, Sportime expects there to be little to no negative impact on their generation of gross receipts, and, therefore, on their related percentage license fees paid to the City (and Sportime has guaranteed a minimum of \$1,000,000 in fees, on an annualized basis, during the interim construction period, as indicated above).

In addition to the minimum \$20 million capital investment described above, Sportime will invest in additional enhancements as required by the License Agreement.

Consistent with considerations set forth in the Pre-Solicitation Memo (page 6, paragraph 2), the License Agreement obligates Sportime to fund the installation of lights at Ballfields #20 and #21, which installation will encourage nighttime play, and replace the hours lost at Ballfield #30 (the proposed expansion site). It is anticipated that this will add nearly 2,000 hours per year of evening field time, from dusk to 11 p.m. daily, whereas Ballfield #30 has only been able to accommodate about 1,500 hours of play per year and only during daylight hours. The installation of lights at Ballfields #20 and #21 is anticipated to cost approximately \$750,000 and the work will be performed according to Parks' specifications and prior to Ballfield #30 being taken off-line for construction.

Additionally, consistent with the Pre-Solicitation Memo (page 7, paragraph 2) under the License Agreement, Sportime will fund \$1.5 million in improvements to one or more existing parks in East Harlem and the South Bronx. The selection of the park(s) and the scope of work will be coordinated with Parks and Manhattan Community Board 11.

These two additional, off-site capital improvements to City parks, in essence, bring Sportime's minimum capital expenditure in the context of the expansion to approximately \$22,250,000.

Consistent with the Pre-Solicitation Memo (page 6, paragraph 3) the License Agreement also requires a significant increase in, and specificity around, free community programs offered to local youth by Sportime at the expanded facility. Currently, Sportime, annually, provides more than 2,500 court hours of free group tennis programs to more than 450 youth primarily in East Harlem and the South Bronx. With an expanded facility, Sportime will significantly increase free school-sponsored and CBO-centered tennis instruction to 6,000 court hours per year, providing more than 1,300 local youth the opportunity to learn tennis annually. While a majority of these youth will receive instruction at the expanded tennis center, expanded free, off-site, tennis instruction will also be offered at local schools and CBOs in the communities surrounding the Island.

Consistent with the Pre-Solicitation Memo (page 7, paragraph 1) under the License Agreement, Sportime will also be required to increase its scholarship program for students. With an expanded facility, Sportime

will make available approximately 25 scholarships annually and the License Agreement obligates Sportime to make available total scholarships valued at no less than \$1,125,000 annually, reflecting a 50% increase corresponding to an anticipated 50% increase in tennis court inventory.

Of note, the increased free community programming and scholarships as well as the off-site capital investments to which Sportime is obligated in the License Agreement are strongly supported by Manhattan Community Board 11.

Further, in the context of the expansion, Sportime will increase and improve access currently enjoyed by NYC Parks tennis permit holders. Presently, tennis permit holders have access to 50% of Sportime's available courts during the outdoor season. However, there is currently no access for tennis permit holders to lighted courts at Sportime after 7 p.m. Consistent with the Pre-Solicitation Memo (page 7, paragraph 3) under the License Agreement, Parks tennis permit holders will continue to have access to 50% of Sportime's available courts during the outdoor season and, for the first time, will have access to Sportime's lighted, outdoor courts during prime evening hours of 7 p.m. to 11 p.m. during the outdoor season. At the expanded facility and under terms contained in the License Agreement, total court hours available to tennis permit holders during a modified outdoor season will increase from approximately 19,320 hours currently to approximately 24,720 hours—and total prime court hours, i.e., on weekends and after-work, will increase from approximately from 7,130 currently to approximately 14,925.

While maintaining 50% court access for Parks permit holders during the outdoor season, the Pre-Solicitation Memo (page 7, paragraph 3) contemplated that additional courts might be made available to Permit holders during the indoor season; however, after extensive consultation between Parks, Sportime, and RIPA, it was determined that this consideration would prove a significant logistical challenge, and consequently, is not included in the License Agreement.

Due to the extraordinary circumstances described above, including the level of proposed on and off-site capital investment, 100% privately funded—which sum, including, in aggregate, what Sportime has invested to date and is required to invest under the terms of the License Agreement, would result in one of the largest private investments made by a municipal concession in NYC history--as well as the substantial increase in minimum annual fees payable to RIPA/the City, the substantial increases in free community programming and scholarships, and the increases both in prime time court hours and outdoor season access for NYC Parks tennis permit holders, this License Agreement extends the term of the agreement for twenty-five (25) years from the date that the expanded and improved facility opens to the public. This extension is critical to Sportime's capacity to move forward with this significant anticipated additional minimum \$20 million capital investment, which will bring their total investment on Randall's Island to almost \$40 million.

Parks believes that soliciting competitive sealed proposals is not in the best interest of the City. All of the expansion improvements will not only be fully integrated into the existing Tennis Center infrastructure, most all of the improvements are anticipated to be physically attached to the existing facility and accessed through it. This project cannot be implemented without its elements being physically attached to and integrated with the existing facility. All of the expansion components, and the expanded programs they will allow, will share critical infrastructure with the existing Tennis Center including utilities, HVAC, ingress and egress, public areas, Café services, offices, locker rooms, lobbies, and parking. The expanded and fully integrated facility will also share site-management, professional staff, line staff, and more. Further, the expansion location is not large enough on its own to support a full-service tennis operation, and even if it were, Parks would not want two separate tennis concessions located right next to each other. Therefore, the enhancements cannot be provided by another entity through a competitive sealed proposal process.

For the above reasons, and given that Sportime: has proven to be a model concessionaire; has demonstrated a clear commitment to providing world-class tennis facilities on Randall's Island; has demonstrated a clear commitment to providing substantial and first-class free community tennis programming and scholarships primarily to the youth of East Harlem and the South Bronx; has paid in

excess of \$9 million in license fees to RIPA so far, with the expectation of increased fees moving forward, and; because Sportime invested substantial capital to construct the Tennis Center (approximately \$18 million, or far more than the \$7.5 million required in the Original License Agreement), with additional capital investment each year, Parks believes that it is in the best interest of the City to amend the Original License Agreement, rather than to proceed with a competitive solicitation process. Given the totality of the circumstances, Parks believes this License Agreement creates an extraordinary opportunity for the City.

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

1. **Publication & Distribution of Public Hearing Notice**

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

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

OR

Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 11/23/2018, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 11/23/2018, which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement in the newspapers indicated below. A copy of each such notice and amended notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 11/23/2018.

- New York Post, a NYC citywide newspaper on 11/29/18 and 12/6/18.
- Our Town, a NYC local newspaper published in the affected borough(s) on 12/6/18.
- West Side Spirit, a NYC local newspaper published in the affected borough(s) on 12/6/18.

2. **Public Hearing Date, Exception to Public Hearing Requirement**

A Public Hearing was conducted on 12/10/2018.

OR

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

Record canceling such hearing on ___/___/___ and sent a copy of that notice to all Committee Members.

AMENDED AND RESTATED LICENSE AGREEMENT

BETWEEN

SPORTIME CLUBS, LLC FKA ISLAND TENNIS, L.P.

d/b/a

SPORTIMESM

AND

**RANDALL'S ISLAND PARK ALLIANCE, INC. FKA RANDALL'S ISLAND SPORTS
FOUNDATION, INC.**

AND

**CITY OF NEW YORK
PARKS & RECREATION**

for

**CONSTRUCTION, EXPANSION, RENOVATION, OPERATION, MAINTENANCE AND
MANAGEMENT**

**OF A YEAR-ROUND TENNIS FACILITY
AT RANDALL'S ISLAND PARK**

MANHATTAN, NEW YORK

M104-IT

DATED: _____, 2018

TABLE OF CONTENTS

| <u>TITLE</u> | <u>PAGE</u> |
|--|--------------------|
| GRANT OF LICENSE..... | 2 |
| DEFINITIONS..... | 3 |
| TERM OF LICENSE | 9 |
| PAYMENT TO RIPA | 17 |
| RIGHT TO AUDIT | 25 |
| CAPITAL IMPROVEMENTS..... | 25 |
| ALTERATIONS | 33 |
| FIXED AND EXPENDABLE EQUIPMENT | 33 |
| UTILITIES..... | 34 |
| OPERATIONS..... | 35 |
| MAINTENANCE, SANITATION AND REPAIRS | 44 |
| APPROVALS..... | 45 |
| RESERVATION FOR PARKS SPECIAL EVENTS..... | 46 |
| PROHIBITION AGAINST TRANSFER, ASSIGNMENT, AND SUBLICENSES..... | 46 |
| PARKS CONSTRUCTION | 48 |
| COMPLIANCE WITH LAWS | 48 |
| NON-DISCRIMINATION..... | 48 |
| NO WAIVER OF RIGHTS | 49 |
| INDEMNIFICATION | 49 |
| INSURANCE | 50 |
| WAIVER OF COMPENSATION..... | 57 |
| INVESTIGATIONS | 57 |
| CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE..... | 59 |
| WAIVER OF TRIAL BY JURY | 60 |

| | |
|---|-----------|
| CUMULATIVE REMEDIES – NO WAIVER..... | 60 |
| EMPLOYEES OF LICENSEE | 60 |
| INDEPENDENT STATUS OF LICENSEE | 61 |
| CREDITOR-DEBTOR PROCEEDINGS | 61 |
| CONFLICT OF INTEREST; COMPETITION..... | 61 |
| PROCUREMENT OF AGREEMENT | 62 |
| NO CLAIM AGAINST OFFICERS, AGENTS, OR EMPLOYEES | 62 |
| ALL LEGAL PROVISIONS DEEMED INCLUDED..... | 62 |
| SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS..... | 62 |
| JUDICIAL INTERPRETATION..... | 63 |
| MODIFICATION OF AGREEMENT | 63 |
| NOTICES | 63 |
| SCOPE OF AGREEMENT | 64 |
| HEADINGS AND TABLE OF CONTENTS | 64 |
| ENTIRE AGREEMENT..... | 64 |
| COUNTERPARTS | 64 |
| FORCE MAJEURE | 65 |
| EXHIBIT A1 | |
| EXHIBIT A2 | |
| EXHIBIT B | |
| EXHIBIT C | |
| EXHIBIT D1 | |
| EXHIBIT D2 | |
| EXHIBIT F | |
| EXHIBIT G | |
| EXHIBIT H | |

AMENDED AND RESTATED LICENSE AGREEMENT (“License Agreement”) made this day of November , 2018, among the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10021, Randall’s Island Park Alliance, Inc. fka the Randall’s Island Sports Foundation, Inc. (“RIPA”), a not-for profit corporation, organized under the laws of the State of New York, whose address is 24 West 61st Street, 4th Floor, New York, New York 10023, and Sportime Clubs, LLC d/b/a SportimeSM fka Island Tennis, L.P. (“Licensee”), a limited liability company organized under the laws of the State of New York whose address is P.O. Box 778, Abrahams Path, Amagansett, New York 11930.

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

WHEREAS, Randall’s Island Park in the Borough of Manhattan is property under the jurisdiction and control of Parks and the management of the Randall’s and Wards Island Park Administrator; and

WHEREAS, the City, RIPA and Licensee entered into that certain license agreement, dated October 5, 2005, for the construction, operation, maintenance, and management of a year-round tennis facility at Randall’s Island Park, as amended on November 13, 2007 and June 30, 2009 (collectively, the “Original License Agreement”); and

WHEREAS, Parks complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) for the use of different procedures to enter into an amendment to the Original License Agreement to, among other things, expand the Licensed Premises to include, after construction, ten (10) additional full-size tennis courts adjacent to the current Licensed Premises and related amenities and to extend the term for twenty-five (25) years from the date the expanded facility opens; and

WHEREAS, Parks, RIPA and Licensee now desire to enter into this Amended and Restated License Agreement, to supersede the Original License Agreement, specifying rights and obligations with respect to the construction, expansion, renovation, operation, maintenance and management of a year-round tennis facility at Randall’s Island Park; and

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

GRANT OF LICENSE

1.1 Parks hereby grants to Licensee and Licensee hereby accepts from Parks this license to exclusively perform the following services: the construction, expansion, renovation, operation, maintenance and management of a state of the art year-round tennis facility at the Licensed Premises (defined in Section 2.1(j) of this License Agreement) for the use and enjoyment of the general public (the “Concession”), in accordance with the terms and conditions set forth in this License Agreement.

1.2 Licensee shall obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary to operate the Licensed Premises in accordance with the terms of this License Agreement. Whenever any act, consent, approval or permission is required of the City, Parks, the Commissioner, RIPA or the Park Administrator under this License Agreement, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or the Commissioner's duly authorized representative, or RIPA's duly authorized representative, or the Park Administrator, respectively. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon a party to this License Agreement, unless the same is, in each instance, in writing and duly signed by the other parties or such parties' duly authorized representative(s).

1.3 It is expressly understood that no land, building, space, improvement, or equipment is leased or otherwise conveyed to Licensee, but that during the Term (as hereinafter defined) of this License Agreement, Licensee shall have the use of the Licensed Premises for the purpose herein provided. Licensee has the right to occupy and operate the Licensed Premises exclusively, except as otherwise provided in this License Agreement, only so long as this License Agreement is not terminated by the Commissioner in accordance with the provisions of this License Agreement.

1.4 Licensee shall provide, upon advance notice when practicable, full and free access to the Licensed Premises to the Commissioner or Commissioner's representatives, RIPA, and to other City, State and Federal officials having jurisdiction, for inspection purposes and to ensure Licensee's compliance with the terms of this License Agreement. Parks shall have the right to have representatives of the City or of the State or Federal governments present to observe the operations at the Licensed Premises. To the extent practicable, any such inspection shall be conducted without disrupting the Licensee's use and enjoyment of the license granted hereunder.

1.5 Parks and RIPA hereby represent and warrant to the Licensee for its reliance that, subject to applicable law, such parties have the right to enter into this License Agreement and to grant the rights granted to the Licensee hereunder.

1.6 (a) Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any part of the Licensed Premises shall be subject to the prior written approval of the Commissioner provided, however, that the Commissioner hereby approves the use of the trade names “SPORTIME” and “John McEnroe Tennis Academy”. Licensee represents and warrants that Licensee has all right, title and interest in the approved trade names above, or has acquired or properly licensed such right, title and interest, and that to the extent Licensee shall

cease to possess such right, title, or interest, it shall immediately notify Parks and cease to use such trade names in connection with the operations under this License Agreement.

(b) All intellectual property rights in the Randall’s Island name, and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks are the property of the City (“City IP”). Licensee may use the name “Randall’s Island” in connection with its operations under this License Agreement only to identify the Licensed Premises, and any other uses of “Randall’s Island” or any other City IP may be only pursuant to a separate written agreement between the City and Licensee. Parks may require that the City own the portion of any new name selected by Licensee for use at the Licensed Premises that indicates Parks property or a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or an identifier that is not otherwise associated with Parks’ property.

DEFINITIONS

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

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

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

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

(iii) any work or construction that would or might affect in any manner, or have any impact whatsoever upon the structure, character, appearance or design of any portion of the Licensed Premises.

(b) “Capital Improvements” shall mean all construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also shall include all Alterations and “Additional Fixed Equipment,” as that term is defined in Section 2.1(i)(ii) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall include the “Phase II Capital Improvements” defined in and attached hereto as **Exhibit D2**. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed Premises.

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

(d) **(i)** “Commissioner” shall mean the Commissioner of the New York City Department of Parks & Recreation or the Commissioner’s designee, including but not limited to the Administrator of Wards and Randall’s Island Park (“Park Administrator”).

(ii) “Concession Manager” shall mean the individual designated by the Commissioner to serve in such position at Parks.

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

(f) Reserved.

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

(h) “Final Completion” or “Finally Complete” shall mean that the construction of a Capital Improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is required by Licensee pursuant to this License Agreement in connection with the construction of said improvement. Any such certification shall be given or denied in a reasonably prompt fashion after the Licensee seeks same, and shall not be unreasonably withheld. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this License Agreement, except as otherwise set forth herein.

(i) “Fixed Equipment” shall mean any property affixed in any way to the Licensed Premises, existing at the time Notice to Proceed is given, whether or not removal of said equipment would damage the Licensed Premises.

(i) “Additional Fixed Equipment” shall mean Fixed Equipment affixed to the Licensed Premises subsequent to the date that Notice to Proceed is given.

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

(j) “Licensed Premises” shall mean, collectively, (i) the Existing Licensed Premises, as shown in **Exhibit A1**, and (ii) the Expanded Licensed Premises, as shown in **Exhibit A2**. The Licensed Premises shall include the structures, as well as any improvements, constructed thereon, including, without limitation, all buildings or structures, walkways, curbs, trees, and landscaping.

(k) (i) “Gross Receipts” shall include without limitation all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind except as expressly provided herein, from the sale or provision of food and beverages, wares, merchandise or services of any kind (less returns), including from Licensee’s Special Events (as hereinafter defined), provided that Gross Receipts shall exclude (a) the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales; (b) during the Original Interim Period, the Original Operating Period, and the Phase II Interim Period (but not during the Phase II Operating Period), the value of Community Programs and Scholarships (as

defined in Section 10.31(a) of this License Agreement) provided by Licensee; and (c) during the Original Interim Period, the Original Operating Period, and the Phase II Interim Period (but not during the Phase II Operating Period), payments made by Licensee to instructors in connection with services provided by such instructors functioning as independent contractors of Licensee at the Licensed Premises under a properly authorized sublicense agreement with Licensee (pursuant to Article 14 of this License Agreement). For clarity, other than the Phase II Operating Period, if Licensee receives \$100 in connection with services provided by a subcontracted tennis instructor and \$30 is due to such instructor under an approved agreement, Licensee shall report \$70 as its Gross Receipts from such transaction.

(ii) Gross Receipts shall include receipts from all sponsorship agreements, whether in cash or as discounts against purchase price of materials, equipment or commodities (exclusive, however, of branded industry-standard operational accessories and collateral materials such as bar and table accessories, umbrellas, check holders and the like); provided, however, in the event Licensee enters into one or more sponsorship agreements which are partially attributed to the Licensed Premises pursuant to the terms of such sponsorship agreement, Gross Receipts shall include only the portion attributable to the Licensed Premises.

(iii) Gross Receipts shall include Licensee's income from sublicense and subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee's subcontractors and sublicensees, excluding instructors functioning as independent contractors who are addressed above in 2.1(k)(i), rather than receipts from all sales made by Licensee's subcontractors and sublicensees pursuant to a properly authorized sublicense agreement. In addition, in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts. Additionally, Gross Receipts shall include the \$1.00 administrative fee which Licensee collects from the sale of single play tickets and reservation tickets to the public pursuant to **Exhibit B**.

(iv) Gross Receipts shall include receipts generated from Parks' Special Events to the extent they fall within the definition of "Gross Receipts", unless those Gross Receipts are retained by Parks or not otherwise paid over to Licensee.

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

(a) Gratuities (as defined below) transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (v):, with respect to non-catered food and beverage service, a "Gratuity" shall mean a charge that is (i) separately stated on the bill or invoice given to Licensee's customer, (ii)

specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverage to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a “food service worker” pursuant to NY Labor Law Section 652(4). Licensee shall provide documentation reasonably satisfactory to Parks to prove that such Gratuities were paid to employees in addition to their Regular Salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

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

(vi) Notwithstanding anything set forth in this Section 2.1(k), Licensee shall comply with all applicable laws, rules, and regulations, including but not limited to City, State, and federal labor laws.

(l) “Licensee’s Special Events” shall mean any catered or private function (e.g., reservation of the Licensed Premises through Licensee by third parties) for a parks-appropriate purpose at the Licensed Premises, excluding “Parks’ Special Events” as defined in Article 13 of this License Agreement. Subject to prior written approval from Parks, Licensee may conduct Licensee’s Special Events at the Licensed Premises. On a monthly basis, Licensee shall submit to Parks for approval all scheduled Licensee’s Special Events for the following month. Notwithstanding the foregoing, Parks’s prior written approval shall not be required for Licensee’s Special Events that (i) will not close 50% or more of the Tennis Facility’s tennis courts, not including the U-10 courts or any courts required to be made available to PTPHs as set forth in Article 10 of this License Agreement, to the general public during regular hours of operation, or (ii) that will not close 25% or more of any other portion of the Licensed Premises, outside of the tennis courts and the Café seating area, that typically is open to the general public during regular hours of operation. All revenue generated through such Licensee’s Special Events must be reported to Parks as Gross Receipts (as defined above) and the amount thereof will be calculated in a manner consistent with such definition and this License Agreement. Notwithstanding anything to the contrary in this Section 2.1(l), Parks reserves the right to review Licensee’s use of the Licensed Premises for Licensee’s Special Events and require that Licensee obtain Parks’ prior written approval for all Licensee’s Special Events, of any type, if, in the reasonable determination of the

Commissioner, the nature and frequency of Licensee's Special Events constitutes an unreasonable limitation on the use and enjoyment of the Licensed Premises by the general public.

(m) "Original Interim Period" shall mean the period between the date of execution of the Original License Agreement and the Original Commencement Date.

(n) "Original Commencement Date" shall mean the first day that Licensee opened for business after the Final Completion of the Capital Improvements contemplated in the Original License Agreement (July 1, 2009).

(o) "Original Operating Period" shall mean the period between the Original Commencement Date and the Effective Date.

(p) "Permitted Sponsorship Activity" shall mean: (i) the naming of Licensee as sponsor of the Tennis Facility or the designation of other individuals or non-commercial entities to be named as sponsors of the Tennis Facility; (ii) the recognition and/or acknowledgment of any entity that supports or sponsors a program or activity at the Licensed Premises, such as the youth tennis program; (iii) any sponsorship of a temporary event, which is limited to the duration of such event, provided the event cannot be of a duration longer than thirty (30) days; or (iv) any other sponsorship activity approved by the Commissioner. The form, size and other material attributes (including location) of such Permitted Sponsorship Activity shall be subject to the prior approval of the Commissioner. The foregoing notwithstanding, for the purposes of calculating license fees, funds received by Licensee from a not-for-profit charity or foundation, or through individual underwriting, specifically for the purpose of supporting the Community Programs and Scholarships referred to in Section 10.31, shall be subject to the ten percent (10%) percentage Gross Receipts calculation and not the twenty percent (20%) Permitted Sponsorship Activity Gross Receipts calculation.

(q) "Phase II Interim Period" shall mean the period between the Effective Date and the Phase II Commencement Date. With respect to the minimum annual license fee, as set forth in Section 4.1, the minimum annual license fee from the final Year of the Original Operating Period shall apply through the August 31st immediately following the Effective Date, and the minimum annual license fee for Phase II Interim Period shall commence on the September 1st immediately following the Effective Date.

(r) "Phase II Commencement Date" shall mean the first to occur of: (i) the first day Licensee opens for business after the Final Completion of the Phase II Capital Improvements, and; (ii) the second anniversary of the Effective Date, subject to Article 41 of this License Agreement.

(s) "Phase II Operating Period" shall mean the period between the Phase II Commencement Date and the expiration or sooner termination of this License Agreement."

(t) "Substantial Completion" or "Substantially Complete" shall mean, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans,

specifications, schematics, and working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules approved in writing by Parks and/or set forth as incomplete items as provided for in Section 6.20 of this License Agreement, and that the improvement may be utilized by the public. Any such certification shall be given or denied in a reasonably prompt fashion after the Licensee seeks same, and shall not be unreasonably withheld.

(u) “Tennis Facility” shall include all buildings and structures presently existing or to be constructed, comprising the clubhouse and tennis courts and any and all interior or exterior improvements to said buildings and structures or new buildings or structures constructed upon the Licensed Premises during the Original Interim Period and the Term.

(v) “Year” shall refer to a consecutive twelve (12) month period.

(w) “Operating Year” shall refer to:

(i) a period beginning on September 1st and ending the following August 31st during the Term;

(ii) a period, during the Term, between the Original Commencement Date, the commencement date of the Phase II Interim Period, or the Phase II Commencement Date and the first subsequent August 31st, if such Original Commencement Date, the commencement date of the Phase II Interim Period, or the Phase II Commencement Date is after September 1st; or

(iii) a period, during the Term, between September 1st and the termination of the Original Operating Period, the Phase II Interim Period, or the Phase II Operating Period, if such termination is prior to the August 31st immediately following that September 1st.

(x) Each Operating Year, other than those Operating Years referenced in Sections 2.1(w)(ii) and (iii) which may encompass a shortened season or a single full or shortened season, shall consist of a winter season, (“Winter Season” or “Indoor Tennis Season”), and a summer season (“Summer Season” or “Outdoor Tennis Season”), as follows:

(i) During the Original Interim Period, the Winter Season commenced on Columbus Day of each calendar year and terminated on April 30th of the following calendar year, followed by a bridge period from May 1 of each calendar year through Memorial Day of the same calendar year and a Summer Season that commenced on the day after Memorial Day of each calendar year and terminated on Columbus Day of the same calendar year;

(ii) During the Original Operating Period, the Winter Season commenced on Columbus Day of each calendar year and terminated on April 30th of the following calendar year, and the Summer Season commenced on May 1st of each calendar year and terminated on the day before Columbus Day of the same calendar year; and

(iii) During the Phase II Interim Period, and the Phase II Operating Period, the

Winter Season shall commence on the day after Labor Day of each calendar year and terminate on the Thursday before Memorial Day of the following calendar year, and the Summer Season shall commence on Friday before Memorial Day of each calendar year and terminate on Labor Day of the same calendar year.

TERM OF LICENSE

3.1 This License Agreement, including the amended Concession, shall become effective upon registration with the Comptroller (“Effective Date”), and commence upon the date written in a written “Notice to Proceed” issued to Licensee by Parks (“Commencement Date”). This License Agreement shall expire twenty-five (25) Years from the Phase II Commencement Date (as defined above) or upon the sooner termination of this License Agreement pursuant to the terms of this License Agreement (“Termination Date”). The period between the Original Commencement Date (as defined above) and the Termination Date shall be referred to as the “Term”.

3.2 Notwithstanding any language contained herein, this License Agreement is terminable at will by the Commissioner at any time, provided that the Commissioner shall not act arbitrarily or capriciously in making such determination or in such termination. For purposes hereof, Parks and Licensee agree that termination by the Commissioner will not be considered arbitrary or capricious where a determination is made by the Commissioner that the Licensed Premises is needed for an alternative park-related use. However, the above is not an exhaustive list of the non-arbitrary or capricious reasons to terminate by the Commissioner. The Commissioner shall not terminate this License Agreement solely for the purpose of issuing a new license to another party, including to another party at a higher license fee, for the operation of a tennis facility. Such termination shall be effective thirty (30) days after written notice is sent to Licensee and to any lending institution who has provided written notice to the Commissioner of its loan to Licensee. In the event of such early termination, Licensee shall continue to make payments as set forth in Article 4 herein, up to and including but not beyond said early termination date. Upon early termination, Parks shall submit a final bill to Licensee. The Commissioner, the City, its officials, employees and agents shall not be liable for damages to Licensee in the event that this License Agreement is terminated by Commissioner as provided for herein. In the event such notice is not given, this License Agreement shall terminate as described in Section 3.1 of this License Agreement.

3.3 (a) Each of the following shall constitute an “Event of Default” for which this License Agreement may be terminated by City for cause:

(i) if Licensee shall fail to make any payment (or any part thereof) of any license fees, as hereinafter defined, or other charges, or otherwise fail to perform any monetary obligation under this License Agreement, as and when due hereunder, and such failure shall continue for a period of thirty (30) days after Parks’ written notice of default to Licensee;

(ii) if Licensee shall fail to maintain or operate the Licensed Premises as provided in Article 10 and if such failure shall continue for a period of thirty (30) days after written notice to Licensee specifying such failure (unless such failure requires work to be performed, acts to be done or conditions to be removed which cannot, by their nature, reasonably be performed,

done or removed within such thirty (30) day period, in which case no Event of Default shall exist as long as Licensee shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion within a reasonable period);

(iii) if Licensee shall enter into (or permit to be entered into) an assignment or transfer or any other transaction by which any of the benefits of ownership or control of this License Agreement are transferred in a manner which would constitute the functional equivalent of an assignment or transfer or any other transaction without Parks' consent in violation of the provisions of this License Agreement and such assignment or transfer or other transaction shall not be made to comply with the provisions of this License Agreement or be cancelled within thirty (30) days after Parks' written notice thereof to Licensee (the foregoing not intended to prohibit an assignment of this License Agreement to a lending institution, subject to Parks' approval);

(iv) if Licensee shall fail to commence construction of the Phase II Capital Improvements as contemplated in Article 6 of this License Agreement in accordance with the terms, conditions and covenants of this License Agreement, and such failure shall continue for a period of thirty (30) days after written notice to Licensee (subject to delays reasonably unavoidable by Licensee and to Article 41 of this License Agreement), or if Licensee shall fail to diligently prosecute the construction of the Phase II Capital Improvements as contemplated in Article 6 of this License Agreement in accordance with the terms, conditions and schedules of this License Agreement, (subject to Article 41 of this License Agreement), and such failure shall continue for a period of thirty (30) days after Parks' written notice to Licensee;

(v) if prior to the Final Completion of the Phase II Capital Improvements as contemplated in Article 6 of this License Agreement and payment of all costs and expenses thereof, any bonds that may have been required under Article 6 shall expire, or be cancelled or otherwise shall cease to be in full force and effect and the condition giving rise to such status is not cured immediately after Parks' written notice thereof to Licensee;

(vi) if Licensee shall fail to Substantially Complete the construction of the Phase II Capital Improvements as contemplated in Article 6 of this License Agreement by the scheduled completion date in accordance with the terms, conditions and covenants of this License Agreement (subject to delays reasonably unavoidable by Licensee and to Article 41 of this License Agreement) and such failure shall continue for a period of thirty (30) days after Parks' written notice to Licensee;

(vii) if Licensee shall fail to observe or perform one or more of the other material terms, conditions, covenants of this License Agreement, any federal, state or local law, rule, regulation or order affecting the License Agreement or the Licensed Premises with regard to any and all matters, and such failure shall continue for a period of thirty (30) days after receipt by Licensee of Commissioner's written order to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply or commence in good faith and with due diligence, efforts to comply with such order within thirty (30) days from the mailing thereof, subject to reasonably unavoidable delays beyond reasonable control of Licensee and Article 41 of this License Agreement (if applicable), then City shall notify the Licensee's lending institution of record (the name and address of which shall be forwarded to Parks upon

execution of this License Agreement) of Licensee's default and pending termination. The lending institution shall, if it so elects, within ten (10) days of such notice of default and pending termination, cure the default and/or assign the License Agreement to a new operator, subject to the approval of Parks (such approval not to be unreasonably withheld). While Parks' approval of the new operator is pending, the License Agreement will not be deemed to be terminated even though the thirty (30) day period may have expired, provided that the lending institution shall continue to pay the license fees to RIPA on a monthly basis until a new operator is approved by Parks and has commenced operations at the Licensed Premises. If Parks does not approve of the new operator, the Licensee's lending institution shall have the opportunity to propose a different operator, subject to the approval of Parks as aforesaid. If such failure by its nature cannot be cured within the thirty (30) day period, then no Event of Default shall be deemed to exist as long as Licensee shall have commenced curing the same within the thirty (30) day period and shall diligently and continuously prosecute the same to completion. Notwithstanding the foregoing, an Event of Default shall occur upon Parks' disapproval of lending institution's third (3rd) proposed new operator. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation, or order follows thereafter within two (2) years of the initial breach, Commissioner, by notice in writing, may revoke and terminate this License Agreement, such revocation and termination to be immediately effective on the mailing thereof;

(viii) to the extent permitted by law, if Licensee shall admit, in writing, that it is unable to pay its debts as such become due;

(ix) to the extent permitted by law, if Licensee shall make an assignment for the benefit of creditors;

(x) to the extent permitted by law, if Licensee shall file a voluntary petition under Title 11 of the United States Code or if a petition under Title 11 of the United States Code shall be filed against Licensee and an order for relief shall be entered, or if Licensee shall file a petition or an answer seeking, consenting to or acquiescing in, any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, or shall seek, or consent to, or acquiesce in, or suffer the appointment of, any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Licensee, or of all or any substantial part of its properties, or of the Licensed Premises or any interest of Licensee therein, or if Licensee shall take any partnership, joint venture or corporate action in furtherance of any action described in Section 3.3 (a) (viii), (ix), or (x);

(xi) to the extent permitted by law, if within sixty (60) days after the commencement of a proceeding against Licensee seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under the present or any future Federal bankruptcy code or any other present or future applicable Federal, state or other bankruptcy or insolvency statute or law, such proceeding shall not be dismissed, or if, within one hundred and twenty (120) days after the appointment, without the consent or acquiescence of Licensee, of any trustee, receiver, custodian, assignee, sequestrator, liquidator or other similar official of Licensee, or of all or any substantial part of its properties, or of the Licensed Premises or any interest of Licensee therein, such appointment shall not be vacated or stayed on appeal or

otherwise, or if, within one hundred and twenty (120) days after the expiration of any such stay, such appointment shall not be vacated;

(xii) if any of the material representations made by Licensee herein is or shall become false or incorrect in any material respect, provided that, if such misrepresentation was unintentionally made, the underlying condition is susceptible to being corrected, and Parks has not been adversely affected by such misrepresentation or underlying condition, Licensee shall have a period of thirty (30) days after Parks' notice to Licensee of such misrepresentation to correct the underlying condition and thereby cure such Default;

(xiii) if a levy under execution or attachment shall be made against the Licensed Premises or any part thereof, the income therefrom or this License Agreement and such execution or attachment shall not be vacated or removed by court order, bonding or otherwise within a period of thirty (30) days;

(xiv) if Licensee shall fail to obtain and maintain any insurance policy required hereunder in accordance with the terms of this License Agreement;

(xv) if, following an opportunity to respond, Licensee fails to offer a satisfactory explanation to Parks or the Comptroller regarding an unexplained discrepancy of more than five percent (5%) in two months out of any three consecutive month period, or of more than ten percent (10%) in any one month, between the fees reported (in the Audited IE Statement, as hereinafter defined) and paid by Licensee pursuant to Article 4 and the amount of fees required to be due and paid hereunder, as determined by an audit conducted by Parks or the Comptroller;

(xvi) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under Article 4, or to maintain reasonable internal financial controls, and such failure shall continue for a period of thirty (30) days after Parks' written notice to Licensee, which shall, additionally, authorize Parks or the Comptroller to make reasonable projections of the amount of Gross Receipts that would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. Licensee shall pay any assessment based upon such reasonable projections within fifteen (15) days after receipt thereof;

(xvii) The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination and such failure or refusal shall continue for a period of thirty (30) days after Parks' written notice to Licensee;

(xviii) Failure to comply with Section 10.31 of this License Agreement, with the understanding that as long as Licensee is making commercially reasonable efforts, its failure to provide that which is set forth in 10.31, including but not limited to the number of hours set forth in 10.31(c)(i), shall not on its face constitute a failure, and such failure shall continue for a period of thirty (30) days after Parks' written notice to Licensee.

(b) If an Event of Default occurs as set forth in this Article 3.3, Parks may elect to

proceed by appropriate judicial proceedings, either at law or in equity, to enforce performance or observance by Licensee of the applicable provisions of this License Agreement and/or to recover damages for breach thereof;

(c) If an Event of Default occurs and Parks, at any time thereafter, at its option, gives Licensee notice stating that this License Agreement and the Term shall terminate on the date specified in such notice, then this License Agreement and the Term and all rights of Licensee under this License Agreement shall expire and terminate as if the date specified in the notice were the Termination Date, and Licensee shall quit and surrender the Licensed Premises forthwith. If such termination is stayed by order of any court having jurisdiction over any case described in Section 3.3(a)(ix) or (x) hereof or by federal or state statute, then following the expiration of any such stay, or if the trustee appointed in any such case, Licensee or Licensee as debtor-in-possession fails to assume Licensee's obligations under this License Agreement within the period prescribed therefor by law or within thirty (30) days after entry of the order for relief or as may be allowed by the court, or if the trustee, Licensee or Licensee as debtor-in-possession fails to provide adequate protection of Parks' right, title and interest in and to the Licensed Premises and adequate assurance of the complete and continuous future performance of Licensee's obligations under this License Agreement as provided in Section 3.3(g) hereof, Parks, to the extent permitted by law or by leave of the court having jurisdiction over such case, shall have the right, at its election, to terminate this License Agreement on thirty (30) days' notice to Licensee, Licensee as debtor-in-possession or the trustee. Upon the expiration of the thirty (30) day period this License Agreement shall cease and Licensee, Licensee as debtor-in-possession and/or the trustee immediately shall quit and surrender the Licensed Premises;

(d) Licensee hereby expressly waives service of any notice of intention to re-enter provided for in any statute, or of the institution of legal proceedings in connection therewith and Licensee, for and on behalf of itself and all persons claiming through or under Licensee, also waives and releases any and all rights (a) of redemption provided by any law or statute now in force or hereafter enacted or otherwise, or (b) of re-entry, or (c) of repossession, or (d) to restore the operation of this License Agreement, if Licensee is dispossessed by a judgment or by warrant of a court or judge or in case of re-entry or repossession by the City or in case of any expiration or termination of this License Agreement. The terms "enter", "re-enter", "entry" or "re-entry", as used in this License Agreement, are not restricted to their technical legal meanings. Licensee shall execute, acknowledge, and deliver within ten (10) days after request by Parks any instrument evidencing such waiver or release that Parks may request;

(e) No failure by either party to insist upon the other's strict performance of any covenant, agreement, term or condition of this License Agreement or to exercise any right or remedy available to it hereunder, including, without limitation, Parks' or RIPA's acceptance of full or partial charges during the continuance of any default or Event of Default, shall constitute a waiver of any such default or Event of Default or of such covenant, agreement, term or condition. No covenant, agreement, term or condition of this License Agreement to be performed or complied with by either party, and no default by Licensee, shall be waived, altered or modified except by a written instrument executed by the other party. No waiver of any default shall affect or alter this License Agreement, but each and every covenant, agreement, term and condition of this License

Agreement shall continue in full force and effect with respect to any other then existing or subsequent default;

(f) In the event of a default or threatened default by Parks or Licensee, the other party shall be entitled to seek to enjoin the default or threatened default and shall have the right to invoke any rights and remedies allowed at law or in equity or by statute or by this License Agreement, other remedies that may be available notwithstanding. Each right and remedy provided for in this License Agreement shall be cumulative and shall be in addition to every other right or remedy provided for in this License Agreement or now or hereafter existing at law or in equity or by statute, and the exercise or beginning of the exercise of any one or more of the rights or remedies provided for in this License Agreement or now or hereafter existing at law or in equity or by statute shall not preclude the simultaneous or later exercise of any or all other rights or remedies provided for in this License Agreement or now or hereafter existing at law or in equity or by statute;

(g) If an order for relief is entered or if any stay of proceeding or other act becomes effective against Licensee or Licensee's interest in this License Agreement in any proceeding which is commenced by or against Licensee under the present or any future Federal Bankruptcy Code or in a proceeding which is commenced by or against Licensee seeking a reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any other present or future applicable federal, state or other bankruptcy or insolvency statute or law, the City shall be entitled to invoke any and all rights and remedies available to it under such bankruptcy or insolvency code, statute or law or this License Agreement, including, without limitation, such rights and remedies as may be necessary to protect adequately the City's right, title and interest in and to the Licensed Premises or any part thereof and adequately assure the complete and continuous future performance of Licensee's obligations under this License Agreement. Adequate protection of the City's right, title and interest in and to the Licensed Premises, and adequate assurance of the complete and continuous future performance of Licensee's obligations under the License Agreement, shall include, without limitation, all of the following requirements to the extent permitted under bankruptcy laws:

(i) that Licensee shall comply with all of its obligations under this License Agreement;

(ii) that Licensee shall continue to use the Licensed Premises in the manner required by this License Agreement;

(iii) that Parks shall be permitted to supervise the performance of Licensee's obligations under this License Agreement;

(iv) that Licensee shall hire such security personnel as may be necessary to insure the adequate protection and security of the Licensed Premises;

(v) that Licensee shall have and will continue to have unencumbered assets after the payment of all secured obligations and administrative expenses to assure Parks that sufficient funds will be available to fulfill the obligations of Licensee under this License Agreement;

(vi) that City shall be granted a security interest reasonably acceptable to it in property of Licensee at the Licensed Premises to secure the performance of Licensee's obligations under this License Agreement; and

(vii) that if Licensee's trustee, Licensee or Licensee as debtor-in-possession shall assume this License Agreement and propose to assign it (pursuant to Title 11 U.S.C. 365, as it may be amended) to any person who shall have made a bona fide offer therefor, the notice of such proposed assignment, giving (i) the name and address of such person, (ii) all of the terms and conditions of such offer, and (iii) the adequate assurance to be provided Parks to assure such person's future performance under the License Agreement, including, without limitation, the assurances referred to in Title 11 U.S.C. 365(b), as it may be amended, shall be given to Parks by the trustee, Licensee or Licensee as debtor-in-possession no later than twenty (20) days after receipt by the trustee, Licensee or Licensee as debtor-in-possession of such offer, but in any event no later than ten (10) days before the date the trustee, Licensee or Licensee as debtor-in-possession shall make application to a court of competent jurisdiction for authority and approval to enter into such assignment, and Parks shall thereupon have the prior right and option, to be exercised by notice to the trustee, Licensee or Licensee as debtor-in-possession, given at any time before the effective date of such proposed assignment to accept an assignment of this License Agreement upon the same terms and conditions and for the same consideration, if any, as the bona fide offer made by such person, less any brokerage commissions which may be payable by Licensee out of the consideration to be paid by such person for the assignment of this License Agreement.

(h) Nothing contained in paragraph (a) above shall be deemed to imply or be construed to represent an exclusive enumeration of circumstances under which Commissioner may terminate this License Agreement, including the Commissioner's right to terminate this License Agreement at will in accordance with Section 3.2 above;

(i) Should an Event of Default as described in Section 3.3 (a) through 3.3 (h) herein above occur and if said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows within three (3) months of such cure of Event of Default, Commissioner, by notice in writing, may revoke and terminate this License Agreement, such revocation and termination to be immediately effective on the mailing thereof.

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

3.5 In the event the Commissioner terminates this License Agreement for reasons related to Section 3.3 (a) above, any property of the Licensee on the Licensed Premises may be held and used by the Commissioner in order to operate the Concession during the balance of the Operating Year and may be held and used thereafter until all indebtedness of the Licensee under this License Agreement, at the time of termination of this License Agreement, is paid in full.

3.6 Licensee agrees that upon the expiration or sooner termination of this License Agreement, it shall immediately cease all operations pursuant to this License Agreement and shall 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 Agreement, the City reserves the right to take immediate possession of the Licensed Premises.

3.7 Licensee shall, on or prior to the expiration or sooner termination of this License Agreement, remove all personal possessions from the Licensed Premises. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License Agreement is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property should Licensee fail to cease operations pursuant to this License Agreement, or remove all possessions from the Licensed Premises on or before the expiration or termination date. Pursuant to and in accordance with Section 4.4 of this License Agreement, the City may seize the Security Deposit to recover such damages in part or in whole.

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

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

(a) Parks may draw down on the Security Deposit (hereinafter defined) in accordance with Section 4.4 of this License Agreement; and

(b) Licensee shall pay to RIPA, or any successor organization at the direction of the City, all fees payable under this License Agreement by Licensee to RIPA, or any successor organization at the direction of the City, through the Termination Date; and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or re-license 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 re-license any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such re-licensing, and no such failure to re-license or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability. Notwithstanding the foregoing, if Parks does so re-license the Licensed Premises, any monies collected by Parks in connection therewith shall serve to mitigate any damages of Parks asserted upon termination.

3.10 Parks and RIPA, or any successor organization, shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to

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

3.11 If this License Agreement is terminated, Parks will not reimburse Licensee's unamortized capital improvement costs.

PAYMENT TO RIPA

4.1 (a) Pursuant to a license agreement between Parks and RIPA, dated December 24, 2012, the payment of fees shall be made to RIPA for projects located in Randall's Island Park and such funds shall be used by RIPA for the operation and maintenance of Randall's Island Park. Licensee shall pay license fees to RIPA, or any successor organization, at the direction of the City, in accordance with this Article 4. To the extent that any Operating Year during the Term was or is less than a full twelve (12) months, there was and shall be a pro rata reduction in the minimum annual fee, and in the percentage of Gross Receipts calculation, for that Operating Year.

(b) During each Year of the Original Interim Period, Licensee made payments to RIPA in the amount of ten percent (10%) of Gross Receipts plus 20% of Permitted Sponsorship Activity. The fee payments set forth in this Section 4.1 (b) were paid to RIPA on or before the tenth day of each month of each succeeding month of operation.

(c) During the Original Operating Period, Licensee has made and shall continue to make payments to RIPA, or any successor organization at the direction of the City, for each Operating Year, consisting of the higher of a minimum annual fee or the sum of the percentages of Gross Receipts derived from the operation of the Concession, as set forth below:

| <u>ORIGINAL OPERATING PERIOD</u> | <u>MINIMUM ANNUAL FEE</u> | <u>Vs. % OF GROSS RECEIPTS</u> |
|--|---------------------------|--|
| <u>OPERATING YEAR</u> | | |
| 1 | \$205,000 | 20% of Permitted Sponsorship Activity + 10% of all other Gross Receipts |
| 2 | \$215,250 | Same as above |
| 3 | \$226,013 | Same as above |
| 4 | \$237,313 | Same as above |
| 5 | \$249,179 | Same as above |
| 6 | \$261,638 | Same as above |
| 7 | \$274,720 | Same as above |
| 8 | \$288,456 | Same as above |
| 9 | \$302,878 | Same as above |
| 10 | \$318,022 | Same as above |
| 11 | \$333,923 | Same as above |
| 12 ¹ | \$350,620 | Same as above |

(d) (i) During the Phase II Interim Period, which commences, for the purpose of calculating license fee payments, as set forth in 2.1(q), Licensee shall make payments to RIPA, or to any successor organization at the direction of the City, for each Operating Year, consisting of the higher of a minimum annual fee or the sum of the percentages of Gross Receipts derived from the operation of the Concession, as set forth below:

¹ Only to the extent the Effective Date is later than September 1, 2019.

PHASE II
INTERIM
PERIOD

| <u>OPERATING YEAR</u> | <u>MINIMUM ANNUAL FEE</u> | Vs. <u>% OF GROSS RECEIPTS</u> |
|-----------------------|---------------------------|---|
| Any | \$500,000 | 20% of Permitted Sponsorship Activity + 10% of all other Gross Receipts |

(ii) Notwithstanding the foregoing in this Section 4.1(c), Sportime shall pay to RIPA no less than One Million Dollars (\$1,000,000) annually during the Phase II Interim Period. Therefore, to the extent that the license fees set forth above equal less than One Million Dollars (\$1,000,000), at the end of the Operating Year, Licensee shall pay to RIPA the difference between such license fees and One Million Dollars (\$1,000,000). Any additional amount shall become due and payable on or before the first December 15th to occur following the end of the Operating Year.

(d) During the Phase II Operating Period, Licensee shall make payments to RIPA, or to any successor organization at the direction of the City, for each Operating Year, consisting of the higher of a minimum annual fee or the sum of the percentages of Gross Receipts derived from the operation of the Concession, as set forth below:

| <u>PHASE II</u> <u>OPERATING</u> <u>PERIOD</u> | <u>MINIMUM ANNUAL FEE</u> | Vs. <u>% OF GROSS RECEIPTS</u> |
|--|---------------------------|---|
| <u>OPERATING YEAR</u> | | |
| 1 | \$1,000,000 | 20% of Permitted Sponsorship Activity + 10% of all other Gross Receipts |
| 2 | \$1,050,000 | Same As Above |
| 3 | \$1,102,500 | Same As Above |
| 4 | \$1,157,625 | Same As Above |
| 5 | \$1,215,506 | Same As Above |
| 6 | \$1,276,282 | 20% of Permitted Sponsorship Activity + 10.5% of all other Gross Receipts |

| | | |
|----|-------------|---|
| 7 | \$1,340,096 | Same As Above |
| 8 | \$1,407,100 | Same As Above |
| 9 | \$1,477,455 | Same As Above |
| 10 | \$1,551,328 | Same As Above |
| 11 | \$1,628,895 | 20% of Permitted Sponsorship Activity + 11% of all other Gross Receipts |
| 12 | \$1,710,339 | Same As Above |
| 13 | \$1,795,856 | Same As Above |
| 14 | \$1,885,649 | Same As Above |
| 15 | \$1,979,932 | Same As Above |
| 16 | \$2,078,928 | 20% of Permitted Sponsorship Activity + 12% of all other Gross Receipts |
| 17 | \$2,182,875 | Same As Above |
| 18 | \$2,292,018 | Same As Above |
| 19 | \$2,406,619 | Same As Above |
| 20 | \$2,526,950 | Same As Above |
| 21 | \$2,653,298 | 20% of Permitted Sponsorship Activity + 13.5% of all other Gross Receipts |

| | | |
|----|-------------|---------------|
| 22 | \$2,785,963 | Same As Above |
| 23 | \$2,925,261 | Same As Above |
| 24 | \$3,071,524 | Same As Above |
| 25 | \$3,225,100 | Same As Above |

4.2 The minimum annual fee for each Operating Year shall be paid to RIPA, or to any successor organization at the direction of the City, in twelve (12) equal installments. If it is determined that Licensee has paid more than required under the approved schedule of fee payments, such overpayment shall be treated as a credit towards subsequent fees, or, if such overpayment is in the final Operating Year of the license term, such overpayment shall be refunded to Licensee. Any additional amount resulting from the applicable percentage fee shall become due and payable on or before the first December 15th to occur following the end of the Operating Year.

4.3 Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of license fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License Agreement, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty (30) day month) from the date they were due and payable shall become immediately due and payable to RIPA, or to any successor organization at the direction of the City, as liquidated damages for the administrative cost and expenses incurred by RIPA, or any successor organization, by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of one thousand dollars (\$1,000.00), due on the 1st day of the month, must be received no later than the tenth (10th) day of the month. If no payment is received, a two percent (2%) late charge in the amount of twenty dollars (\$20.00) will be assessed on the eleventh (11th) day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10th) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

4.4 (a) On or before the date hereof, Licensee provided the City with a security deposit in the amount of Seventy-Five Thousand Dollars and No Cents (\$75,000.00) and such deposit was

increased to One Hundred and Twenty-Six Thousand Three Hundred and Forty-Seven Dollars and Fifty Cents (\$126,347.50) on or before the Original Commencement Date. On or before the Phase II Operating Period, the security deposit shall be increased to Two Hundred Fifty Thousand Dollars (\$250,000.00) (any such funds hereinafter referred to as "Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License Agreement to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Original Interim Period and the Term of this License Agreement.

(b) Security Deposit shall, at Licensee's option, consist of cash, a certified check payable to the City of New York, an irrevocable letter of credit naming the City of New York as beneficiary, an interest-bearing bond or other negotiable interest bearing instrument payable to the City of New York which the Comptroller shall approve as being of equal market value with the sum required. The Security Deposit shall be held by the City without liability for interest thereon, as security for the full and faithful performance by the Licensee of each and every term and condition of this license on the part of the Licensee to be observed and performed PROVIDED, HOWEVER, that Licensee may submit to the City an interest bearing or non-interest bearing bond (with a minimum market value sufficient to cover the amount of the required Security Deposit) to serve as said Security Deposit. In that event, Licensee may collect or receive annually any interest or income earned on such bonds less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether in lieu of administrative expense or custodial charge or otherwise. The City shall not be obligated to place or keep cash deposited hereunder in interest-bearing bank accounts.

(c) If any fees or other charges or sums payable by Licensee to the City, RIPA, or any successor organization, shall be overdue and unpaid or should the City, RIPA, or to any successor organization, make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License Agreement, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City, RIPA, or any successor organization, toward the payment of license fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City, RIPA, or by any successor organization, resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five days after receipt of written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License Agreement and pay all license fees and other charges and sums, including utilities, payable by Licensee to the City, RIPA, or to any successor organization, the Security Deposit shall be returned to Licensee as soon as is practicable following the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License Agreement.

4.5 (a) On or before the thirtieth (30th) day following each month during the Original Interim Period and the Term, Licensee shall submit to Parks and RIPA a draft statement of Gross Receipts, and on or before the thirtieth (30th) day following each quarter of each Operating Year

Licensee shall submit to Parks and RIPA, in a form satisfactory to Parks and RIPA, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month or quarter. Notwithstanding anything to the contrary set forth in this paragraph (a), Licensee shall be entitled on a quarterly basis to adjust the information set forth in its statements for the preceding quarter based on the review of its books and records in the ordinary course of business. Examples of the currently approved monthly and quarterly statements of Gross Receipts and are included in the attached **Exhibit C**.

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

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

(d) Licensee shall conduct an annual audit, executed by independent auditors (the "Audit"), and such Audit shall certify that the procedures for reporting Gross Receipts to Parks and RIPA are consistent with the requirements set forth in this License Agreement. Each Operating Year, the sections of the Audit relevant to the operations under this License Agreement shall be provided to Parks and RIPA within thirty (30) days of its issuance.

4.6 On or before the December 15th to occur following the end of each Operating Year during the the Term, Licensee shall submit to Parks and RIPA either: (i) an audited income and expense statement, including a summary report of Gross Receipts, pertaining to the preceding Operating Year, prepared pursuant to the Audit and signed and verified by an officer of Licensee ("Audited IE Statement"); or (ii) a draft income and expense statement, including a summary report of Gross Receipts pertaining to the preceding Operating Year, signed and verified by an officer of Licensee ("Draft IE Statement"). In the event that Licensee submits the Draft IE Statement, Licensee will provide to Parks and RIPA the Audited IE Statement within thirty (30) days of the Audit's issuance. If additional license fees are due and payable to RIPA pursuant to Audited IE Statement, the Licensee shall remit such additional license fees within thirty (30) day of the issuance of such Audited IE Statement to Parks and RIPA. An example of the currently approved income and expense statement is included in the attached **Exhibit C**.

4.7 (a) Licensee, during the Term of this License Agreement, shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by Licensee and the Gross Receipts therefrom as well as a transparent audit trail. Such books and records maintained pursuant to this License Agreement shall, when feasible, 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, whether maintained in hard copy or in electronic form; sales slips, daily dated cash register receipts, sales books; duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

(b) Licensee shall use such accounting and internal control methods and procedures and keep such additional books and records as agreed upon herein, and as may be prescribed by Parks or the Comptroller, and Parks or the Comptroller shall have the right to examine the recordkeeping procedures during the Term of this License Agreement in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each Operating Year's records, books of account and data for a minimum of ten (10) Years.

(c) Reserved.

4.8 In the event Parks or RIPA reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors breach any of the provisions contained in this Article 4, Licensee may be subject to a charge of Five Hundred Dollars (\$500) with respect to each incident of breach as liquidated damages, provided that Licensee is given reasonable notice of such breach and willfully fails to cure within thirty (30) days of such notice.

4.9 License fees shall be made payable to the Randall's Island Park Alliance, Inc., or successor organization as directed by the City, and delivered or mailed to arrive by the due date at the following address:

Randall's Island Park Alliance, Inc.
24 West 61st Street, 4th Floor
New York, NY 10023

All other required payments or submissions to Parks shall be delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10021

with copy to:

President
Randall's Island Park Alliance, Inc.
24 West 61st Street, 4th Floor
New York, NY 10023

4.10 Where provision is made herein for notice to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice by certified mail, return receipt requested, addressed to the Commissioner, or RIPA, as provided above.

RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right, during business hours, to examine, audit or photocopy the records, books of account and data of the Licensee relating to the operation of the Licensed Premises for any purpose deemed necessary by Parks or the Comptroller, including to verify Gross Receipts as reported by the Licensee. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

5.2 Reserved

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

CAPITAL IMPROVEMENTS

6.1 (a) Parks, RIPA, and Licensee agree that Licensee has expended or caused to be expended approximately Eighteen Million Dollars (\$18,000,000) to complete the Capital Improvements listed in the Original Schedule of Capital Improvements, attached hereto as **Exhibit D1**.

(b) Licensee shall expend or cause to be expended, prior to the Phase II Commencement Date, a minimum of Twenty Million Dollars (\$20,000,000) for the Phase II Capital Improvements, as defined below and as set forth in **Exhibit D2**, and approximately Seven Hundred Fifty Thousand Dollars (\$750,000) for the field lighting set forth in **Exhibit D2**, including any and all related project approval fees and architectural and design fees. In the event that Licensee completes, prior to the Phase II Commencement Date, the Phase II Capital Improvements set forth in **Exhibit E2** for less than Twenty Million Dollars (\$20,000,000), as determined by the Commissioner in accordance with Section 6.4 below, Licensee shall expend the difference in supplemental Capital Improvements, as approved by Parks and RIPA, during the Phase II Operating Period. If Licensee does not expend any such difference by the Termination Date of this License Agreement, any excess monies shall be remitted to RIPA as additional license fees within thirty (30) days following the Termination Date.

(c) The foregoing and below notwithstanding, the following shall constitute an Event of Force Majeure (as defined in Article 41): if Licensee's expenditures on the Phase II Capital Improvements, including any and all related project approval fees and architectural and design fees and including removal or remediation of Hazardous Substances as hereinafter defined, if applicable, is estimated to exceed Twenty-Seven Million Five Hundred Thousand Dollars (\$27,500,000), as determined by duly qualified professionals engaged by Licensee.

(d) Licensee shall perform and complete all Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks and other government agencies having jurisdiction, and subject to the express written consent of Commissioner, such consent not to be unreasonably withheld. All Additional Fixed Equipment applied toward the Phase II Capital Improvements required in this Article 6, or otherwise constructed by Licensee, shall become the property of Parks upon installation, at Parks' option.

(e) The renovation and construction of the Phase II Capital Improvements by Licensee shall be completely contained within the boundaries of the Expanded Licensed Premises, unless Parks and RIPA approve, in advance and in writing, the use by Licensee of additional areas adjacent to the Licensed Premises or elsewhere on Randall's Island, for construction staging. Licensee shall make best efforts to mitigate any noise and or nuisance, and to avoid disruption of the tennis courts or other facilities of the Tennis Facility, during construction.

(f) If, in the context of constructing the Phase II Capital Improvements it is discovered that the Licensed Premises are contaminated with substances or materials defined as hazardous under the current federal, New York State or City laws ("Hazardous Substances") in amounts requiring remediation or removal under applicable law, it shall be the responsibility of the Licensee to promptly and diligently complete the removal of all such Hazardous Substances and the remediation of the Licensed Premises to the extent required by all relevant federal, New York State and City agencies.

(g) Licensee shall comply with the Americans with Disabilities Act ("ADA") in the performance of this License Agreement at the Licensed Premises, including, but not limited to, installing ADA accessible counters, installing ramps, as needed, and ADA signage. Licensee shall comply with all City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

(h) Parks shall be solely responsible for any and all expenses related to the field lighting once operational, including, but not limited to, repair, maintenance and electricity.

(i) Licensee shall remit to Parks, simultaneously with "breaking ground" on the construction of the Phase II Capital Improvements (excluding the field lighting and any and all preparatory work, e.g. test borings), the "Community Parks Contribution" in the amount of \$1,500,000.

6.2 (a) Reserved.

(b) Reserved.

(c) To guarantee prompt payment of monies due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the performance of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000.00), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 6.2(c): (i) Licensee guarantees payment in accordance with the provisions of **Exhibit G**, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all persons furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project.

6.3 One percent of the minimum guaranteed capital investment ("Total Cost") for all Capital Improvement activities will be charged to the Licensee for design review by Parks personnel (the "Design Review Fee"). The foregoing notwithstanding, the Design Review Fee related to the Phase II Capital Improvements (in the amount of Two Hundred Thousand Dollars (\$200,000)) will be payable in the context of supplemental Capital Improvements, in addition to the Phase II Capital Improvements, completed by Licensee at the Licensed Premises during the Term. In the event that the Design Review Fee related to the supplemental Capital Improvements does not equal or exceed the Design Review Fee related to the Phase II Capital Improvements, then any shortfall shall be remitted to RIPA as additional license fees within thirty (30) days subsequent to the termination of this License Agreement.

6.4 An audited determination of the Total Cost of Capital Improvements, including costs for removal or remediation of Hazardous Substances, if any, shall be submitted to the Commissioner by Licensee based upon construction documents, invoices, labor time sheets and such other supporting documents or other data as Licensee deems appropriate. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements. The Commissioner shall thereafter render a reasonable determination as to Licensee's submissions. In making the determination of the total cost of Capital Improvements, Commissioner may request any information Commissioner reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request.

6.5 (a) Licensee shall proceed in good faith and with due diligence to complete the Phase II Capital Improvements in accordance with the schedule set forth in **Exhibit D2**. Licensee shall complete or cause to be completed all such Phase II Capital Improvements so that the services to the public contemplated herein may commence and continue.

(b) The scope of work for the Phase II Capital Improvements may be modified with the prior written approval of Parks in the event a Force Majeure Event occurs (as defined in Section 41.1 of this License Agreement) affecting construction conditions at the Licensed Premises.

6.6 Parks will use its reasonable efforts to approve or disapprove Licensee's design plans for any Capital Improvements within thirty (30) days of receipt thereof. Licensee shall obtain the services of a New York State licensed design consultant, a registered architect or a professional engineer to review all improvements and/or replacements required under this License Agreement and to supervise the construction and installation thereof.

6.7 Within one (1) week of Parks' notification to Licensee that it may commence Capital Improvements, Licensee shall provide Parks, for its review and approval, a schedule for all work and the installation of the improvements required under this License Agreement. The Licensee shall update this schedule periodically. All replacement work and improvements shall be made in accordance with the schedule described in this Section 6.7. Any modifications to this schedule must be approved in writing by the Department.

6.8 Licensee shall use its best efforts to minimize the extent to which the public use of Randall's and Wards Island Park, and the tennis courts at the Licensed Premises, are disrupted in connection with its construction, expansion, renovation, operation, maintenance, and management activities at the Licensed Premises.

6.9 (a) Under no condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's Capital Improvements, or with any other of Licensee's rights or duties under this License Agreement, without the express written permission of Parks. Moreover, Licensee acknowledges that Parks does not intend to authorize the removal of any living trees in conjunction with any of Licensee's rights or duties detailed herein.

(i) Prior to the commencement of construction work at the Permitted Premises, Licensee shall contact the Manhattan Director of Forestry.

(ii) Licensee shall comply with all quarantine zones for the Asian Long Horned Beetle and any other invasive tree species or disease that may develop during the Interim Period and Term of this License Agreement. Licensee shall comply with all city, state or federal rules and regulations regarding new tree planting, infestation control, treatment, tree trimming and removal.

(iii) Licensee shall not stockpile any construction material within the dripline of trees.

(iv) Licensee shall perform at its sole cost and expense compensatory pruning of trees adversely affected by the work. If so required, pruning shall be done by a Parks approved licensed arborist when and where directed by Parks.

(v) Licensee shall install wooden tree guards as directed by Parks.

(vi) Licensee shall circumvent trees by trenching outside the dripline of the trees.

(vii) Licensee shall remove all dead plant material resulting from Licensee's work, as determined by Parks, from the Permitted Premises.

(b) Tree removal and acceptable replacements must be approved in writing by Parks.

(c) Plantings Guarantee. Plantings (trees, shrubs) at the Licensed Premises shall be watered and otherwise cared for and guaranteed by the Licensee for a period of one (1) year after the final inspection and acceptance by Parks. After the one year guarantee period, any tree or shrub that requires replacement (as directed by Parks) shall carry an additional six (6) month maintenance guarantee. Replacement plantings must successfully survive the six (6) month period or again be subject to replacement until accepted by Parks. Where vandalism is agreed by Parks as the cause for replacement, the Licensee shall not be responsible for replacement during the one year guarantee period after the final acceptance or during any subsequent six month guarantee period.

6.10 Reserved.

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

(b) Licensee, within three (3) months of certification of Final Completion of a Capital Improvement, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, or shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the New York City Comptroller upon request.

6.12 Licensee shall pay all applicable fees and shall submit to Parks and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State registered architect or licensed professional engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall reasonably require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to his reasonable satisfaction.

6.13 At Parks' request, Licensee shall provide Parks with one (1) complete set of final, approved plans on 4 millimeter double matte Mylar. Acceptable manual drafting methods include ink or plastic film pencil. Right reading fixed line photo on 4 millimeter Mylar may be substituted for original drawings. If the fixed line photo process is used, the resultant film negative must be submitted with the drawings. CADD-generated drawings must be printed right-reading with either a pen or ink jet plotter. Drawings produced by diazo, electrostatic (i.e. Xerographic), laser, copy press (i.e. OCE), or other means utilizing toner will not be accepted. Each drawing shall contain the name, address and telephone number of the architect/engineer and the contractor. Each drawing shall also include the Parks property number, Block and Lot numbers for the Parks facility in which the work was performed, and, if applicable, the Department of Buildings approval / application number.

6.14 (a) For any Capital Improvements commenced under this License Agreement, Licensee shall apply for applicable licenses from Parks' Revenue Division prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks. All necessary licenses, permits and approvals for capital work and design and outdoor signage must also be obtained by Licensee from the following agencies (to the extent each has jurisdiction): DOB; the Public Design Commission of City of New York; the New York State Historic Preservation Office; the New York City Landmarks Preservation Commission (if applicable); and any other agency having jurisdiction. The permits and approvals that Licensee must obtain from DOB shall include, without limitation, a Certificate of Occupancy, Public Assembly Permit and Letters of No Objection, as needed. Additionally, all necessary permits and approvals for capital work and design for on-site structures must be obtained from DOB. Licensee shall also, prior to commencing work, obtain all other necessary permits, licenses and approvals from all City, State and Federal agencies having jurisdiction over the operation and maintenance of the Licensed Premises. Licensee will also be responsible for obtaining, amending and complying with the sign-offs, public assembly permits, DOHMH permits, fire department certificates and all other permits, including, but not limited to, New York City Department of Environmental Protection ("DEP") if applicable, New York State Department of Environmental Conservation ("NYSDEC") if applicable and/or other government agency approvals and permits necessary for any alterations to the Licensed Premises as it presently exists. Licensee shall notify Commissioner of the specific date on which construction shall begin.

(b) Licensee shall not commence any Capital Improvements unless and until (i) Licensee shall have obtained and delivered to Parks copies of all permits, consents, certificates and approvals of all governmental authorities which are necessary for the work to be done, certified by Licensee or its architect or engineer, (ii) Licensee shall have delivered to Parks proof(s) of insurance required to be carried pursuant to the provisions of Article 20 hereof, and (iii) Licensee shall have obtained the bonds required by subsection (c) of Section 6.2.

(c) Parks and RIPA shall cooperate with Licensee in obtaining the permits, consents, certificates and approvals required for Capital Improvements and any necessary utility easements, and shall not unreasonably withhold its consent to signing any accurate application made by Licensee required to obtain such permits, consents, certificates, approvals and easements. Licensee shall reimburse Parks within ten (10) days after Parks' demand for any reasonable out-of-pocket

cost or expense incurred by Parks in cooperating with Licensee to obtain the permits, consents, certificates and approvals required for the construction work hereof and any necessary utility easements.

6.15 No temporary storage or other ancillary structures and staging areas may be erected and maintained outside of the Licensed Premises without a permit obtained from Parks' Construction Division, Permit Office.

6.16 During performance of all Capital Improvements and up to the date of Final Completion of any Capital Improvements, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense. All risks of construction and development of the Licensed Premises are hereby expressly assumed by Licensee except as may be specifically provided otherwise herein. All development of the Licensed Premises and all Capital Improvements will be designed, constructed, maintained, secured and insured entirely at Licensee's expense without reimbursement by Parks or credit or offset of any kind for cost overruns or otherwise, and Licensee shall pay all municipal fees and impositions in connection therewith.

6.17 Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of Capital Improvements shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Licensee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable and shall assign the same, if still applicable, to the City when and if the City exercises its option to take title to such equipment and materials in accordance with the terms of this License Agreement except to the extent that Licensee retains the obligation to maintain such equipment and materials under this License Agreement. In furtherance of the preceding sentence, as applicable, Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guaranties and warranties. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

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

6.19 Unless otherwise provided, Licensee shall choose the means and methods of completing Capital Improvements unless Commissioner reasonably determines that such means and methods

constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements.

6.20 Licensee shall provide Parks with discharges for any and all liens which may be levied against Capital Improvements during construction of such improvements. Licensee shall use its best efforts to discharge such liens within thirty business days of receipt of notice of the lien by Licensee. Upon Final Completion of all Capital Improvements, Parks shall return to Licensee any remaining construction security bond on deposit with the City.

6.21 Licensee shall promptly, provided there has been no early termination of the License Agreement, repair, replace, restore, or rebuild as the Commissioner reasonably may determine, items of Capital Improvements in which defects of materials, workmanship or design may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 6.22 shall constitute a default and may result in the termination of this License Agreement.

6.22 Reserved.

6.23 Licensee warrants that it is financially solvent and sufficiently experienced and competent to perform, or cause to be performed, the Capital Improvements required pursuant to this License Agreement.

6.24 Parks reserves the right, at its own expense and on reasonable notice to Licensee, to maintain field personnel at the Licensed Premises to observe Licensee's construction means, methods, procedures and techniques for the purpose of ensuring that all Capital Improvements are performed in accordance with the applicable plans and specification and all applicable rules, regulations and laws, and Parks shall be entitled to have its field personnel or other designees receive reasonable prior notice of and attend Licensee's job and/or safety meetings, if any. No such observation or attendance by Parks' personnel or designees shall impose upon Parks responsibility for any failure by Licensee to observe any applicable rules, regulations and laws or safety practices in connection with such construction or constitute an acceptance of any work which does not comply in all respects with any rules, regulations and laws or the provisions of this License Agreement. Parks shall assume all risk and shall indemnify Licensee from and against actions arising out of the negligence or willful misconduct of Parks' field personnel to the extent arising out of such negligence or willful misconduct.

6.25 Licensee shall keep Parks and RIPA fully informed of Licensee's progress in the performance of all Capital Improvements. Upon request of Parks or RIPA, Licensee shall promptly provide Parks or RIPA with copies of all materials normally or actually provided to a construction lender including, but not limited to, scheduling of payments, projections and certifications of construction costs and sources of funds on a monthly basis, and all construction documents and all plans and specifications reasonably specified by Parks and RIPA to assist Parks and RIPA in monitoring said progress by Licensee.

6.26 All risks of construction and development of the Licensed Premises are hereby expressly

assumed by Licensee except as may be specifically provided otherwise herein. All development of the Licensed Premises and all Capital Improvements will be designed, constructed, maintained, secured and insured entirely at Licensee's expense without reimbursement by Parks or credit or offset of any kind for cost overruns or otherwise, and Licensee shall pay all municipal fees and impositions in connection therewith.

ALTERATIONS

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

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

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

(ii) Ensure that work performed and Alterations made on Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to paragraph (i) of this subsection (b), in a good and workmanlike manner, and within a reasonable time; and

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

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

FIXED AND EXPENDABLE EQUIPMENT

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

8.2 The City has title to all Fixed Equipment. Licensee shall have the use of all Fixed Equipment located on the Licensed Premises.

8.3 Title to any Additional Fixed Equipment, and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing

of said equipment or the substantial completion of such construction, renovation or improvement. To the extent the City chooses not to exercise such option it shall be the responsibility of Licensee to remove such items at its sole cost and expense after the termination of this License Agreement.

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

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

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

8.7 Licensee acknowledges that it acquired 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 City concerning the fitness thereof, and that by taking possession of the Licensed Premises and Fixed Equipment, Licensee has accepted them in their present condition “as is”.

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

UTILITIES

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or to create a new utility system, and obtain the appropriate permits and approvals. 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. The forgoing notwithstanding, Licensee shall be invoiced for electrical usage by the City Department of Citywide Administrative Services. Licensee will be required to pay for any and all utility costs connected with the operation of the Concession granted hereby during the Term. These utility costs include, but are not limited to paying all water and sewer charges that DEP assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

9.2 Licensee shall be responsible for payment of all utility costs for the Licensed Premises incurred during the Term of this License Agreement, however Licensee shall have the right to provide separate metering for its sublicensees and upon notice to the City of such separate metering City shall accept separate payments for utilities from such sublicensees, provided that it is expressly understood that such payment arrangement is made solely as an accommodation to Licensee and in no way relieves Licensee of its obligation to ensure full payment of such costs.

OPERATIONS

10.1 Licensee, at its sole cost and expense, shall operate the Concession for the use and enjoyment of the general public during such seasons and times of day, and in such manner as the Commissioner shall prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction. Licensee accepts the Licensed Premises in their “as-is” condition. Licensee shall provide the necessary number of personnel having the requisite skills, together with the necessary personal equipment and consumable supplies, and shall perform the following services at the Licensed Premises:

(a) Operate, maintain, manage and program indoor tennis courts on a year-round basis in accordance with the approved operating schedule;

(b) Operate, maintain, manage and program outdoor tennis courts in accordance with the approved operating schedule;

(c) Offer nighttime tennis programs after dusk on the indoor and lighted outdoor courts;

(d) Maintain and manage open public use of tennis courts, for seasonal and per diem use, on a year-round basis, in accordance with the approved operating schedule;

(e) Provide educational, instructional, competitive tennis and related athletic programs to paying youth and adult patrons, on a year-round basis;

(f) Provide and manage free on and off-site youth school-based and community based organization-based tennis programs, as well as needs-based and/or merit-based tennis scholarships to youth to participate in Licensee’s programs, as set forth in Section 10.31 of this License Agreement;

(g) Provide any other programs and services customarily provided by tennis facility operators in the ordinary course of business;

(h) Manage, on behalf of Parks and in accordance with all Parks’ Rules and Regulations, the open use of certain tennis courts by Parks Tennis Permit Holders’ (“PTPH”) during the Outdoor Tennis Season. During the Phase II Interim Period and the Phase II Operating Period, the PTPH tennis courts shall be operated by Licensee, during the Outdoor Tennis Season, as follows:

(i) 50% of the available tennis courts, which shall always include a minimum of five (5) outdoor tennis courts, and excluding the U10 Courts, as hereinafter defined, shall be allocated for PTPH use during the hours of operation;

(ii) The specific tennis courts allocated for use by PTPHs shall be, at all times, at Licensee's sole discretion;

(iii) PTPHs shall have access to indoor tennis courts only when and to the extent that more than 50% of the available tennis courts includes indoor courts (by way of example, in the unlikely event that ten (10) of the thirty (30) courts were out of rotation for repairs, leaving eleven (11) indoor courts and nine (9) outdoor courts, one (1) indoor court would be allocated to PTHPs in addition to the nine (9) outdoor courts);

(iv) Subparagraph (i) notwithstanding, Licensee may utilize any or all of the tennis courts allocated for PTPH use for programs, etc., when such tennis courts are not being used by PTPHs. In such case(s), Licensee shall vacate such tennis court(s) within ten (10) minutes of a request for a tennis court(s) by PTPH(s);

(v) Licensee shall make hourly tennis court reservations for PTPHs, and sell to the general public, at rates to be determined by Parks, Parks' City-wide single play tickets and reservation permits for the tennis courts, as issued to the Licensee by Parks. Licensee may retain \$1.00 for each reservation permit or single play ticket sold, as an administrative fee;

(vi) Licensee shall provide nighttime court usage for PTPHs from 7pm to close.

(i) operate and maintain outdoor U-10 Learning Courts (the "U10 Courts"), as described in **Exhibit D2**, once constructed, as follows:

(i) for year-round use, during daylight hours, weather permitting;

(ii) for the use of Randall's Island Park users, to be administered in one-hour segments on a first-come-first-served basis, or in a different manner subject to the approval of Parks and RIPA, which approval shall not be unreasonably withheld, conditioned or delayed;

(iii) for the use of Licensee for its "Community Programs", as hereinafter defined, and other non-revenue generating programs (the courts shall not be used by Licensee for revenue generating purposes);

(iv) Licensee shall provide loaner rackets and balls to users of the U10 courts, when needed, at no cost;

(j) provide, operate and maintain vending machines (subject to Section 2.1(k)(ii) and the Citywide Beverage Vending Machines Standards set forth in **Exhibit E**);

(k) provide, operate and maintain a tennis pro shop for the sale of tennis and sports related merchandise and services, including racket stringing;

(l) provide, operate, and maintain a food and beverage service at the Licensed Premises; and

(m) continuously perform such ongoing and preventive maintenance activities necessary to maintain the Licensed Premises in good order and repair, and consistent with the highest professional and industry standard, to the reasonable satisfaction of Commissioner.

10.2 During the Term:

(a) Subject to Section 10.1 above, Licensee shall, at its sole cost and expense, assemble for each Indoor Tennis Season, and take down for each Outdoor Tennis Season, the inflatable air structure(s) used to enclose tennis courts, and any ancillary equipment for enclosing tennis courts, except anchoring equipment and inflation units affixed to the Licensed Premises, and make all other preparations required for the operation of the Indoor Tennis Season or the Outdoor Tennis Season, respectively. Prior to the Outdoor Tennis Season, Licensee shall disassemble the inflatable air structures, render the surfaces of all courts free of all trip hazards, and shall otherwise restore all tennis courts used during the Indoor Tennis Season to ready such tennis courts for outdoor tennis use. Licensee may, at its sole risk, cost and expense, store any inflatable air structure(s) and ancillary equipment at the Licensed Premises during the Outdoor Tennis Season. The foregoing notwithstanding if, during the Term, Licensee wishes to keep one (1) or more air-structures inflated during the Outdoor Season, then Licensee shall be able to do so, subject to the prior written approval of Parks and RIPA, which approval shall not be unreasonably withheld, conditioned or delayed; and

(b) Licensee shall provide adequate levels of heat and light inside inflatable air structure(s).

10.3 All hours of operation, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks' prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Licensee may operate the Concession when the park in which the Licensed Premises is located is open. Licensee shall conduct its operations at the Licensed Premises seven (7) days per week for the hours of operation set forth in the approved "staffing plan and hours of operation" detailed in **Exhibit B**, which hours of operation shall be posted prominently at the Licensed Premises. Any change in the hours of operation shall be subject to the prior written approval of Parks and RIPA, such approval not to be unreasonably withheld, conditioned or delayed.

10.4 Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the Concession granted by this License Agreement. All employees of Licensee shall be qualified for their respective functions to conduct Licensee's operations. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks.

10.5 Licensee agrees that it, or any sublicensee approved by Parks, shall provide services and sell food and beverages of high grade and good quality, and shall maintain adequate inventory to assure a constant supply of food and beverages. Licensee is strictly prohibited from selling any beverages in glass bottles. All beverages will be required to be in non-glass, shatter-proof containers. The foregoing notwithstanding, Licensee or an approved sublicensee may stock beverages in glass bottles and decant them into non-glass, shatterproof cups or containers prior to dispensing them to customers.

10.6 Licensee shall comply with all national safety guidelines and Federal, State and City laws, rules, and regulations related to the operation, renovation, and maintenance of the Licensed Premises.

10.7 The operation of the Concession shall be in such a manner so as to maintain the highest New York City Department of Health and Mental Hygiene (“DOHMH”) inspection rating. Any staff assigned by Licensee to sell food and beverages to the public must possess all required Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Licensee may only operate the food service facilities at the Licensed Premises if it has obtained the appropriate, valid permits and authorizations required by DOHMH. At all times that any of the food service facilities at the Licensed Premises are operating, a staff person with a valid DOHMH food handler’s license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of food or beverages.

10.8 (a) The selling and/or advertisement of cigarettes, cigars, or any other tobacco products; non-tobacco smoking products; or electronic cigarettes, is strictly prohibited.

(b) Smoking of any tobacco product, non-tobacco smoking product, or electronic cigarettes, is strictly prohibited anywhere on the Licensed Premises except in parking lots or sidewalks along the park perimeter.

(c) Additionally, Licensee shall not use in its operations any polystyrene packaging or food containers.

(d) Licensee shall adhere to and strictly enforce the prohibitions contained in this Section 10.8.

10.9 Alcoholic beverages may be served by Licensee to complement the food service at the Licensed Premises, provided that Licensee obtains, at its sole expense, the appropriate permit(s) and license(s) applicable to the sale or service of alcoholic beverages from the State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served by Licensee at the Licensed Premises, and must be consumed on the Licensed Premises within designated areas. All efforts must be made by Licensee to keep alcohol consumption discreet. Licensee must keep in mind that the Licensed Premises is in a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

10.10 Licensee may place tables, chairs, and umbrellas at outdoor seating areas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas at the Licensed Premises are subject to Parks' prior written approval, such approval not to be unreasonable withheld, conditioned or delayed. Licensee shall ensure free and open public access to any outdoor seating areas, provided however that access to any outdoor seating area where alcoholic beverages are served may be restricted to comply with Section 10.9 of this License Agreement and the requirements of the New York State Liquor Authority, or any other agency having jurisdiction.

10.11 On a monthly basis, Licensee shall submit to Parks for approval all scheduled Licensee's Special Events for the following month. In no event shall Licensee close the entire Licensed Premises to conduct private activities during public hours without prior written approval by RIPA and Parks, such approval not to be unreasonably withheld, conditioned or delayed. Any complete closure of the entire Licensed Premises, approved by RIPA and Parks, must be announced to the public at least two (2) weeks in advance of such activities or events. In addition, Parks may make use of the Licensed Premises, as provided in Article 16 herein. Licensee shall cooperate with the Park Administrator on the coordination and scheduling of all Randall's Island-wide special events and schedules.

10.12 Licensee shall collect approved fees for all services and products which it provides under this License Agreement. Licensee is permitted to increase tennis and related athletic instructional, educational and competitive program fees, seasonal and per-diem court fees, and any and all other fees for services and products, excluding membership fees, annually by a percentage of up to 2.5% (any fee increase not taken in a given Operating Year may be accrued and added to the permitted increase in any future Operating Year, however, Licensee may not implement an increase of more than 5% in any Operating Year without the prior written approval of the Commissioner). For membership fees, fees may be increased annually by \$3 for Junior members, \$6 for Adult Individual members, \$9 for Adult Couple members and \$12 for Family members (any fee increase not taken in a given Operating Year, including during the Original Operating Period, may be accrued and added to the permitted increase in any future Operating Year, however, Licensee may not implement an increase of more than \$6 for Junior members, \$12 for Adult Individual members, \$18 for Adult Couple members and \$24 for Family members in any Operating Year without the prior written approval of the Commissioner). Licensee shall submit to RIPA and Commissioner for Commissioner's prior approval (which approval shall not be withheld for any fees determined in accordance with the immediately preceding sentence), not less than sixty (60) days before the first (1st) day of each Operating Year, proposed fees and rates for the services and products to be provided under this License Agreement during the forthcoming Operating Year. Following approval of such rates and fees, Licensee shall, at its sole cost and expense, print, post on-line and/or prominently display in a place and manner designated by Commissioner, the current approved fees and rates. Any change to approved fees during the course of an Operating Year must receive prior approval from the Commissioner in writing (which approval shall not be withheld, conditioned or delayed for any fees determined in accordance with the permitted fee increases set forth above). Should Licensee choose not to charge the maximum allowable fees and rates, this shall in no way be interpreted as a waiver of Licensee's right to charge such maximum allowable fees and rates at any other time. Annexed hereto as Exhibit B is the Schedule of Approved Fees for the Operating Year ending August 31, 2019.

10.13 Licensee shall record all transactions involved in the operation of this License on cash registers or point of sale computer system and keep books and records as required by Article 4.

10.14 An officer of the Licensee shall personally operate this License Agreement or employ an operations manager (“Manager”) possessing appropriate qualifications to manage operations at the Licensed Premises in a manner that is satisfactory to Commissioner. The Manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a cellular telephone number through which Parks may contact the Manager in event of an emergency. Licensee shall replace any Manager, employee, subcontractor or sublicensee whenever reasonably demanded by Commissioner.

10.15 Licensee shall provide equipment that will provide security for all monies received by Licensee therein. Licensee shall provide for the transfer of all monies collected to Licensee’s banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License Agreement.

10.16 Licensee shall, at its sole cost and expense, use its best efforts to recruit personnel from the communities immediately surrounding the Licensed Premises, and provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License Agreement, including but not limited to:

- (a) collect and safeguard all monies generated under this License Agreement;
- (b) maintain the Licensed Premises;
- (c) conduct and supervise all activities at the Licensed Premises, including but not limited to the provision of qualified food service personnel and cashier(s);
- (d) securing the Licensed Premises; and
- (e) produce, set-up, take-down and store any inflatable air-structure(s).

10.17 Licensee shall, at its sole cost and expense, provide any lighting, music, music programming and sound equipment which Licensee determines may be necessary for its operations under this License Agreement.

10.18 Licensee shall operate and play such sound equipment and music in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d)(2), the Administrative Code of the City of New York, §24-201 et. seq. thereof, and only at a sound level acceptable to the Commissioner in his reasonable exercised discretion. Licensee shall be responsible for payment of any and all fees or royalties to ASCAP, BMI or such other entity as required by law for such music or music programming in connection with its operation of the Licensed Premises.

10.19 Installation of additional fixed lighting or fixed sound equipment by the Licensee on the Licensed Premises shall require the prior written approval of the Commissioner, which approval shall not be unreasonably withheld, conditioned or delayed.

10.20 Licensee shall provide access to the Licensed Premises to disabled members of the public. This accessibility shall be clearly indicated by signs and included in all advertising by Licensee. Licensee shall include in its advertising and promotion program, provided for in Section 10.25 herein, a plan which describes how it intends to make the programs, services and activities provided at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the Americans with Disabilities Act and any other similarly applicable legislation.

10.21 Licensee shall, at its sole cost and expense, provide a twenty-four (24) hour per day security system at the Licensed Premises, which shall be either an electronic security system, or twenty-four hour unarmed staff, or both. No grant of authority for Licensee to establish living quarters on the Licensed Premises is provided by this obligation. Such security measures shall be subject to the approval of Parks, the New York City Police Department (“NYPD”), and any other relevant agencies.

10.22 Licensee shall prepare and provide to Parks and RIPA reports of major accidents or unusual incidents occurring at the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall promptly notify Parks and RIPA, in writing, of any claim for injury, death, property damage or theft which may be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all claims for loss or damage including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks and RIPA in writing as to said person’s name and address.

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

10.24 Reserved.

10.25 Licensee shall maintain close liaison with Parks' Enforcement Patrol, NYPD, and other police officials, and cooperate with all efforts to remove illegal vendors from the Licensed Premises and adjacent areas. Licensee shall use best efforts to prevent illegal activity on the Licensed Premises.

10.26 The design, placement and content of all signage, including signage which includes Licensee’s name, trade name(s) and/or logo(s), is subject to Parks’ prior written approval. Signage shall also comply with ADA standards. Under no circumstances shall Licensee be permitted to place advertisements on the exterior of the Licensed Premises. All advertising utilized at the Licensed Premises is subject to Parks’ prior written approval. Licensee shall not advertise any product brands without Parks’ prior written approval. Licensee is prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without

the prior written approval of Parks. The display or placement of tobacco, non-tobacco smoking product, or electronic cigarette advertising shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted, but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. The following standards will apply to all allowed advertising: 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 be prohibited. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense. Any sign posted by Licensee at the Licensed Premises, or any advertisement used in connection with such facility, shall be appropriately located, and shall indicate through text or logo inclusion that the Licensed Premises is a Parks concession operated by Licensee and that Randall's Island Park is managed by RIPA.

10.27 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, non-tobacco smoking product, 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 see fit. If the Commissioner in the Commissioner's 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.

10.28 Licensee shall at its sole cost and expense post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. It is expressly understood that if Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to Commissioner's prior approval, or to the approval of RIPA and Parks with respect to Randall's Island.

10.29 Licensee shall, at its sole cost and expense, hire qualified tennis and athletic coaches to give instruction in the rules, methods and techniques of the game of tennis.

10.30 (a) Licensee shall cooperate with Parks and RIPA to cultivate, promote and provide on-site (at the Tennis Facility) and off-site (in the communities surrounding Randall's Island), free school and Community Based Organization ("CBO")-based tennis and athletic programming, with an emphasis on schools and CBOs located in East Harlem and the South Bronx (the "Community Programs"), as well as to provide needs-based and/or merit-based scholarships for youth to participate in Sportime programs and services ("Scholarships").

(b) During the Original Interim Period and the Original Operating Period, Licensee cooperated with RIPA to promote and conduct a junior development program with scholarship and fee-based membership. These junior development programs were conducted by a fully certified staff of instructors and included group instruction in tennis for children and adolescents. These programs included, but were not limited to the following components: teaching programs, special tournaments, exhibitions, clinics and league play.

(c) During the Phase II Interim Period, Licensee shall provide Community Programs and Scholarships at levels substantially similar to those that Licensee provides in the final Operating Year of the Original Operating Period.

During the Phase II Operating Period, Licensee shall make available the following:

(i) Six thousand (6,000) aggregate on-site and off-site court hours of Community Programs per Operating Year, including hours provided to the RIPA summer camp and other RIPA programs;

(ii) In conjunction with the Community Programs, increased transportation for partner schools and CBOs, subject to the prior written approval of Parks and RIPA. Licensee shall be responsible for obtaining, or, if Licensee contracts with a transportation provider, shall be responsible for ensuring that any transportation provider obtains, all necessary insurance, permits, licenses, and approvals from all City, State, and Federal agencies having jurisdiction, and Parks shall use reasonable efforts to cooperate with Licensee and assist Licensee to obtain such permits, licenses, and approvals;

(iii) Scholarships valued at no less than one million one hundred twenty-five thousand and 00/100 dollars (\$1,125,000.00) per Operating Year.

(d) Licensee shall submit to Parks an annual report of such Community Programs and Scholarships on or before the first December 15th to occur following the end of each Operating Year, which shall include the details of the Community Programs, and the details and value of Scholarships provided during such Operating Year.

10.31 Licensee shall not have the right to install antennas or other transmitters at the Licensed Premises for the purpose of wireless, satellite or other transmissions, except as reasonably approved in writing by Parks. Notwithstanding the foregoing, Parks hereby approves the installation of equipment required for the provision of utilities that service the Licensed Premises (e.g., internet access or television).

10.32 Should Commissioner, in the Commissioner's sole judgment, decide that an unsafe or emergency condition exists on the Licensed Premises, after written notification, Licensee shall have twenty-four (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 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 the Commissioner's reasonable discretion, may extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

MAINTENANCE, SANITATION AND REPAIRS

11.1 Licensee shall, at its sole cost and expense (or through arrangements with third parties), renovate, operate, and maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, equipment, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. Licensee may not erect any ancillary structures at the Licensed Premises without Parks's and RIPA's prior written approval, such approval not to be unreasonably withheld, conditioned or delayed. Any repair to the exterior of the building during the course of the Term will require prior written approval from Parks, DOB and any other agencies having jurisdiction.

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

11.3 At Parks' or RIPA's request, Licensee shall conduct a site inspection at the Licensed Premises with a representative of Parks or RIPA, as applicable. Such inspection shall assess the condition of the Licensed Premises and all Fixed and Additional Fixed Equipment therein, and determine the nature and extent of repairs to be performed by Licensee. Licensee shall make all necessary repairs during the Term.

11.4 Licensee shall be responsible for, at its sole cost and expense, clean-up and removal of all snow at the Licensed Premises, and shall be responsible for, at its sole cost and expense, clean-up and removal of all waste, garbage, refuse, rubbish and litter from the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles and have these receptacles emptied on a daily basis and removed by a private carter. The design, location, and placement of all waste and recycling receptacles outside of structures on the Licensed Premises is subject to Parks' prior written approval. Licensee shall comply with all City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' reasonable satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition throughout the Term.

11.5 Licensee shall maintain the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, planting, fertilization, terrain shaping, and soil improvements. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All work to be performed at the Licensed Premises is subject to Parks' prior written approval. In addition, Licensee shall obtain all necessary permits, approvals, and authorizations from all City, State, and Federal agencies having jurisdiction over the Licensed

Premises before any work is performed, and such work shall be of a quality which meets Parks' standards. Under no condition shall Licensee remove, replant, move, prune, or cut-back any tree, living or dead, in conjunction with Licensee's Capital Improvements, or with any other of Licensee's rights or duties under this License Agreement, without the express written permission of Parks. Moreover, Licensee acknowledges that Parks does not intend to authorize the removal of any living trees in conjunction with any of Licensee's rights or duties detailed herein.

11.6 At the expiration or sooner termination of this License Agreement, Licensee shall turn over the Licensed Premises and the Fixed and Additional Fixed Equipment (to the extent City has exercised its option to retain such Additional Fixed Equipment) to Parks in a well-maintained state, and in good repair, ordinary wear and tear excepted.

11.7 At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti that may appear on the buildings and structures on the Licensed Premises. Such graffiti removal shall be commenced within twenty-four (24) hours from the appearance of any such graffiti and shall continue until such graffiti is removed.

11.8 Licensee shall conduct regular pest control inspections and extermination, as needed. Pest control methods chosen by Licensee shall be subject to the reasonable approval of Parks. To the extent Licensee applies pesticides to any property owned or leased by City, Licensee, or any subcontractor hired by Licensee, shall comply with Chapter 12 of Title 17 of the New York City Administrative Code and limit the environmental impact of its pesticide use.

11.9 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 the New York State Department of Environmental Conservation ("DEC") and register such tanks with DEP. Licensee shall assume all registration and update costs. Licensee shall keep a copy of the PBS Certificate on site and provide copies to Parks's 5-Boro Office on Randall's Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five (5) 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.

APPROVALS

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

12.2 Whenever any act, consent, approval or permission is required of the City, Parks, the Commissioner, RIPA or the Park Administrator under this License Agreement, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or the Commissioner's duly authorized representative, or RIPA's duly authorized representative, or the Park Administrator, respectively. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon a party to this License Agreement, unless the same is, in

each instance, in writing and duly signed by the other parties or such parties' duly authorized representative(s).

RESERVATION FOR PARKS SPECIAL EVENTS

13.1 For the purposes of this Article 13.1, the term "Parks' Special Event(s)" shall mean any event for which Parks has issued a Special Event Permit, including those sponsored or promoted by Parks itself. In the event that Parks enters into agreements with third parties to sponsor or promote Parks' Special Events, Parks shall:

(a) require that any third parties will provide evidence of adequate insurance to cover the Parks Special Event, and name Licensee as an additional insured;

(b) procure a written indemnification of Licensee from such third parties; and

(c) require that such third parties be responsible for maintenance and clean-up of the Licensed Premises associated with any such Parks' Special Event.

Any Parks' Special Events sponsored or promoted by Parks or a third party entering into an agreement with Parks relating thereto shall be presented to the Licensee at least forty-five (45) days prior to the event. Commissioner represents to Licensee that Commissioner has not granted and will not grant to any person or entity other than Licensee any license, permit, or right of possession or use of the Licensed Premises that would prevent Licensee in any way from performing its obligations and realizing its rights under this License Agreement, or that would interfere with Licensee's operation of the Licensed Premises. In addition, Parks shall not, at any time, issue a Special Event Permit for use of the Licensed Premises to a third-party engaged in the tennis-related business, except as agreed to by Licensee, in writing, at its reasonable discretion.

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

PROHIBITION AGAINST TRANSFER, ASSIGNMENT, AND SUBLICENSES

14.1 (a) Subject to the terms of this Article 14, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License Agreement, forty-nine (49%) or more of the shares of or interest in Licensee, or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License Agreement, nor shall this License Agreement be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License Agreement solely to Licensee herein named.

(b) 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

Commissioner by submitting a written request including proposed assignment documents as provided herein. Commissioner may request any additional information he/she deems reasonably necessary and Licensee shall promptly comply with such requests. Licensor and Licensee acknowledge the approved sublicense agreement for the operation of the Café at the Licensed Premises.

(c) The term “assignment” shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in forty-nine percent (49%) or more 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 or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Article 14.

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 forty-nine percent (49%) or more of stock or voting control of Licensee without the prior written consent of Commissioner, which shall not be unreasonably withheld, conditioned or delayed. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by 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 Commissioner together with a certification that it shall provide management control acceptable to Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure 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 sublicense 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 Agreement.

14.4 In addition to the foregoing requirements, Licensee shall promptly report to Parks any proposed change of five percent or more of the shares of or interest in Licensee.

14.5 In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such 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 development, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee 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 with respect to the development, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance

(applicable to the operations being sublicensed) required of Licensee under this License Agreement and indemnifying the City as set forth in Article 19 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License Agreement.

PARKS CONSTRUCTION

15.1 Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by Commissioner. Parks shall use its reasonable efforts to give Licensee at least thirty (30) days' notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose consistent with this paragraph, as determined by Commissioner. In the event that Licensee must close all or a portion of the Licensed Premises for the purposes provided for in this License Agreement because of such Parks' work, then Licensee may propose and submit for Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License Agreement. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee.

COMPLIANCE WITH LAWS

16.1 Licensee shall comply with, and cause its employees and agents to comply with, all applicable federal and state laws, including without limitation the New York State Labor Law and New York State Tax law, and all rules and regulations pursuant thereto, all other federal and state labor and tax laws, and all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the Concession and the Licensed Premises and/or Licensee's use and occupation thereof. Without limiting the foregoing, Licensee must collect and pay New York State and City Sales Tax and pay all other applicable taxes, including New York City Commercial Rent or Occupancy taxes.

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

NON-DISCRIMINATION

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

status, or sexual orientation. Licensee shall comply with the Americans with Disabilities Act (“ADA”) and regulations pertaining thereto as applicable. Any violation of this Article 17 shall be a material breach of this License Agreement.

17.2 All advertising for employment at the Licensed Premises shall indicate that Licensee is an Equal Opportunity Employer.

NO WAIVER OF RIGHTS

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

INDEMNIFICATION

19.1 (a) As between the City, RIPA and Licensee, Licensee shall be solely responsible for the safety and protection of its employees, agents, servants, contractors, and subcontractors, and for the safety and protection of the employees, agents, or servants of its contractors or subcontractors, with respect to the operations under this License Agreement.

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

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

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all Federal, State or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by City as part of this License Agreement, 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.

19.2 (a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold RIPA and the City and their respective officials and employees, harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License Agreement (regardless of whether or not Licensee itself has been negligent) and/or Licensee's failure to comply with the law or any of the requirements of this License Agreement. Insofar as the facts or law relating to any of the foregoing would preclude RIPA, the City or their respective officials and employees, from being completely indemnified by Licensee, RIPA, the City and their respective officials and employees, shall be partially indemnified by Licensee to the fullest extent permitted by law.

(b) Licensee's obligation to defend, indemnify and hold City, RIPA and their respective officials and employees, harmless shall not be (i) limited in any way by Licensee's obligations to obtain and maintain insurance under this License Agreement, nor (ii) adversely affected by any failure on the part of RIPA, the City or their respective officials and employees to avail themselves of the benefits of such insurance.

19.3 For purposes of Article 19 hereof, the term "operations under this License Agreement" shall include any operations ancillary to or connected with Licensee's operations pursuant to this License Agreement, including without limitation, providing or arranging for transportation to and from the Licensed Premises.

INSURANCE

20.1 (a) From the date this License Agreement is executed through the date of its expiration or termination, Licensee shall ensure that the types of insurance indicated in this Article 20 are obtained and remain in force, and that such insurance adheres to all requirements herein. City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of Commissioner, Licensee's operations warrant it.

(b) Licensee is authorized to undertake or maintain operations under this License Agreement 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. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). Licensee shall maintain coverage for products completed operations in the amount of Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License Agreement. If the concessionaire engages an independent contractor to teach on its court, the concessionaire's commercial general liability insurance must cover the independent contractor's activity. Coverage

shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 00 01, and shall contain no exclusions other than as required by law or as approved by Commissioner, and shall be “occurrence” based rather than “claims-made.”

(b) Such Commercial General Liability insurance shall name RIPA and the City, together with their respective officials and employees, as Additional Insureds for claims that may arise from any of the operations under this License Agreement. Coverage shall be at least as broad as the most recent editions of ISO Forms CG 20 26 and CG 20 37, and the limits for the City shall be no lower than Licensee’s. “Blanket” or other forms are acceptable if they provide the RIPA and the City, together with their officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(c) If Licensee or a contractor or sublicensee of Licensee serves alcoholic beverages anywhere on the Licensed Premises, Licensee shall carry or cause to be carried liquor law liability coverage in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name RIPA and the City, together with their respective officials and employees, as Additional Insureds. Such insurance shall be effective prior to the commencement of any such operations and continue throughout such operations. Commissioner may increase or decrease the limit(s) if 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 Agreement, and such insurance shall comply with the laws of the State of New York.

20.4 (a) If vehicles are to be used in connection with the operations under this License Agreement, Licensee shall carry Commercial Automobile Liability Insurance in the amount of One Million Dollars (\$1,000,000) for each accident combined single limit for liability arising out of ownership, maintenance, or use of any owned, non-owned, or hired. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(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 written on a special causes of form (often referred to as an “All Risk” policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises (“Concession Structures”), whether existing at the Notice to Proceed or built at any time before the Termination Date. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) at a value reasonably determined by Parks and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), 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 Additional Insured and Loss Payee as its interests may appear.

(b) 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 an “all risk” or “special perils form” insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

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

(d) If the Licensed Premises includes any structure or building, as defined by the Federal Emergency Management Agency (“FEMA”), in a special flood area designated by FEMA as of date hereof or at any time in the future as a Special Flood Hazard Area (“SFHA”), Licensee shall maintain flood insurance through the National Flood Insurance Program (“NFIP”) for each building on the Licensed Premises. Each building shall be insured separately. For each building, Licensee shall maintain the maximum limits available under the NFIP for both the building and its contents. Licensee shall ensure that the City is listed as a loss payee on the NFIP insurance. In the event Licensee purchases flood insurance excess to the limits available under the NFIP, Licensee shall assure that the City is listed as loss payee under all such policies.

20.6 (a) In the event the Licensee enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs or any other hazardous materials or substances, the Licensee shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury, property damage, cleanup costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for sudden and non-sudden pollution conditions arising out of the contractor’s operations at the Premises.

(b) If required, the Contractors Pollution Liability Insurance shall each have a limit of at least Two Million Dollars (\$2,000,000), and provide coverage for the Licensee as Named Insured or Additional Insured and the City and RIPA, together with their respective officials and employees, as Additional Insureds. Coverage for the City and RIPA shall be at least as broad as the Licensee’s. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor’s work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

20.7 If Licensee is authorized by Parks and RIPA to provide or to contract with another entity to provide transportation services to and from the Licensed Premises the following insurance must

be maintained covering the transportation services:

(a) Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence, One Million Dollars (\$1,000,000) personal and advertising injury, and One Million Dollars (\$1,000,000) aggregate, protecting the insureds from claims for property damage and/or bodily injury, including death. Coverage shall be at least as broad as that provided by the most recently issued ISO Form CG 0001, and 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.” Such Commercial General Liability insurance shall name the City and RIPA, together with their respective officials and employees, as Additional Insureds with coverage at least as broad as the most recent edition of ISO form 20 26; and

(b) Commercial Automobile Liability insurance in the amount of at least Five Million Dollars (\$5,000,000) 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.

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

20.8 (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” or a Standard and Poor’s rating of at least A, unless prior written approval is obtained from Commissioner.

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

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

(e) City’s and RIPA’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 for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide City and RIPA with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both Commissioner, City of New York Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; and the New York City Comptroller, Attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007; and RIPA, 24 West 61st Street, 4th Floor, New York, New York 10023. Such notice is to be sent at least thirty (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

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

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

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form acceptable to City.

ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article other than Workers Compensation, Employers Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to Commissioner. All such Certificates of Insurance shall (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which City and RIPA, including their respective officials and employees, have 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 required by Commissioner, attached hereto as **Exhibit F**, or certified copies of all policies referenced in such Certificate of Insurance.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to

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

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

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

20.10 (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 entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also name RIPA and the City, including their respective officials and employees, each as an Additional Insured with coverage at least as broad as the most recent edition of ISO form CG 20 26.

(c) Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not City or RIPA is an insured under the policy. If the Commissioner authorizes a self-insured retention, the Licensee must allow the City or RIPA to pay the self-insured retention upon the Licensee's failure to pay. If the City or RIPA pays such self-insured retention, the City or RIPA may deduct the self-insured retention from the Security Deposit

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, Licensee shall 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 twenty (20) days after such event. For any policy where City or RIPA is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to 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 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 City or RIPA at any time.

(f) Insurance coverage in the minimum amounts provided for in this Article shall not relieve Licensee of any liability under this License Agreement, nor shall it preclude City or RIPA 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 City and RIPA with regard to such potential or actual claim.

(h) Apart from damages or losses covered by Workers' Compensation Insurance, Employers Liability Insurance, Disability Benefits Insurance, or Commercial Automobile Insurance, Licensee waives all rights against RIPA and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of Licensee and/or its employees, agents, or servants of its contractors or subcontractors.

(i) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, and such insurance shall include RIPA and the City, together with their officials and employees, as Additional Insureds with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License Agreement and requires such entity to name Licensee as an Additional Insured under such insurance, Licensee shall ensure that such entity also names RIPA and the City, together with their respective officials and employees, as Additional Insureds (with coverage for Commercial General Liability Insurance) at least as broad as ISO form CG 20 26).

(j) 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 Commissioner, City of New York Department of Parks & Recreation, The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065; the New York City Comptroller, attn: Office of Contract Administration, Municipal Building, One Centre Street, Room 1005, New York, New York 10007; and RIPA, 24 West 61st Street, 4th Floor, New York, New York 10023. Notwithstanding the foregoing, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

WAIVER OF COMPENSATION

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

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

INVESTIGATIONS

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

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

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

(c) (i) The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a

hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

(ii) 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(e) below without the City incurring any penalty or damages for delay or otherwise.

(d) 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 (5) years from the date of an adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License Agreement, 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.

(e) 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 22.1(e)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22.1(e) (iii) and (iv) below in addition to any other information that 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 (d) 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 (c)(i) 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.

(f) (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.

(g) In addition to and notwithstanding any other provision of this License Agreement the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) 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 of this License Agreement.

CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

23.2 Any and all claims asserted by or against the City, or RIPA arising under this License Agreement 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 intent, Licensee agrees:

(a) If the City or RIPA initiates any action against Licensee in Federal Court or in New York State Court, service of process may be made on Licensee either in person, wherever such

Licensee may be found, or by registered mail addressed to Licensee at its address set forth in this License Agreement, or to such other address as Licensee may provide to the City and RIPA in writing; and

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

23.4 If Licensee commences any action against the City or RIPA in a court located other than in the City and State of New York, upon request of the City or RIPA, 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, Licensee shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

WAIVER OF TRIAL BY JURY

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

CUMULATIVE REMEDIES – NO WAIVER

25.1 The specific remedies to which City and RIPA may resort under the terms of this License Agreement 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 default hereunder. The failure of City or RIPA to insist in any one or more cases upon the strict performance of any of the covenants of this License Agreement, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of such covenants or option.

EMPLOYEES OF LICENSEE

26.1 All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License Agreement are neither employees of the City or RIPA, nor under contract to the City or RIPA, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License Agreement. Nothing in this License Agreement shall impose any liability or duty on the City or RIPA for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association,

corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

INDEPENDENT STATUS OF LICENSEE

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

CREDITOR-DEBTOR PROCEEDINGS

28.1 In the event any bankruptcy, insolvency, reorganization or other creditor-debtor proceedings shall be instituted by or against Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City or RIPA, or successor organization at the direction of the City, for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's, or RIPA's, or successor organization's, damages; provided, however, that if any such proceeding is instituted against Licensee or its successors or assigns, or the guarantor, if any, then such party shall have sixty (60) days to have such proceedings dismissed during which time no action or deduction shall be taken relating to or against the Security Deposit.

CONFLICT OF INTEREST; COMPETITION

29.1 Licensee represents and warrants that neither Licensee 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 Agreement no person having such interest or possible interest shall be employed by him. 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 Agreement 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 Agreement or in the proceeds thereof. The parties hereto acknowledge and agree that Licensee's operations of the Licensed Premises may, in a fair and open manner, compete with other private and public tennis, fitness and multi-sports facilities which Licensee owns and operates throughout the State of New York. Notwithstanding the foregoing sentence, Licensee shall remain responsible for its minimum guaranteed license fee payments pursuant to Article 4 herein.

29.2 Parks and RIPA hereby acknowledge and agree the management, restoration and development plan for Randall’s Island Park currently has no contemplation of the construction of a tennis facility or the staging of tennis events on Randall’s Island other than in accordance with the terms of this License Agreement.

PROCUREMENT OF AGREEMENT

30.1 Licensee represents and warrants that no person or selling agency has been employed or retained to solicit or secure this License Agreement 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 and RIPA to enter into this License Agreement and the City and RIPA rely upon such representations and warranties in the execution hereof.

30.2 For a breach or violation of such representations or warranties, the Commissioner shall have the right to annul this License Agreement without liability, entitling the City and RIPA 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 Agreement. This remedy, if effected, shall not constitute the sole remedy afforded the City or RIPA for the falsity or breach, nor shall it constitute a waiver of the City's or RIPA’s right to claim damages or refuse payment or to take any other action provided by law or pursuant to this License Agreement.

NO CLAIM AGAINST OFFICERS, AGENTS, OR EMPLOYEES

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

ALL LEGAL PROVISIONS DEEMED INCLUDED

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

SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

33.1 If any term or provision of this License Agreement or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this License Agreement, 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 Agreement shall be valid and enforceable to the fullest extent permitted by law.

JUDICIAL INTERPRETATION

34.1 Should any provision of this License Agreement 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 conclusion 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 Agreement and that legal counsel was consulted by each responsible party before the execution of this License Agreement.

MODIFICATION OF AGREEMENT

35.1 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 be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

NOTICES

36.1 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 Commissioner, RIPA, or to the attention of Licensee, at their respective addresses below, or such other address as may be provided by the parties in writing:

If to Parks:

City of New York Department of Parks & Recreation
The Arsenal - Room 407
830 Fifth Avenue
New York, NY 10021

If to Licensee:

Sportime Tennis Center
20 Central Road
Randall's Island Park
New York, NY 10035
Attn: Bennett I. Schlansky, Esq.

With a copy to:

Sportime Central Office
275 Old Indian Head Road
PO Box 326
Kings Park, NY 11754
Attn: Bennett I. Schlansky, Esq.

And if to RIPA:

President
Randall's Island Park Alliance, Inc.
24 West 61st Street, 4th Floor
New York, NY 10023

SCOPE OF AGREEMENT

37.1 This License Agreement and the Gross Receipts generated pursuant thereto shall be limited to Licensee's operation of the Licensed Premises only. Notwithstanding the foregoing sentence, Licensee shall remain responsible for its minimum guaranteed license fee payments pursuant to Article 4 herein.

HEADINGS AND TABLE OF CONTENTS

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

ENTIRE AGREEMENT

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

COUNTERPARTS

40.1 This License Agreement may be executed simultaneously in two (2) or more counterparts, each of which shall be deemed an original, and shall be deemed to have become effective when and only when one or more of such counterparts shall have been signed by or on behalf of each of the parties hereto, although it shall not be necessary that any single counterpart be signed by or on behalf of each of the parties hereto, and all such counterparts shall be deemed to constitute but one and the same instrument.

FORCE MAJEURE

41.1 (a) A “Force Majeure Event” means a delay beyond the reasonable control of the party claiming that a Force Majeure Event has occurred, including, without limitation, delays due to: (a) strikes, slowdowns, walkouts, lockouts, work stoppages, material default by a contractor or subcontractor, unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions, judicial injunction, acts of God, terrorism, severe weather conditions, enemy action, civil commotion, fire, casualty or other similar causes; or (b) the delay of any governmental authority to grant any discretionary permits or approvals required for the License Agreement, the Concession, or the prosecution of any Capital Improvement, provided that in each case the party applying for any such permit or approval has submitted a complete application for, and has made diligent and good faith efforts to comply with all conditions of the governmental authority granting such, permits or approvals. Notwithstanding the foregoing, a Force Majeure Event shall be deemed to have occurred only to the extent that in each case: (1) despite reasonable efforts, the party claiming that a Force Majeure Event has occurred has been unable to prevent or mitigate such Force Majeure Event; and (2) the party claiming that a Force Majeure Event has occurred shall have notified the other party in writing not later than ten (10) days after the claiming party first had any knowledge of the occurrence of the Force Majeure Event. It is understood and agreed that Licensee’s financial condition or inability to obtain financing shall not constitute a Force Majeure Event and the denial by a governmental authority to grant a permit or approval required by the License Agreement, the Concession, or the prosecution of any Capital Improvement beyond any right of appeal shall terminate any Force Majeure Event.

(b) In the event a Force Majeure Event has occurred and has delayed or prevented performance of one or more obligation of Licensee under this License Agreement, the time for performance of such obligation or obligations, and any related time periods defined in this License Agreement, e.g. the Phase II Interim Period, shall be extended commensurate with the nature of the Force Majeure Event, and thereafter Licensee and Parks shall meet as soon as possible after notice from Licensee to Parks requesting a meeting (and in any event no later than within five (5) business days after such notice from Licensee to Parks) and cooperate in good faith to agree to an equitable solution to address the impact of the Force Majeure Event on the Concession or this License Agreement. Without limiting the scope of potential equitable solutions, the parties recognize that an equitable solution may take into account Licensee’s Capital Improvements expenditures during the Original Interim Period and Original Operating Period, Licensee’s Capital Improvements expenditures for the Phase II Capital Improvements, whether Licensee has complied with the terms of this License Agreement, and any other relevant considerations, and such equitable solution may, depending on the circumstances and subject to compliance with applicable legal requirements, include, among other things, possible further amendment to this License Agreement to renegotiate the license fees, Licensee’s operations, or the Term.

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of , 2018 before me personally came [] to me known, and known to be the Assistant Commissioner for Revenue of the Department of Parks & Recreation of the City of New York, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of , 2018 before me personally came Aimee Boden to me known, and known to be the President of Randall's Island Park Alliance, Inc. and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein

Notary Public

STATE OF NEW YORK

ss:

COUNTY OF

On this day of , 2018 before me personally Claude Okin, who, being duly sworn by me did depose and say that he is the President of Sportime Clubs LLC, and that he executed the forgoing instrument and acknowledged that he executed the same for the purposes mentioned therein.

Notary Public

Exhibit A1

The Existing Licensed Premises

Exhibit A2

The Expanded Licensed Premises

Exhibit B

Schedule of Approved Fees for the Operating Year ending August 31, 2019

Exhibit C

Approved Form of Monthly Gross Receipts Report

Currently Approved Summary of Gross Receipts Report

Currently Approved Yearly Income and Expense Statement

Exhibit D1

Original Schedule of Capital Improvements

Exhibit D2

Phase II Capital Improvements

Licensee shall complete the following Capital Improvements prior to the Phase II Commencement Date, with a minimum capital investment of Twenty Million Dollars (\$20,000,000.00):

On the Existing Licensed Premises:

- Renovate the existing clubhouse. On its second floor, the existing outdoor bleachers will be removed and converted into an indoor space that will be connected to the existing clubhouse by a glass walkway. The new second floor space will include a new lounge/viewing area looking out to the exhibition court with an adjoining pantry, bathrooms, and a conference room.
- Install new bleachers to accommodate approximately 473 people on the north side of the exhibition courts, on an existing asphalt pad, to replace the existing bleachers that are being dismantled.
- Construct a new basketball court to replace an existing court to be removed.

On the Expanded Licensed Premises:

- The construction of 10 additional full-size tennis courts. Six shall be Deco-Turf hard courts or a Parks-approved equal and four shall be Har-Tru clay courts.
- Construction of a new pre-fabricated permanent indoor metal building to house the six new Deco-Turf courts.
- Construct new grade beams and install air handling equipment as needed to seasonally enclose four new Har-Tru clay courts.
- Construct a new support building. The support building will house bathrooms and lounge areas with views of new courts and may include new offices and storage areas.
- Construct four new U10 Learning (smaller sized) courts.
- Install new landscaping including new trees and a viewing slope, which will abut the new indoor building.
- Increase parking along the southern end of the site, adding 19 new spaces.

Other:

- Construct a connector structure to connect the existing clubhouse to the new support building for enclosed pedestrian circulation.
- Procure and install capitably-eligible furniture, fixtures, and equipment, including but not limited to inflatable structures for covering tennis courts (up to Two Million Dollars (\$2,000,000.00)).

In addition to and separate from the above Capital Improvements, and prior to the Phase II

Commencement Date, Licensee shall:

- Install field lighting at Ballfields #20 and #21, prior to Ballfield #30 being taken off-line for construction (approximately \$750,000).

Exhibit E

Citywide Beverage Vending Machines Standards

For Vending Locations Regularly Used by Adults

All of the following criteria must be met:

A) Specifications regarding the product mix:

- 1) No more than two columns (or “buttons”) may be unlimited calorie beverages (the maximum of two columns applies irrespective of the total number of columns in the machine).
- 2) Unless otherwise approved by the City in writing, water is required to be stocked for a minimum of 2 columns (or “buttons”). Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
- 3) The remaining products must be ≤ 25 calories per 8 oz.

B) Specifications regarding product display placement:

- 1) Water must be placed in the position with the highest selling potential.
- 2) “High Calorie” beverages (defined as any beverage > 25 calories per 8 oz) must be placed in the position with the lowest selling potential.
- 3) For machines where the buttons are arrayed vertically, highest selling potential means those closest to eye level, usually the top buttons, and lowest selling potential means those furthest from eye level, usually the bottom buttons. Or as determined by industry best practices.
- 4) However, because machines have different display arrangements, the City will have sole discretion to approve all product display and placement.

C) Specifications regarding size:

- 1) All beverage selections with the exception of water and seltzer are limited to 12 oz. For the purposes of these Standards, seltzer is defined as water naturally or artificially impregnated with mineral salts or gasses, having 0 calories per 8 oz. and no artificial sweeteners.
- 2) All water and seltzer selections must be at least 12 oz.
- 3) Portion sizes smaller than 12 oz are encouraged for High Calorie beverages.

D) Calorie labeling:

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

E) Promotional space:

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

F) Price:

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

For Vending Locations Regularly Used by Children age 18 and under

A) Specifications regarding the product mix:

- 1) Beverage vending machines can only include:
 - Water
Unless otherwise approved by the City, in its sole discretion in writing, water for the purposes of these Standards shall mean bottled water that is intended for human consumption, that contains 0 calories per 8 oz, and contains no added flavor, color, or sweeteners of any kind. Any product containing water modified with added flavors, colors or sweeteners or with calories in excess of 0 calories per 8 oz shall not be considered water for the purposes of these Standards.
 - Unsweetened milk, 1% or nonfat only
 - Beverages with ≤ 25 calories per 8 oz
 - Carbonation and caffeine are allowed
- 2) Prohibited:
 - Artificial sweeteners
 - Other "natural" non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol)
 - Artificial flavors and colors
- 3) If the location is regularly used by **programs serving children age 12 or younger** (e.g. afterschool locations, summer camp), in addition to the standards above, products:
 - Should not be caffeinated
 - Should be ≤ 10 calories per 8 oz

B) Calorie labeling:

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

(adapted from HC §81.50)

C) Promotional space:

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

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

New York City Food Standards

Part III: Standards for Food Vending Machines

The Standards for Food Vending Machines were enacted December of 2011, pursuant to Executive Order 122. These Standards apply to all types of food vending machines including non-refrigerated “snack” and refrigerated machines. Follow these standards to make vending machine choices healthier for employees and visitors.

Snack Standards

Snacking in excess can lead to weight gain. Snacks, when consumed, should add healthy nutrients to the overall diet and help curb hunger.

- 1) Require that snacks meet all of the following criteria, per package:
 - Calories: no more than 200 calories
 - Total fat: no more than 7 grams
 - Nuts, seeds, nut butters and cheese are exempt
 - Combination products of dried fruit and nuts are exempt
 - Saturated fat: no more than 2 grams
 - Nuts, seeds, nut butters and cheese are exempt
 - Trans fat: 0 grams trans fat
 - Sodium: no more than 200 mg
 - Cottage cheese: no more than 400 mg
 - Sugar: no more than 10 grams
 - Fruit and vegetable products with no added sugar are exempt
 - Yogurt: no more than 30 grams sugar per 8 ounces
 - Contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)
- 2) Limit grain/potato-based snacks (includes similar products, such as corn, plantain and taro chips) to no more than 50% of food items in machine.
- 3) Require that calorie information is posted for each food item, as packaged.

Exhibit G

PAYMENT GUARANTEE

I. (A) For purposes of this Exhibit G:

(1) "Contractor" means a person, firm or corporation who or which contracts with the Licensee to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to the Licensee in connection with the work for the Capital Improvement Project. The Contractor may also be referred to in this Exhibit G as a "party liable for payment" where applicable;

(2) "Licensee" shall have the meaning given such term in the License Agreement. The Licensee may also be referred to in this Exhibit G as a party liable for payment where applicable; and

(2) "Subcontractor" means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, or actually furnishes, labor, material, equipment, supplies, or any combination thereof to a Contractor in connection with the work for the Capital Improvement Project. The Subcontractor may also be referred to in this Exhibit G as a "party liable for payment" where applicable.

(B) Licensee shall, in accordance with the terms of this Exhibit G, guarantee payment of all lawful claims for:

(1) Wages and compensation for labor performed and/or services rendered; and

(2) Materials, equipment, and supplies provided, whether incorporated into the Capital Improvement Project or not, when demands have been filed with the Licensee as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof,

in connection with the Capital Improvement Project (hereinafter referred to as a "beneficiary") performed at the direction of the Licensee, the Contractor, or a Subcontractor of the Contractor; and

II. The provisions of Section I.(B) of this Exhibit G are subject to the limitations and conditions in this Section II and in Sections III and IV of this Exhibit G:

(A) The guarantee is made for the benefit of all beneficiaries as defined in Section I.(B) of this Exhibit G, provided that those beneficiaries strictly adhere to the terms and conditions of this Section II of this Exhibit G.

(B) Nothing in this Exhibit G shall prevent a beneficiary providing labor, services or

material for the Capital Improvement Project from suing the person, firm or corporation for whom such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

(C) Every person who has furnished labor or material, to the Licensee, a Contractor or to a Subcontractor of the Contractor, in the prosecution of the Capital Improvement Project and who has not been paid in full therefor before the expiration of a period of ninety (90) days after the date on which the last of the labor was performed or material was furnished by him/her for which the claim is made, shall have the right to sue on this payment guarantee in his/her own name for the amount, or the balance thereof, unpaid at the time of commencement of the action, by filing a demand hereunder; provided, however, that a person having a direct contractual relationship with a Subcontractor of the Contractor but no contractual relationship express or implied with the Contractor shall not have a right of action upon the guarantee unless he/she shall have given written notice to the Contractor within one hundred twenty (120) days from the date on which the last of the labor was performed or the last of the material was furnished, for which his/her claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or for whom the labor was performed. The notice shall be served by delivering the same personally to the Contractor or by mailing the same by registered mail, postage prepaid, in an envelope addressed to the Contractor at any place where it maintains an office or conducts its business; provided, however, that where such notice is actually received by the Contractor by other means, such notice shall be deemed sufficient.

(D) No action on this payment guarantee shall be commenced after the expiration of two (2) years after the completion of the Capital Improvement Project.

(E) A Contractor shall promptly forward to the Licensee any notice or demand received pursuant to Section II.(C) of this Exhibit G. The Contractor shall inform the Licensee of any defenses to the notice or demand and shall forward to the Licensee any documents the Licensee requests concerning the notice or demand. If the Contractor has a claim against the Licensee as described in the first sentence of Section II.(C) of this Exhibit G , the Contractor shall promptly forward such demand to the Licensee.

(F) All demands made against the Licensee by a beneficiary of this payment guarantee shall be presented to the Licensee along with all written documentation concerning the demand which the Licensee deems reasonably appropriate or necessary, which may include, but shall not be limited to: the contract or subcontract; any invoices presented to the party liable for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the party liable for payment and that the demand has not been paid by the party liable for payment within the time allowed for such payment by the contract or subcontract; and copies of any correspondence between the beneficiary and the party liable for payment concerning such demand. If the party liable for payment is not the Licensee, the Licensee shall notify the party liable for payment that a demand has been made. The party liable for payment shall inform the Licensee of any defenses to the demand and shall forward to the Licensee any documents the Licensee requests concerning the demand.

(G) The Licensee shall make payment as described in Section IV only if, after considering all defenses presented to the claim for payment, it determines that the payment is due and owing to the beneficiary making the demand.

(H) No beneficiary shall be entitled to interest from the Licensee, or to any other costs, including, but not limited to, attorneys' fees, except to the extent required by applicable law.

III. Upon the receipt by the Licensee of a demand pursuant to this Exhibit G, in the case where the Licensee is not the party liable for payment, the Licensee may withhold from any payment otherwise due and owing to the Contractor an amount sufficient to satisfy the demand.

IV. (A) In the event the Licensee determines that the demand is valid and the Licensee is not the party liable for payment, the Licensee shall notify the party liable for payment of such determination and the amount thereof, and direct the party liable for payment to immediately pay such amount to the beneficiary. In the event the party liable for payment, within seven (7) days of receipt of such notification from the Licensee, fails to pay the beneficiary, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee becomes aware of such failure to pay the beneficiary.

(B) In the event the Licensee determines that the demand is valid and the Licensee is the party liable for payment, the Licensee shall pay the amount due and owing to the beneficiary within seven (7) days of the date on which Licensee determines that the demand is valid.

(C) In the event the Licensee determines that the demand is invalid, any amount withheld pending the Licensee's review of such demand shall be paid to the Contractor; provided, however, no lien has been filed. In the event a lien has been filed, the parties will be governed by the provisions of the Lien Law of the State of New York. The Licensee shall provide written notification of its determination that the demand is invalid to the beneficiary that made such demand.

V. Nothing in this Exhibit G shall relieve a party liable for payment of the obligation to pay the claims of all persons with valid and lawful claims against such party relating to the Capital Improvement Project.

VI. Notwithstanding any provision to the contrary contained in the License Agreement (including this Exhibit G), the payment guarantee made pursuant to this Exhibit G shall be construed in a manner consistent with Section 5 of the New York Lien Law.

Exhibit H
PAID SICK LEAVE LAW
CONCESSION AGREEMENT RIDER

Introduction and General Provisions

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

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

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

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

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

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

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

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

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

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

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

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

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

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

Exemptions and Exceptions

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

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

Retaliation Prohibited

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

Notice of Rights

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

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

Records

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

Enforcement and Penalties

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

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

More Generous Policies and Other Legal Requirements

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



NYC Parks

Mitchell J. Silver, FAICP
Commissioner

T 212.360.1305
F 212.360.1345

E mitchell.silver@parks.nyc.gov

City of New York
Parks & Recreation

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

MEMORANDUM

To: Hon. Eric L. Adams, President of the Borough of Brooklyn
Mr. Eddie Mark, District Manager, Brooklyn Community Board 13

FROM: Eric Weiss, Senior Project Manager 

SUBJECT: Notice of intent to seek Franchise and Concession Review Committee approval to utilize a different procedure to negotiate an amendment to the existing Permit Agreement between the New York City Department of Parks and Recreation and Surf Avenue Parking, LLC for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn.

DATE: November 2, 2018

In accordance with Section 1-16 of the Concession Rules of the City of New York, this is to notify the Brooklyn Borough President and Brooklyn Community Board 13 that the New York City Department of Parks and Recreation ("Parks") is seeking Franchise and Concession Review Committee ("FCRC") approval to negotiate an amendment to the existing Permit Agreement with Surf Avenue Parking, LLC for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn. It is anticipated that the amendment would extend the agreement for one (1) year with an additional one (1)-year renewal option to be exercised at the sole discretion of Parks.

This concession has been determined not to be a major concession as defined in Chapter 7 of the Rules of the City Planning Commission.

Please feel free to contact me at 212-360-3483 with any questions or comments you may have.

Thank you.

CITY OF NEW YORK

FRANCHISE AND CONCESSION REVIEW COMMITTEE

(Cal. No. __)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks & Recreation (“Parks”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to the existing concession agreement between Parks and Surf Avenue Parking, LLC for the renovation, operation, and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn. Parks anticipates that the amendment would extend the agreement for one (1) year, with an additional one (1)-year renewal option to be exercised at the sole discretion of Parks.

BE IT FURTHER RESOLVED, that Parks shall submit the amendment it proposes to enter into with Surf Avenue Parking, LLC to the Franchise and Concession Review Committee for approval.

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

December 12, 2018

Date: _____

Signed: _____

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

CONCESSION AGREEMENT PRE-SOLICITATION REVIEW MEMORANDUM COVER SHEET
 (Complete and attach a CPSR Memorandum only if the selection procedure will be other than Competitive Sealed Bids)

| | |
|---|--|
| AGENCY: New York City Department of Parks & Recreation ("Parks") | CONCESSION TITLE/DESCRIPTION: Renovation, operation, and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn. |
| # VOTES required for proposed action = 4 <input type="checkbox"/> N/A | CONCESSION IDENTIFICATION # B369-PL |

SELECTION PROCEDURE
 (* City Chief Procurement Officer approval of CPSR required)

Competitive Sealed Bids (CSB) (CSP)*
 Competitive Sealed Proposals

Different Procedure * (Sole Source Agreement Other: Intent to negotiate an amendment to the existing concession agreement)

Negotiated Concession*

Recommended Concessionaire: Surf Avenue Parking, LLC EIN SSN # 46-3804648
 Attach Memo(s) *

| | |
|--|--|
| <p align="center">CONCESSION AGREEMENT TERM</p> <p>Initial Term: One (1) Year Renewal Option(s) Term: One (1) Year</p> <p>Total Potential Term: Two (2) Years</p> | <p align="center">ESTIMATED REVENUE/ANTICIPATED BUSINESS TERMS (Check all that apply)</p> <p align="center"><input type="checkbox"/> Additional description attached</p> <p><input type="checkbox"/> Annual Minimum Fee(s) \$ _____</p> <p><input type="checkbox"/> % Gross Receipts _____%</p> <p><input type="checkbox"/> The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts</p> <p><input checked="" type="checkbox"/> Other formula To be negotiated</p> |
| <p>LOCATION OF CONCESSION SITE(S)* <input type="checkbox"/> N/A Borough: <u>Brooklyn</u> C.B. <u>13</u></p> <p>Lot 1: <u>Between W. 19th and W. 20th Streets and between Surf Avenue and Riegelmann Boardwalk, Brooklyn, NY; Block # 7073 Lot # 101</u></p> <p>Lot 2: <u>Between W. 21st and W. 22nd Streets and between Surf Avenue and Riegelmann Boardwalk, Brooklyn, NY; Block # 7071 Lot # 100</u></p> <p><small>*Attach additional sheet</small></p> | |

CONCESSION TYPE (Check all that apply)

> **Significant Concession:**
 NO
 YES Basis:
 Total potential term =>10 years Projected annual income/value to City >\$100,000 Major Concession

> **Major Concession:**
 NO
 YES - Award will be subject to review and approval pursuant to Sections 197-c and 197-d of NYC Charter.

NOTIFICATION REQUIREMENTS

Subject concession will be awarded by CSB or CSP. YES NO

If YES, check the applicable box(es) below:

The subject concession is a Significant Concession and the Agency has/will complete its consultations with each affected CB/BP regarding the scope of the solicitation at least 30 days prior to its issuance.

The subject concession is a Significant Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

The subject concession has been determined not to be a Major Concession and the Agency has sent/will send written notification of such determination to each affected CB/BP at least 40 days prior to issuance of the

solicitation.

- The subject concession has been determined not to be a Major Concession and the Agency provided notification of such determination to each affected CB/BP by inclusion of this concession in the Agency's Plan pursuant to §1-10 of the Concession Rules.

If NO, check the applicable box below:

- The Agency certifies that each affected CB/BP has received/will receive written notice at least 40 days in advance of the FCRC meeting at which the agency will seek approval to use a different selection procedure.
- The Agency certifies that based on exigent circumstances it has requested/will request unanimous approval of the FCRC to waive advance written notice to each affected CB/BP.
- The Agency certifies that each affected CB/BP will receive written notice that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession upon publication of a Notice of Intent to Enter into Negotiations. The agency further certifies that it will send a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP.

AUTHORIZED AGENCY STAFF

This is to certify that the information presented herein is accurate.

Name **Alexander Han**

Title **Director of Concessions**

Signature _____

Date __/__/__

CITY CHIEF PROCUREMENT OFFICER

This is to certify that the agency's plan presented herein will comply with the prescribed procedural requisites for the award of the subject concession.

Signature _____

Date __/__/__

City Chief Procurement Officer

CONCESSION AGREEMENT 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 Department of Parks & Recreation ("Parks") is seeking Franchise and Concession Review Committee ("FCRC") approval to utilize a different procedure (pursuant to Section 1-16 of the Concession Rules of the City of New York to negotiate an amendment to the existing concession agreement between Parks and Surf Avenue Parking, LLC ("Permittee"), for the renovation, operation and maintenance of parking facilities at MCU Park, Coney Island, Brooklyn ("Permit"), 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.*

To be determined at a later date – when/if the Franchise and Concession Review Committee ("FCRC") approves the use of a different procedure to negotiate an amendment to the existing Permit. Such amendment, it is anticipated, will include the extension of the existing term of the Permit by one (1) year, with an additional one-year (1-year) renewal option, exercisable by Parks in its sole discretion.

- 2. Briefly explain the basis for the determination not to solicit Competitive Sealed Proposals.** *[Explain]*

In 2009, the Department of City Planning, in partnership with the New York City Economic Development Corporation ("EDC"), the Department of Housing Preservation and Development ("HPD") and Parks, developed a comprehensive rezoning plan to establish a framework for the revitalization of the Coney Island amusement area and the surrounding blocks. The plan builds upon the few remaining existing amusements to create a new 27-acre amusement and entertainment district that will reestablish Coney Island as a year-round, open and accessible amusement destination.

As part of the rezoning plan, a new east-west street is being planned which will divide a 375,000 square foot Parks-owned parcel (including a portion of Brooklyn Block 7073 Lot 101, the site of parking lot #1 in the Permitted Premises as set forth in the Permit), into two future development sites. The affected portion of the parking lot is planned to be demapped as parkland and transferred to EDC (the "Action"). The Action originally was anticipated to be completed in 2018.

The Permit currently expires in early 2019. Recently the expected completion date of the Action has changed, and the completion date is now uncertain. Nonetheless, Parks desires to avoid a break in service for a public parking amenity enjoyed not just by patrons and staff of the Brooklyn Baseball Company ("BBC") at MCU Park, but also by visitors of the Riegelmann Boardwalk, Coney Island beach, the amusement area, neighborhood special events, and users of the nearby Abe Stark ice rink.

Additionally, a Stadium Lease Agreement between the City and BBC requires the City to provide parking for no less than two (2) hours prior to the scheduled start of and at least one (1) hour after the end of each BBC event at MCU Park, and to provide at all times a number of parking spaces to BBC and its staff. Parks has limited operational resources to divert to the parking lots and has determined that it is in the best interests of the City to have a concessionaire operate the parking lots. Parks believes that it is in the best interests of the City of New York ("City") to amend the existing Permit to extend the term on a short-term basis rather than to proceed with a competitive solicitation process.

Given the uncertainty around the Action and the limited duration of potential operations, Parks believes that if the concession were to be offered in a competitive solicitation, there is no guarantee of Parks receiving more than one bid, let alone a bid from anyone other than the existing concessionaire, and that any such bid would be on terms less beneficial to the City than the current Permit. Finally, due to the recent nature of the change to the anticipated completion of the Action, there simply is not enough time to draft and publish a new solicitation, and to award and register a new concession agreement before the current Permit expires.

3a. Briefly explain the selection procedure that will be utilized. [Explain]

Parks is requesting FCRC authorization to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to negotiate an amendment to its existing Permit Agreement with Surf Avenue Parking, LLC which will go before the FCRC on December 12, 2018 (Step 1). Once negotiated and if determined by Parks to be a significant concession, the agency and the FCRC will hold a joint Public Hearing on the proposed amendment to its existing Permit Agreement before presenting it to the FCRC for "Step 2" approval at a second Meeting. If Parks determines the concession to be non-significant, the agency will present the fully negotiated amendment with Surf Avenue Parking, LLC to the FCRC and request the required FCRC authorization to enter into the amendment 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 each affected CB/BP that a selection procedure other than CSB or CSP will be utilized, explain the exigent circumstances. [Explain] N/A