

**CITY OF NEW YORK
FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Cal. No. 1)

RESOLVED, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks and Recreation ("Parks") to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York, to enter into a Sole Source License Agreement ("Agreement") with the 34th Street Partnership, Inc. ("the Partnership") for the operation and maintenance of Herald and Greeley Squares in Manhattan ("Licensed Premises"), including the operation of food concessions, temporary markets, and special events, and the placement of advertising. The Partnership shall operate and maintain the Licensed Premises for the use and enjoyment of the general public in accordance with the terms of the Agreement and to the reasonable satisfaction of the Commissioner. All gross receipts received by the Partnership will be used exclusively to pay all costs incurred by the Partnership in operating, repairing, maintaining, and managing the Licensed Premises, and in performing the Partnership's obligations and providing services required or permitted by the Agreement ("Expenses"). If the gross receipts received by the Partnership for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used by the Partnership to pay Expenses incurred in any subsequent Fiscal Year provided however that up to \$100,000 of Excess Revenues per Fiscal Year may be used on the Licensed Premises or other property under the jurisdiction of Parks within the BID, as approved by Parks. At the end of the term, any remaining Excess Revenues shall be remitted to the City in accordance with the Agreement. ~~may also apply such excess up to \$100,000 each Fiscal Year to BID Horticulture, i.e. Parks-approved street tree planting and maintenance of trees on property under Parks' jurisdiction within the 34th Street Business Improvement District, and flower planting and maintenance on such property.~~ The term of this Agreement shall be ten (10) years with up to two (2) five (5) year renewal options, by mutual agreement, and shall commence on Parks' giving written notice to proceed to the Partnership.

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

October 11
September 13,
2017

Date: _____

Signed: _____

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

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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: <u>New York City Department of Parks and Recreation ("Parks")</u>	RECOMMENDED CONCESSIONAIRE Name: <u>34th Street Partnership, Inc.</u> Address: <u>1065 Avenue of the Americas, Suite 2400, New York, NY 10018</u> Telephone # <u>(212) 719-3434</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN <u>#13-3629973</u> Not-for-Profit Organization <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No Certified by DSBS as M/WBE <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	CONCESSION TITLE/ DESCRIPTION: <u>Sole Source License Agreement with the 34th Street Partnership, Inc. for the Operation and Maintenance of Herald and Greeley Squares in Manhattan, including the Operation of Food Concessions, Temporary Markets, and Special Events, and the Placement of Advertising.</u>
# VOTES required for proposed action = <u>4</u> <input type="checkbox"/> N/A	CONCESSION I.D.# <u>M32,36-O</u>	

LOCATION OF CONCESSION SITE(S*)

Herald Square

Address Broadway & 6th Avenue between 34th and 35th Street; New York, NY
Borough Manhattan **C.B.** 5 **Block #** 810 **Lot #** 45

☐ **N/A** *Attach additional sheet

Greeley Square

Address Broadway & 6th Avenue between 32nd and 33rd Street; New York, NY
Borough Manhattan **C.B.** 5 **Block #** 834 **Lot #** 1

☐ **N/A** *Attach additional sheet

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 _____)
> FCRC approved different selection procedure on 01/11/2017.
☐ Negotiated Concession*

CONCESSION AGREEMENT TERM

Initial Term: Ten (10) years from Notice to Proceed

Renewal Option(s) Term: Up to two (2) five (5)-year renewal options

Total Potential Term: Twenty (20) years*

☐ * >20 years – FCRC unanimously approved term on __/__/__

ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ **Annual Fee(s)** \$ _____

☐ **% Gross Receipts** _____%

☐ **The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts**

☒ **Other** The Partnership shall operate and maintain the Licensed Premises for the use and enjoyment of the general public in accordance with the terms of the Agreement and to the reasonable satisfaction of the Commissioner. All gross receipts received by the Partnership will be used exclusively to pay all costs incurred by the Partnership in operating, repairing, maintaining, and managing the Licensed Premises, and in performing the Partnership's obligations and providing services required or permitted by the Agreement ("Expenses"). If the gross receipts received by the Partnership for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used by the Partnership to pay Expenses incurred in any subsequent Fiscal Year provided however that up to \$100,000 of Excess Revenues per Fiscal Year may be used on the Licensed Premises or other property under the jurisdiction of Parks within the BID, as approved by Parks. At the end of the term, any remaining Excess Revenues

shall be remitted to the City in accordance with the Agreement. may also apply such excess up to \$100,000 each Fiscal Year to BID Horticulture, i.e. Parks-approved street tree planting and maintenance of trees on property under Parks' jurisdiction within the 34th Street Business Improvement District, and flower planting and maintenance on such property.

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 12/02/2016, which was at least 40 days in advance of the FCRC meeting on 01/11/2017 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

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))

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Total Potential Term: Twenty (20) years*

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ANNUAL REVENUE

(Check all that apply)

(☐ Additional sheet (☐s) attached)

- ☐ **Annual Fee(s)** \$ _____
☐ **% Gross Receipts** _____ %
☐ **The Greater of Annual Minimum Fee(s of \$_____ v. _____% of Gross Receipts**

☒ **Other** The Partnership shall operate and maintain the Licensed Premises for the use and enjoyment of the general public in accordance with the terms of the Agreement and to the reasonable satisfaction of the Commissioner. All gross receipts received by the Partnership will be used exclusively to pay all costs incurred by the Partnership in operating, repairing, maintaining, and managing the Licensed Premises, and in performing the Partnership's obligations and providing services required or permitted by the Agreement ("Expenses"). If the gross receipts received by the Partnership for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used by the Partnership to pay Expenses incurred in any subsequent Fiscal Year provided however that up to \$100,000 of Excess Revenues per Fiscal Year may be used on the Licensed Premises or other property under the jurisdiction of Parks within the BID, as approved by Parks. At the end of the term, any remaining Excess Revenues

shall be remitted to the City in accordance with the Agreement.

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.
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Award is a major concession.

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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 and 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 a sole source license agreement ("Agreement") with the 34th Street Partnership, Inc. ("the Partnership") for the operation and maintenance of Herald and Greeley Squares in Manhattan ("Licensed Premises"), including the operation of food concessions, temporary markets, and special events, and the placement of advertising.

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

A. SELECTION PROCEDURE

☒ Sole Source

☐ Other *Describe:*

B. NEGOTIATIONS

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

The term of this Agreement shall be ten (10) years with up to two (2) five (5) year renewal options, by mutual agreement, and shall commence on Parks' giving written notice to proceed to the Partnership.

The Partnership shall operate and maintain the Licensed Premises for the use and enjoyment of the general public in accordance with the terms of the Agreement and to the reasonable satisfaction of the Commissioner. All gross receipts received by the Partnership will be used exclusively to pay all costs incurred by the Partnership in operating, repairing, maintaining, and managing the Licensed Premises, and in performing the Partnership's obligations and providing services required or permitted by the Agreement ("Expenses"). If the gross receipts received by the Partnership for any Fiscal Year exceed such costs ("Excess Revenues"), any Excess Revenues shall be used by the Partnership to pay Expenses incurred in any subsequent Fiscal Year provided however that up to \$100,000 of Excess Revenues per Fiscal Year may be used on the Licensed Premises or other property under the jurisdiction of Parks within the BID, as approved by Parks. At the end of the term, any remaining Excess Revenues shall be remitted to the City in accordance with the Agreement. ~~may also apply such excess up to \$100,000 each Fiscal Year to BID Horticulture, i.e. Parks-approved street tree planting and maintenance of trees on property under Parks' jurisdiction within the 34th Street Business Improvement District, and flower planting and maintenance on such property.~~

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:

The Partnership is a not-for-profit, private management company incorporated in 1992 as a Business Improvement District ("BID") solely to service the 34th Street District, pursuant to a contract with the NYC Department of Small Business Services ("SBS"). The BID is comprised of 31 dense blocks with heavy foot traffic in the heart of Manhattan. The Partnership is funded by assessments on properties within its boundaries, as well as fees it receives from concessions and special event revenue at Herald and Greeley Squares ("Licensed Premises").

The Partnership includes talented professionals in the fields of urban management, sanitation, security, industrial design, graphic design, horticulture, retail services, event planning and management, visitors' services, and information systems. The Partnership assumes the responsibility for providing sanitation and security services in the BID, as well as maintains over 2,000 pieces of street furniture, mostly of their own design, and keeps the BID green by maintaining trees and planters. Due to the public nature of its endeavors, the Partnership cooperates closely with City agencies including NYPD, Parks, Transportation, Sanitation, and SBS to promote the safety and vibrancy of the neighborhood.

The Partnership entered into an agreement with Parks in 1997 (the "Agreement") for the maintenance and operation of the Licensed Premises, properties under Parks' jurisdiction, located between Broadway and Sixth Avenue, and between 34th and 35th Streets, and between 32nd and 33rd Streets, respectively. The Agreement allowed the Partnership to improve and maintain the Licensed Premises and the exclusive right to operate concessions and to sublicense others to do so. Under the Agreement, the Partnership in 1999 made \$2,987,000 in capital improvements to the Licensed Premises, funded by bonds issued by the BID in the amount of \$24,180,000. The Agreement also granted the Partnership the right to hold special events and the right to sell and display advertising, subject to prohibitions contained in the Agreement. Any revenue received by the Partnership generated by such operations at the Licensed Premises was to be used solely to provide labor and materials employed by the Partnership to operate and maintain the Licensed Premises or for such other purposes specifically approved by the Commissioner.

Presently, Parks seeks to enter into a Sole Source License Agreement with the Partnership for the continued operation and maintenance of the Licensed Premises. The new Sole Source License Agreement will allow the Partnership to engage in revenue generating activities including the operation of food concessions, temporary markets, and special events, and the placing of advertising, subject to Parks' approval.

The Partnership has extensive experience providing valuable public amenities, including restrooms, at the site and has been an excellent steward of the Licensed Premises. Given the Partnership's demonstrated and firm commitment to maintaining and improving the Licensed Premises, as well as the entire 34th Street District, Parks believes that it is in the best interest of the City to enter into a Sole Source License Agreement with the Partnership.

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 08/25/2017, 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 08/25/2017, 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 containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 08/25/2017.

- ☒ New York Post, a NYC citywide newspaper on 08/31/2017 and 09/07/2017.
- ☒ West Side Spirit, a NYC local newspaper published in the affected borough(s) on 08/31/2017.
- ☒ Our Town, a NYC local newspaper published in the affected borough(s) on 08/31/2017.

2. Public Hearing Date, Exception to Public Hearing Requirement

- ☒ A Public Hearing was conducted on 09/11/2017.

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.

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 and 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 a sole source license agreement ("Agreement") with the 34th Street Partnership, Inc. ("the Partnership") for the operation and maintenance of Herald and Greeley Squares in Manhattan ("Licensed Premises"), including the operation of food concessions, temporary markets, and special events, and the placement of advertising.

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

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LICENSE AGREEMENT

BETWEEN

34TH STREET PARTNERSHIP, INC.

AND

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

for

THE OPERATION AND MAINTENANCE OF HERALD AND GREELEY SQUARES

MANHATTAN, NEW YORK

M 32, 36-O

DATED: _____, 2017

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LICENSE AGREEMENT (this “License Agreement”, “Agreement” or “License”) made this ___ day of _____, 2017 between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 (Fax No. 212-360-3434), and 34th Street Partnership, Inc. (“Licensee”), a New York not-for-profit corporation, whose address is 1065 Avenue of the Americas, Suite 2400, New York, NY 10018 (Fax No. (212) 719-3499).

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

WHEREAS, Herald and Greeley Squares located between Broadway and Sixth Avenues and between 34th and 35th Streets and 32nd and 33rd Streets, respectively, in Manhattan, New York are properties under the jurisdiction of Parks; and

WHEREAS, pursuant to its Certificate of Incorporation, Licensee was formed in 1992 for the purpose of managing the 34th Street Business Improvement District (the “BID”), an area which includes Herald and Greeley Squares, and, by that certain Contract with the City of New York, Department of Small Business Services, dated as of July 1, 2012²⁷ (“SBS Contract”), Licensee currently provides maintenance services, supplementary sanitation and security services, public programming as well as the capital improvements and the maintenance thereof for the BID; and

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

WHEREAS, Licensee and Parks have developed an effective public/private partnership through which Licensee, under the review and approval of the Commissioner, has undertaken substantial responsibility for public programming, specific maintenance, and capital improvements at Herald and Greeley Squares (also referred to herein as the “Squares,” “Licensed Premises” or “Premises” and are further denoted and described in Exhibit A attached hereto) pursuant to that certain Agreement dated as of June 9, 1997 between Parks and Licensee pursuant to which Licensee has operated and maintained the Squares since that date; and

WHEREAS, Licensee in 1999 made \$2,987,000 in capital improvements to the Squares funded by bonds issued by the BID in the amount of \$24,180,000; and

WHEREAS, Licensee has strong relationships with businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the BID; and

WHEREAS, Parks desires to provide for the operation of food concessions and special events at Herald and Greeley Squares and the maintenance of Herald and Greeley Squares for the accommodation of and use by the public; and

WHEREAS, Licensee has extensive experience operating food concessions and special events, providing amenities and performing maintenance activities in Herald and Greeley Squares; and

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

WHEREAS, the Franchise and Concession Review Committee (“FCRC”) authorized Parks to enter into a Sole Source License Agreement with Licensee for the operation of food concessions and special events and the placement of advertising at Herald and Greeley Squares and for the revenue therefrom to be used exclusively for the maintenance and operation of Herald and Greeley Squares as set forth herein for the accommodation of and use by the public; and

WHEREAS, Licensee desires to operate food concessions and special events and place advertising at Herald and Greeley Squares and maintain and operate Herald and Greeley Squares in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the operation of food concessions and special events and placement of advertising at Herald and Greeley Squares and the maintenance and operation of Herald and Greeley Squares;

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

1. GRANT OF LICENSE

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

(b) (1) Licensee is hereby authorized and agrees to provide food concessions approved by Parks (“Food Concessions”), from mobile food units, kiosks and/or booths, subject to the approval of Parks. Parks has heretofore approved one food kiosk in Herald Square and one food kiosk in Greeley Square. Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain, Food Concessions in the Squares.

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

(i) Temporary or seasonal markets for food or other Parks appropriate items (e.g., holiday market, farmers’ market and food kiosks) for sale approved by Parks (“Temporary Markets”). Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain, Temporary

Markets in the Squares. Food Concessions and Temporary Markets may take the form of mobile food units, kiosks and/or booths. The design and placement of all Food Concessions and Temporary Markets are subject to Parks' written approval;

(ii) Special Events (as defined in 56 RCNY Section 1-02) permitted by Parks ("Licensee's Special Events") at Herald and Greeley Squares. Subject to this Section 1 and Section 13, Licensee shall have the right to host or contract with third parties to operate, Special Events in the Squares;

(iii) Advertising (as set forth in this subdivision (iii) and as defined in Section 2): Licensee shall have the exclusive right to sell and display Advertising on the Advertising Panels (as hereinafter defined) at the Squares, subject to the prohibitions contained in Section 10.12(b), (c) and (d) and the following conditions: Advertising shall only be placed within the five (5) existing Advertising Panels (or any replacement thereof) (the "Advertising Panels") located on the existing food and toilet kiosks as shown on Exhibit A (or any replacement thereof approved by Parks in accordance with this Agreement) in the Squares during the term of this License. No Advertising shall be placed on any fences, park furniture or free standing structures of any kind other than the kiosks. All Advertising displayed or placed in the Advertising Panels is subject to Parks' prior written approval. Notwithstanding the foregoing, Advertising on the Advertising Panels of Macy's products shall not require the approval of Parks so long as such Advertising does not violate the prohibitions contained in Section 10.12 (b), (c) and (d) (the foregoing exception to the requirement to obtain Parks' approval for Advertising being the "Macy's Advertising Exception"). In addition, notwithstanding the restriction that Advertising be contained in the Advertising Panels and the prohibitions contained in Section 10.12, for Special Events in which a product or service is being promoted, temporary promotional signage may be permitted in the Licensed Premises for the duration of the applicable Special Event, subject to approval by Parks of such Special Event and signage.

(c) (i) Licensee may sublicense portions of Herald and Greeley Squares (the "Sublicensed Premises") for the operation of Food Concessions or Temporary Markets to sublicensees approved in advance in writing by Parks (the "Sublicensees"). The terms and conditions of any such sublicense ("Sublicenses") shall be subject to the prior written approval of Parks. Any Sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation of Food Concessions and/or Temporary Markets shall be equally applicable to any Sublicensee that operates a Food Concession or that operates a Temporary Market, except as may be otherwise expressly noted in this Agreement. Licensee shall require any Sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the operation of the Food Concessions and Temporary Markets and shall be responsible for assuring such compliance. If any Sublicensee does not comply with this License insofar as applicable to it, such Sublicensee's operations shall be terminated by Licensee upon direction of Parks. No Sublicense may be assigned without the prior written consent of Parks.

(ii) In selecting a Sublicensee for a Food Concession or Temporary Market, Licensee shall issue a solicitation in the basic form of a request for proposals (“RFP”) with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee for a Food Concession or Temporary Market in accordance with Parks’ usual procedures and requirements and subject to Parks’ approval. Parks’ disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check.

(iii) Licensee has granted a sublicense to Belgo BRP LLC, a New York limited liability company, to operate a Food Concession using the food kiosk at Herald Square under the name Wafels and Dinges pursuant to a License Agreement dated as of July 10, 2013. Parks hereby approves such Food Concession.

(iv) Licensee has granted a sublicense to Nuchas GSQ, LLC to operate a Food Concession using the food kiosk at Greeley Square pursuant to a License Agreement dated as of August 27, 2013. Parks hereby approves such Food Concession.

(v) Licensee has granted a sublicense to Urban Space Holdings, Inc., a New York corporation, to operate a Temporary Market at Greeley Square under the name Broadway Bites pursuant to a License Agreement dated as of September 27, 2015. Parks hereby approves such Temporary Market.

(d) Licensee may operate the Licensed Premises for Licensee’s Special Events. All Licensee’s Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner’s designee, which approval shall not be unreasonably withheld. Licensee shall give the Commissioner at least thirty (30) days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee’s Special Event. Licensee’s Special Events may not restrict public access to the Licensed Premises without Parks’ prior written consent. Licensee’s Special Events shall not require a sublicense, but the sponsor or host of the event must enter into an agreement with Licensee that is acceptable to Parks before the commencement of load-in for such Licensee’s Special Event.

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

(f) All Gross Receipts (as hereinafter defined) received by Licensee from any Advertising, Sponsorships (as hereinafter defined), Sublicenses and from any of Licensee’s Special Events, Food Concessions or Temporary Markets shall be accounted for separately and apart from all other funds of Licensee within the general ledger accounts of Licensee and will be used by Licensee exclusively to pay Expenses (as hereinafter defined), ~~except that Licensee may apply up to \$100,000.00 of. Any~~ Excess Revenues (as hereinafter defined) ~~each Fiscal Year to BID Horticulture (as hereinafter defined). The record of the balance of any Excess Revenues in~~ Section 2.1(f) for any Fiscal Year and any disbursements therefrom shall be maintained by Licensee in the separate general ledger accounts referenced above, and any Excess Revenues

shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the certification described in clause (viii) of Section 4.1(f).

Notwithstanding the foregoing, within thirty (30) days of providing Parks with the statement of Gross Receipts as described in Section 4.1. (a), Licensee may propose in writing to the Commissioner that up to \$100,000 of the Excess Revenues be used to provide maintenance, operations, or programming on the Licensed Premises or other property under the jurisdiction of Parks within the BID that are supplemental to services required under this License or any other agreement that Licensee has with the City. The proposal must contain sufficient supporting documentation. The Commissioner, in his reasonable discretion, may approve or reject the proposal, or request additional information or a revised proposal from Licensee. In the event the Commissioner rejects Licensee's proposed use of the Excess Revenues, or requests additional information, he shall set forth the reason in writing and Licensee shall have an additional thirty (30) days to resubmit a proposal. In the event Licensee's recommendation is still not approved, then said Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the certification described in clause (viii) of Section 4.1(f).

(g) (i) Subject to the approval of the Commissioner, Licensee, as part of its mission and in connection with Licensee's Special Events, may provide free services and programming open to the public in the Licensed Premises, including, without limitation, horticulture, education, athletics, maintenance, tours, food, products, programs, and concerts. If Licensee's Special Event is promoted as open to the public without an admission charge, then the public shall not be charged a fee for admission to such Special Event.

(ii) All aspects of Licensee's Special Events shall comply with the Parks Department Rules and Regulations, including, but not limited to obtaining Parks permits where applicable. Licensee is responsible for securing any/all ancillary permits required as they pertain to outside agency regulations. These may include, but not be limited to NYPD Amplified Sound permits, Department of Buildings' structural or temporary place of assembly permits, Department of Health permits and Fire Department permits. Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, §24-et seq., and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations. A cabaret license will be strictly prohibited at the Licensed Premises.

(h) All Advertising, menus and merchandise (items and prices), Sponsorships, and hours of operation of Licensee and any Sublicensee are subject to Parks' prior written approval.

1.2 All menus and prices of a Food Concession must be approved in advance in writing by Parks. Licensee, if it is selling food to the public, and any Sublicensee, shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by Licensee or any Sublicensee, as applicable, to sell food and beverages to the public

must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene (“DOHMH”) permits. A person may operate a Food Concession only if it has obtained the permits and authorizations required by DOHMH. At all times that a Food Concession is operating, a staff person with a valid DOHMH food handler’s license must be present. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

1.3 The operation of a mobile food unit in the Squares shall require a DOHMH Vendor License for each person designated as an operator of a mobile food unit and a DOHMH Mobile Food Vending Unit Permit for each mobile food unit. All persons designated as mobile food unit operators must have a valid DOHMH Vendor License in order to operate. All mobile food units must pass a DOHMH inspection in order to receive a DOHMH Mobile Food Vending Unit Permit. All mobile food units operating under this Agreement or a Sublicense must first pass a DOHMH inspection. Licensee or any Food Sublicensee, as applicable, must submit to Parks a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit before the operation of a mobile food unit can commence. Licensee or any Sublicensee, as applicable, must provide Parks with documentation that it has been issued a valid DOHMH Vendor License and DOHMH Mobile Food Vending Unit Permit for each mobile food unit. If Licensee or any Sublicensee operates a mobile food unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Parks will instruct the operator thereof to cease operations and such operator will be subject to fines. When warranted, Officers of the Parks Enforcement Police, New York City Police Department, FDNY and DOHMH may confiscate the mobile food units, including goods.

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

1.5 It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee or to any Sublicensee, but that, during the Term of this License, Licensee and any Sublicensee shall have the use of the Licensed Premises for the purposes herein provided.

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

1.7 (a) Licensee may enter into Sponsorships with a Sponsor, and may install Sponsorship Recognition for such Sponsor, all subject to the prior written approval of Parks, including, but not limited to, approval over the size, quantity and location of Sponsorship Recognition and other forms of recognition and subject to applicable laws, rules and regulations Licensee may submit to Parks for its approval proposed plans or mock-ups for Sponsorship Recognition, and if Parks approves any such proposed plans or mock-ups, then Licensee shall be entitled to use Sponsorship Recognition without any further approval of Parks so long as such Sponsorship Recognition is not materially different from the proposed plans or mock-ups theretofore approved by Parks. In recognition of the commercial exigencies of product

promotions, Licensee shall submit to Parks for its approval Sponsorship Recognition or related plans or mock-ups promptly after any of the foregoing is available, and Parks shall endeavor in good faith to review any submissions and respond with its approval or comments as expeditiously as practical, notwithstanding anything to the contrary contained in Section 12.3 or elsewhere in this Agreement.

(b) (i) Except as set forth in subparagraph (ii) below, all intellectual property rights in the Herald Square and Greeley Square names, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to Herald Square and Greeley Square and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on behalf of the City, or (ii) in the case of trademarks, used by the City in commerce, unless Licensee is a prior user of any trademark in commerce, are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("Partnership Activities"), Licensee shall obtain the prior written permission and approval from Parks for such use. If Parks permits Licensee to use the City IP for non-commercial purposes, such use will be non-exclusive, royalty-free, world-wide, non-transferrable and non-sublicensable and any revenue generated by Licensee therefrom will be for not-for-profit purposes and will be used by Licensee only in support of Herald Square, Greeley Square or other Parks property notwithstanding the exception set forth in Section 1.1.(f). To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require the prior, written agreement of Parks, on terms to be agreed by the parties, and any revenue derived by Licensee shall be used exclusively to benefit Herald Square, Greeley Square, or other Parks property notwithstanding the exception set forth in Section 1.1.(f). Upon Parks' request, Licensee shall provide Parks with an accounting reasonably satisfactory to Parks of revenue derived from and expenditures made from any use of City IP. To the extent that prior permission and approval of Parks has already been obtained to use City IP (whether for non-commercial or commercial purposes, as the case may be), it is hereby continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (i). Nothing in this subparagraph (i) prohibits Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from using the words "Herald Square" or "Greeley Square" as part of the business address thereof or in the ordinary course of business thereof, and nothing in this subparagraph (i) requires Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from obtaining permission from Parks to use the words "Herald Square" or "Greeley Square" as provided in this sentence; provided, however, that Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee specifically acknowledge that the Herald Square or Greeley Square names or words as described in this subparagraph (i) are included within the definition of City IP and no permitted use by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall result in any ownership interest, title or other right on the part of Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee in such words or name, and further provided that any permitted use of such City IP by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall immediately terminate when such person ceases to operate in the Squares.

(ii) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements (“Licensee Specific IP”) are the property of Licensee: such intellectual property (1) was created by or on behalf of Licensee, any Sublicensee, their respective employees, contractors, or others, other than at the specific direction of the City or Parks, and (2) includes no City IP (as defined in subparagraph (i) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee’s activities, as shall Licensee’s ability to use any City IP that is incorporated into Licensee Specific IP with the City’s permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this License Agreement exclusively in connection with Licensee’s activities, but such restriction shall terminate on the expiration or termination of this License Agreement. Licensee hereby grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicenseable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to or which does generate revenue) without the prior written approval of Licensee.

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

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

(B) The parties will not use the name or logos of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement

without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed.

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

1.8 In addition to the requirements of Sections 1.1(d) and (g) above concerning Licensee's Special Events, Licensee and any Sublicensee, as applicable, must obtain a Parks permit for any Special Event attended by over twenty (20) people or any Special Event pursuant to which Licensee derives or retains revenues through fees or other charges. The Licensee shall use reasonable effort to provide Parks with no less than thirty (30) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed Special Event.

2. **DEFINITIONS**

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

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

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

~~(c) "BID Horticulture" shall mean Parks approved street tree planting and maintenance of trees on property under Parks' jurisdiction within the BID, and flower planting and maintenance on such property. Licensee shall obtain all necessary approvals and permits, including a Parks tree work permit, in advance of any tree planting and maintenance.~~

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

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

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

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

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

~~(i)~~(h) “Expenses” means all costs incurred by Licensee in operating, repairing, maintaining and managing the Squares and in performing Licensee obligations and providing services required or permitted by this Agreement, including sanitation, security, programming, Special Events and horticulture, performing Alterations, installing Additional Fixed Equipment and Expendable Equipment, and performing other work that does not constitute an Alteration. Such costs include, but are not limited to, personnel costs, third-party contract costs, insurance, costs of supplies and depreciation of Capital Improvements, Fixed and Additional Fixed Equipment and Expendable Equipment, if the foregoing have been installed by Licensee. The personnel whose cost is included as an Expense includes those persons performing services at the Licensed Premises, such as sanitation and security, horticultural, programming and Special Events, as well as those persons responsible for the supervision of the Squares and responsible for supervision of persons performing the aforementioned services. The salaries of managers, supervisors and other shared costs will be allocated among the Squares, the BID and Bryant Park each Fiscal Year in accordance with the allocation set forth in the Annual Operating Budget and Operating Plan for such Fiscal Year to be submitted by Licensee to the Commissioner for review and approval pursuant to clause (iv) of Section 4.1(f). The categories of Expenses each Fiscal Year shall be consistent with the line items contained in the Annual Operating Budget and Operating Plan of Licensee for such Fiscal Year. Expenses shall exclude the salary of the President and/or BID Director of Licensee or any successor title and the costs and expenses attributable to Licensee’s charitable fund-raising staff.

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

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

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

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

~~(k)~~ (i) “Gross Receipts” shall include without limitation all funds or other consideration received by Licensee and any Sublicensee, without deduction or set-off of any kind, from Advertising on the kiosks, the sale of food and beverages, wares, merchandise or services of any kind from the Food Concessions, Temporary Markets and Licensee’s Special Events, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee or any Sublicensee. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee or any Sublicensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee or any Sublicensee outside thereof. For example, if Licensee or any Sublicensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

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

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

(A) With respect to non-catered food and beverage service, a “Gratuity” shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee’s or any Food Sublicensee’s customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee or any Food Sublicensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are

paid a cash wage as a “food service worker” pursuant to NY Labor Law §652(4). Licensee and any Food Sublicensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee or any Food Sublicensee, as applicable. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee.

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

~~(m)~~(l) “Licensed Premises” or “Premises” shall have the meaning as ascribed to them in the preamble to this Agreement and shall include the structures, as well as any improvements constructed thereon, including public restrooms, all walkways, curbs, trees, and landscaping.

~~(n)~~(m) “Licensee’s Gross Receipts” shall mean the Gross Receipts of Licensee, and expressly excluding Gross Receipts of any Sublicensee.

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

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

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

~~(r)~~(q) “Sublicensee’s Gross Receipts” shall mean the Gross Receipts of any Sublicensee, and expressly excluding the Gross Receipts of Licensee.

3. TERM OF LICENSE

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

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

3.3 Parks may terminate this License for cause as follows:

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

(b) The following shall constitute events of default for which this License may be terminated on one day’s notice: the appointment of any receiver of Licensee’s assets; the making of a general assignment for the benefit of creditors by Licensee; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges

necessary for the proper conduct and operation of this License; and the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

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

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

3.6 Licensee shall, on or prior to the date that is fifteen (15) days following the expiration or sooner termination of this License (the fifteen (15) day period beginning on the expiration or sooner termination of this License being the "Removal Period", and the last day of the Removal Period being the "Removal Deadline"), remove from the Licensed Premises and shall cause any Sublicensee to remove, all Personal Equipment, all Capital Improvements and Alterations that are not Additional Fixed Equipment, and Additional Fixed Equipment to which the City has not taken title pursuant to Section 7.2(a) and Section 8.3 (such equipment being "Removal Equipment"). Licensee acknowledges that any Removal Equipment remaining on the Licensed Premises after the Removal Deadline shall be deemed to be abandoned. Licensee shall remain liable to the City for the cost of removal or disposal of Removal Equipment, should Licensee fail to remove all Removal Equipment from the Licensed Premises by the Removal Deadline. During the Removal Period, Licensee shall have the right to enter the Licensed Premises to remove any Removal Equipment, provided that Licensee shall maintain the insurance required by Article 20 hereof during the Removal Period and shall indemnify, defend and hold the City and its officials harmless against and all claims and demands of third parties for injury, including death, or property damage, arising out of any such entry and removal, and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements), arising from any such claims and demands. In addition, if the removal of Removal Equipment results in damage to the Squares and Licensee or such Sublicensee fails to repair such damage to the Commissioner's reasonable satisfaction and upon such deadline as reasonably determined by the Commissioner, then Licensee shall be responsible for the cost of such repair which shall be promptly paid to Parks upon Parks' written demand to Licensee (the cost of such removal and the cost of such repair being collectively, "Removal Costs").

3.7 In addition to Removal Costs, Licensee shall be liable to Parks for the following damages if Parks terminates this Agreement pursuant to Section 3.3: (i) if Parks terminates this Agreement pursuant to Section 3.3 on account of the failure of Licensee to comply with Licensee's maintenance obligations under this Agreement, the reasonable costs borne by Parks to perform the specific maintenance obligations that Licensee failed to perform in accordance with

this Agreement, and (ii) if at the time of any such termination, Licensee commenced an Alteration and failed to complete such Alteration, Licensee shall be liable for the cost to complete such Alteration which shall be promptly paid to Parks upon Parks' written demand to Licensee; provided, however, that unless the performance by Licensee of such Alteration was the basis for Parks terminating this Agreement pursuant to Section 3.3, at the parties' mutual election Licensee shall have the right to complete such Alteration at Licensee's expense and the termination of this Agreement on account thereof shall be suspended until such Alteration is completed to the extent necessary for the purposes of completing such Alteration. During such time, the Insurance and Indemnification requirements of this Agreement shall remain in force. Except for Removal Costs and such other damages and other sums as are set forth in Sections 3.6 and 3.7, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.3. Except for Removal Costs, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.2. Notwithstanding the foregoing, the expiration or sooner termination of this License shall not affect the performance by Licensee of its obligations under the SBS Contract, and the limitation of liability set forth in Sections 3.6 and 3.7 shall not apply to any liability imposed on Licensee for failure to perform its obligations under the SBS Contract, or any of Licensee's obligations under Article 19. 3.8 If this License is terminated as provided in Section 3.2 or 3.3 hereof, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises without being liable to indictment, prosecution or damages therefor and may dispossess Licensee and any Sublicensee by summary proceedings or other legal means.

3.8 Except as otherwise provided in Section 3.7, if this License is terminated as provided in Section 3.3 hereof, Parks may complete all repair, maintenance and construction work required to be performed by Licensee or any Sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable, which will not be at Licensee's expense, and Parks may relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

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

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

4. FINANCIAL RECORDS AND REPORTS

4.1 (a) On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Licensee's Gross Receipts, signed and verified by an officer of Licensee, reporting any

Licensee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Licensee's Gross Receipts shall survive the termination of this License. Licensee shall indicate on its statement of Licensee's Gross Receipts whether or not these amounts are inclusive of sales tax collected.

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

(c) Within one hundred twenty (120) days after the end of each Fiscal Year, Licensee shall submit detailed income and expense statements for itself for operating the Squares during the preceding Fiscal Year. Such statements shall be in sufficient detail to show that Licensee is in full compliance with Section 1.1(f) hereof. The application of any Excess Revenues shall be shown by supplemental statement submitted concurrently with such detailed income and expenses statements. Without limiting the generality of the foregoing, such statements shall identify each employee for whom personnel costs are included in Expenses and the percentage of such employee's personnel costs that are included in Expenses. If any other Expenses are shared among the Squares, the BID and/or Bryant Park, such statement shall identify which Expenses are so shared and explain how they are allocated among the foregoing locations.

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

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

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

(i) Financial Statement: Licensee shall furnish to the Commissioner a detailed financial statement audited in conformance with GAAP for each Fiscal Year during the Term and any renewal thereof, which shall include the aggregate amount of all

salaries of all paid staff whose personnel costs are included in Expenses and shall be audited by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such annual statement shall be submitted to the Commissioner no later than one hundred twenty (120) days after the close of each Fiscal Year of the Term of this Agreement together with a supplemental statement setting forth an itemization of such salaries.

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

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

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

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

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

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

(viii) Use of Excess Revenues: If Licensee derives Excess Revenues in a particular Fiscal Year and expends all or any portion of such Excess Revenues in any subsequent Fiscal Year, Licensee shall submit, within thirty (30) days following each expenditure of such Excess Revenues, a certification from Licensee's Chief Financial Officer identifying the specific Expenses to which such Excess Revenues were applied and certifying that such Excess Revenues were applied solely to pay Expenses, subject to the exception set

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

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

(b) Licensee shall, and shall cause any Sublicensee to, use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee and any Sublicensee prior to the commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee and any Sublicensee. Licensee shall, and shall cause any Sublicensee to, maintain each year's records, books of account and data for a minimum of ten (10) years from the date of creation of the record.

5. RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any Sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall, and shall cause any Sublicensee to, also permit the inspection by Parks,

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

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

6. CAPITAL IMPROVEMENTS

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

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

6.3 In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks' approval, the Licensee may enter into contracts for approved Parks Capital Improvements and may supplement Parks and/or other public capital funds with the Licensee funds for the development of such approved Parks projects.

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

7. ALTERATIONS

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

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

(a) Obtain the Commissioner's written approval, which shall not be unreasonably withheld, for any designs, plans and specifications of the proposed Alteration. At the time the Commissioner issues its written approval of the plans and specifications for any Additional Fixed Equipment, the Commissioner shall notify Licensee whether the City shall

accept title to such Additional Fixed Equipment upon substantial completion of the installation or affixing of such Additional Fixed Equipment;

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

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

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

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

7.4 To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any Alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Alteration. Notwithstanding the above, to the extent that an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable.

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

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

8. FIXED AND EXPENDABLE EQUIPMENT

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

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

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

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

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

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

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

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

9. UTILITIES

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee and any Sublicensee, at their sole cost and expense, shall directly pay for all utility costs associated with Licensee's or any Sublicensee's operations at the Licensed Premises, including but not limited to all DEP water and sewer charges and all charges for electricity. Licensee shall, and shall cause any Sublicensee to, at their sole cost and expense, connect to and/or, if necessary, upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals, and/or install or cause to be installed, and maintained, all gas, electric, sewer and telephone utilities, service lines, conduits, pipes, meters and supplies of power necessary for the proper operation of this License. This includes establishing a dedicated meter and/or submeter that captures utility usage on the Licensed Premises and an account with the appropriate service providers. Utilities, as described in this License Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, and water and sewer charges. Licensee shall, and shall cause any Sublicensee to, not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities as have jurisdiction over the construction and operation of the Licensed Premises. Licensee shall, and shall cause any Sublicensee to, remove any unsuitable existing materials as required. Licensee shall, and shall cause any Sublicensee to, adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

10. OPERATIONS

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

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

10.3 Licensee shall or shall cause any Sublicensees to provide a public access seating area at the Licensed Premises approved by Parks and, if alcoholic beverages are served, they may only be served by Licensee in restricted areas designated by Parks. The design and color of all tables, chairs, and umbrellas are subject to Parks' prior written approval, which shall not be

unreasonably withheld. The placement of all tables, chairs and umbrellas is subject to Licensee's discretion, but shall be changed if Parks objects. Alcoholic beverages may be served to complement the food service, provided that Licensee obtains the appropriate license(s) from the State Liquor Authority and all other agencies having jurisdiction. All efforts must be made to keep alcohol consumption discrete. Licensee must keep in mind that this is a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

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

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

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

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

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

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

10.6 Licensee shall, and shall cause any Sublicensee to, obtain the prior written approval of Parks prior to entering into any marketing or Sponsorship agreement with respect to operations at the Licensed Premises. In the event Licensee or any Sublicensee breaches this provision, Licensee shall or shall cause its Sublicensee, as applicable, to take any action that the City may deem necessary to protect the City's interest.

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

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

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

10.9 Licensee shall, and shall cause any Sublicensee to, at its sole cost and expense, provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to: (a) collecting and safeguarding all monies generated under this License; (b) maintaining the Licensed Premises; and (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

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

10.11 Licensee and any Sublicensee may establish an Advertising and promotion program. Licensee and any Sublicensee shall have the right to print or to arrange for the printing of programs or brochures containing any Advertising matter except Advertising which contains tobacco, electronic cigarette or alcoholic beverage Advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to Advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee and any Sublicensee may release news items to the media as they sees fit. If the Commissioner in his or her discretion, however, determines any Advertising or other releases to be unacceptable, then Licensee shall, and shall cause such Sublicensee (as applicable) to, cease or alter such advertisements or releases as directed by the Commissioner. Notwithstanding anything to the contrary contained in this Agreement, the Commissioner shall have prior approval as to all Advertising and promotional materials, subject to the Macy's Advertising Exception.

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

maintained by the Licensee in cooperation with Parks through this License Agreement. Such signs shall be subject to the approval of Parks.

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

(c) The display or placement of tobacco or electronic cigarette Advertising shall not be permitted. The display or placement of Advertising of alcoholic beverages shall not be permitted, but Licensee or any Sublicensee may display signage approved by Parks setting forth its offerings of alcoholic beverages.

(d) In the event advertising is allowed, the following standards will apply: Any type of Advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Licensee shall, and shall cause its Sublicensees to, immediately remove any such prohibited material displayed or placed upon notice from Parks at Licensee's sole cost and expense.

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

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

period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

10.14 Licensee shall not, and shall cause any Sublicensee not to, block any sidewalk, pathway, park entrance or other pedestrian walkway with Licensee's equipment or supplies. Licensee shall, and shall cause any Sublicensee to, place their equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times.

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

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

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

10.18 Inspectors from Parks will visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies Licensee will be obligated to rectify in a timely fashion. If Licensee fails to remedy the deficiency within the timeframe set forth in the directive and if the deficiency falls within one of the categories set forth in the list below, Parks may, at its option, assess liquidated damages. In no event shall the timeframe set forth in any such directive be less than seven (7) days. If Licensee fails to provide the cleaning, maintenance, and operational services required by this License Agreement, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If Licensee fails to cure the violation within the timeframe set in the notice, Parks may, at its option, in addition to any other remedies available to it, suspend or terminate this License Agreement and/or assess liquidated damages if the violation falls within one of the categories set forth in the list below. In no event shall the timeframe set forth in any such notice be less than seven (7) days. Parks may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages will be assessed in accordance with the following schedule:

PROVISION	LIQUIDATED DAMAGES PER OCCURRENCE
Unauthorized Menu Items or Merchandise	\$150
Missing or Unauthorized Price List	\$250
Overcharging	\$350

Expanding beyond the designated location of a kiosk, mobile food unit or booth	\$350
Blocked Exits	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Unauthorized tapping into utilities used, operated or owned by the City	\$350
Mobile Food Unit Leaking Fluids	\$350
Mobile Food Unit/Structure Obviously Damaged or in Poor Repair	\$250
Unauthorized Advertising	\$350
Roving or Vending at Unauthorized Location	\$250
Improper Storage	\$350
Graffiti, Dirty Mobile Food Unit or Umbrella or Restroom not maintained	\$350
Permit Decal Expired or Not Displayed	\$250
Operating without applicable permit(s) or license(s)	\$250
311 sign not displayed	\$250

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

(1) Filing an Appeal

If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee's appeal (such as photographs, documents, witness statements, etc.) should also be included.

If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee's account.

(2) Adjudication of Appeal

The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks.

The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

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

(b) Notwithstanding the foregoing, Parks agrees that while this License Agreement is in effect, Parks will not authorize another person (i) to operate Food Concessions in the Squares or (ii) to place Advertising on the Advertising Panels.

11. MAINTENANCE, SANITATION AND REPAIRS

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

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

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

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

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

(v) Power washing, as needed.

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

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

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

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

(x) With respect to Greeley Square, the sculpture and pedestal shall be cleaned periodically of soiling, environmental particulates, and bird guano. The sculpture's protective coating shall be renewed annually following cleaning, in keeping with professional standards. The pedestal's masonry shall be pointed as necessary. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Arts and Antiquities Monuments Unit and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Arts & Antiquities' approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xi) With respect to the James Gordon Bennett Monument (Clock Tower) in Herald Square, the lower portion of the monument (from the apex of the statuary group to the ground) shall be cleaned periodically of soiling, environmental particulates and bird guano. Bird prevention may be installed, in consultation with Parks Art & Antiquities. Protective finishes on all bronze sculptural or decorative elements, including the door on the rear shall be renewed annually. Methods and procedures shall be conducted in consultation with and pre-approved by Parks Art & Antiquities. Licensee shall ensure the consistent operation of the clock, have the clock reset for daylight savings in the spring and eastern standard time in the fall, arrange for periodic maintenance and lubrication of the clock mechanism and proper physical operation of the clock and statuary group (bell ringers). The lights in the bronze owls will be functional at all times, and keyed to the clock timer. Trees and foliage will be pruned back on a regular basis to permit views of the monument, and cafe tables shall not be placed in manner that obscures the monument or blocks the engraved inscription.

(b) Licensee shall comply with the rating standards for all applicable enumerated categories set forth in the Parks Inspection Program ("PIP") to the extent such standards and categories apply to the Licensed Premises. Notwithstanding this provision,

Licensee shall maintain the Licensed Premises in accordance with Parks' standards, including, but not limited to, the applicable categories as set forth in the, PIP Manual and/or any other standards that Parks may require in the future. Licensee acknowledges receipt of the PIP Manual.

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

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

(b) Licensee may not cut down, replant or remove any tree from Herald or Greeley Squares without prior written approval from the Commissioner, except that Licensee may replace potted trees as needed without prior approval. Any plans developed by Licensee for gardens or other horticultural installations in Herald or Greeley Square shall be submitted for the Commissioner's approval in advance of any planting.

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

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

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

11.3 This paragraph describes Licensee's current security services for the Squares. These security services are intended to supplement any services provided by the City, including services provided by the New York City Police Department and Emergency Medical Services provided by the New York City Fire Department, it being agreed, however, that nothing in this Agreement obligates the City to provide any such services. A uniformed security officer of Licensee patrols by foot Greeley Square each day, 7 days a week, from 7 a.m., when an officer unlocks the gate at Greeley Square, to 9 p.m., when an officer locks the gate at Greeley Square. Herald Square is part of a foot patrol route assigned to another uniformed security officer of

Licensee. The patrol route that includes Herald Square also includes the area bounded by 34th Street on the south, 36th Street on the north, Broadway (primarily on the west) and Avenue of the Americas (primarily on the east). This patrol also occurs each day, 7 days a week, from 7 a.m., when an officer unlocks the gate at Herald Square, to 9 p.m., when an officer locks the gate at Herald Square. Each security officer of Licensee possesses a New York State security license and has received annual training certified by New York State. In addition, each officer receives daily “roll call” instructions, during which the officers are given instructions for the day, particularly if the area will be the location of a special event (such as a parade or protest). Security officers are unarmed and have no authority to arrest persons. Security officers are equipped with two-way radios, which allows them to notify Licensee’s security operations center of unusual events, for which a response from New York Police Department or Emergency Medical Service is recommended. Security officers are expected to enforce rules of the Squares (e.g., patrons are forbidden to remove alcohol from the Squares or to sit on the monuments), interact with people and intervene to prevent or de-escalate disputes, patrol the toilet facilities to reduce illegal behavior inside the toilet facilities, and observe the conduct of people who may be emotionally disturbed or whose conduct may be influenced by the consumption of alcohol or illegal drugs to intervene in the event their conduct interferes with the enjoyment of the Squares by others. Licensee shall continue to provide security services generally consistent with the foregoing during the Term.

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

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

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

11.7 Licensee shall have no responsibility for maintaining the LinksNYC kiosk on the Licensed Premises.

12. APPROVALS

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

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

12.3 Parks shall use reasonable efforts to respond to Licensee’s request for a Parks Approval within 30 days following Parks’ receipt of such request. For those matters as to which Parks has agreed in this Agreement not to unreasonably withhold its approval, if Parks rejects Licensee’s request for a Parks Approval, Parks shall use reasonable efforts to provide specific reasons for such rejection, and if following a rejection by Parks, Licensee revises its submission to address the specific reasons for such rejection and resubmits such request to Parks, Parks shall use reasonable efforts to respond to Licensee’s resubmitted request for a Parks Approval within ten (10) days following receipt of such resubmission. Issuance by Parks of a permit for an event, including Special Events permit for a Licensee’s Special Event shall constitute approval by Parks of such Special Event. Licensee’s submission of an application for a Special Events permit for a Licensee’s Special Event, with all relevant back-up information, shall constitute notice by Licensee to Parks of Licensee’s Special Event for purposes of this Agreement. Notwithstanding the review period prescribed above or elsewhere in this Agreement, the parties acknowledge there will be occasions in which Licensee requires a significantly shorter response period than the period prescribed herein (e.g., a proposal for a promotional Special Event is made to Licensee three (3) days prior to the proposed date of the promotional Special Event). Parks shall use reasonable efforts to accommodate Licensee’s shorter approval requests. Further, notwithstanding the foregoing, the Commissioner in his sole discretion may entertain an appeal of a denial submitted by Licensee within five (5) days of such denial.

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

13. PARKS’ SPECIAL EVENTS

13.1 For the purposes of this Section 13 the term “Parks’ Special Event(s)” shall mean any Special Event at the Licensed Premises sponsored by Parks. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use of the Licensed Premises or any portion thereof. For each Parks Special Event, Parks shall comply with the following conditions:

(a) Parks shall give Licensee not less than thirty (30) days (or such lesser period as agreed by the parties) advance notice of any Parks’ Special Event, and any annual event will be on a date

mutually agreed to by Parks and Licensee, (b) Parks shall not sponsor or permit a Parks' Special Event on a date that will conflict with a Licensee's Special Event for which Licensee has submitted to Parks an application for a Special Event Permit and such Special Event Permit has been approved by Parks, (c) Parks shall be responsible for maintenance and clean-up associated with any such Parks' Special Event and may delegate such maintenance and clean-up obligation to a third-party, but such delegation shall not relieve Parks of primary responsibility to Licensee for such maintenance and clean-up, and (d) each Sublicensee, in its own discretion, may elect to operate or not to operate during any Parks' Special Event. Subject to the foregoing conditions, Licensee shall, and shall require that each Sublicensee, cooperate with Parks in connection with Parks' Special Events. Such events shall not, without the prior written consent of Licensee, prohibit the Licensee or any Sublicensee from reasonable access to the Licensed Premises. Furthermore, Parks reserves the right to grant permits for "Demonstrations" as defined in Section 1-02 of Parks' Rules and Regulations at the Licensed Premises where appropriate under Parks' Rules and Regulations and where such Demonstrations do not unreasonably interfere with previously scheduled and Parks-approved Licensee's Special Events as reasonably determined by Parks.

14. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

14.1 Except for Sublicenses approved by Parks, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent or more of the shares of or interest in Licensee (unless it is agreed to, in writing, by Parks and signed by the Commissioner or Commissioner's designee), or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

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

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

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to

Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

14.3 No consent to or approval of any assignment or 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.

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

15. PARKS CONSTRUCTION

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

solely responsible for claims, damages, or injury resulting from Parks Construction, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee or any Sublicensee.

16. COMPLIANCE WITH LAWS

16.1 Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and Sublicensees to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided the Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and shall comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and the Licensee's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., New York City Administrative Code §18-137, the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

16.2 Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively "Environmental Laws"). Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of on the Licensed Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

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

17. NON-DISCRIMINATION

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

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

18. NO WAIVER OF RIGHTS

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

performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

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

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

(b) Licensee shall take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

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

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

To the fullest extent permitted by law, Sublicensee shall indemnify, defend and hold the City and its officials and employees (an “Indemnified Party”) harmless against any and all claims and demands of third parties for injury (including death) or property damage arising out of operations under this Sublicense (“Claims”), and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements) arising from any Claims (together with Claims, “Liabilities”), arising out of (i) the condition of the Sublicensed Premises, (ii) the acts or omissions (where there is a duty to act) of Sublicensee or any of its employees, servants, contractors, subcontractors or agents, in any operations under this Sublicense, or (iii) Sublicensee’s or any of its employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with applicable law or any of the requirements of its Sublicense, regardless of

whether any of the foregoing have been negligent. To the extent Liabilities arise from the following, they shall be excluded from Sublicensee's indemnification and defense obligations under this paragraph: (i) any construction performed by Parks or Parks' contractors, (ii) any Parks' Special Event, or (iii) the negligence or willful misconduct of the City or any of its officials, employees, contractors or agents (except for any negligence imputed to the City or any of its officials, employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement). Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the Indemnified Party shall be partially indemnified by Sublicensee to the fullest extent permitted by law.

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

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

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

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

20. INSURANCE

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

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

20.2 (a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury and not less than Five Million Dollars (\$5,000,000) in the aggregate on a per location basis (it being agreed that Herald Square and Greeley Square shall be deemed to be a single location for purposes of the per location requirement), and Five Million Dollars products completed operations coverage, which amounts may be obtained by a combination of primary and excess/umbrella coverage carried by Licensee. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

(b) Licensee shall require that each Sublicensee and each of its construction contractors maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death), One Million Dollars (\$1,000,000) for personal and advertising injury, One Million Dollars (\$1,000,000) in the aggregate, and One Million Dollars (\$1,000,000) products completed operations coverage. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

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

(d) If Licensee or a Sublicensee of Licensee or a contractor of either serves alcoholic beverages anywhere on the Licensed Premises, Licensee and its Sublicensee and contractor shall carry or cause to be carried liquor law liability coverage in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and list the City, together with its officials

and employees, as an additional insured. Such insurance shall be effective prior to the commencement of any operations in which alcoholic beverages are sold and continue for the duration of such operations. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

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

20.4 (a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

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

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

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

(d) In the event of any loss to any of the Concession Structures, Licensee shall provide the insurance company that issued such property insurance with prompt, complete and timely notice, and simultaneously provide the Commissioner with a copy of such notice. With

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

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

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

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

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

(d) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

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

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

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

(c) For all insurance required under this Article other than Workers Compensation, Employer's Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form annexed hereto as Exhibit D or as otherwise required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

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

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

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

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

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

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

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, Licensee shall, and/or shall cause its Sublicensees and construction contractors, as applicable, to, notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured, including its officials and employees, as well as the Named Insured." For any policy where the City is a Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Loss Payee as its interests may appear." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

21. WAIVER OF COMPENSATION

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

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

22. INVESTIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

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

(b) If the City initiates any action against the Licensee in Federal Court or in New York State Court, service of process may be made on the Licensee either in person, wherever such Licensee may be found, or by registered mail addressed to the Licensee at its

address set forth in this License, or to such other address as the Licensee may provide to the City in writing; and

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

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

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

24. WAIVER OF TRIAL BY JURY

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

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

25. CUMULATIVE REMEDIES - NO WAIVER

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

26. EMPLOYEES

26.1 All experts, consultants and employees of Licensee who are employed by Licensee to perform work under this License are neither employees of the City nor under contract to the City, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor, specialist, trainee, employee, servant, or agent or for

taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

27. INDEPENDENT STATUS OF LICENSEE

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

28. CONFLICT OF INTEREST

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

29. PROCUREMENT OF AGREEMENT

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

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

30. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

31. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

32. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

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

33. JUDICIAL INTERPRETATION

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

34. MODIFICATION OF AGREEMENT

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

35. NOTICES

35.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to the Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by facsimile transmission to the fax numbers for each party provided at the beginning of this License Agreement. Notices to Licensee shall also be given to Licensee at the following address: 34th Street Partnership, Inc., 1065 Avenue of the Americas, Suite 2400, New York, New York 10018, Attention: Dan Pisark (Fax No. (212) 719-3499).

Notwithstanding the foregoing, notices seeking or relating to a Parks Approval may be sent by email to the applicable Parks representative set forth in Section 12.4, as updated from time to time.

36. LICENSEE ORGANIZATION, POWER AND AUTHORITY

36.1 Licensee and the individual executing this License Agreement on behalf of Licensee each represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

37. MISCELLANEOUS

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

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

CITY OF NEW YORK DEPARTMENT OF
PARKS & RECREATION

34th STREET PARTNERSHIP, INC.

By:_____

By:_____

Dated:_____

Dated:_____

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of , 2017 before me personally came _____ to me known, and known to be the _____ of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

Notary Public

STATE OF NEW YORK

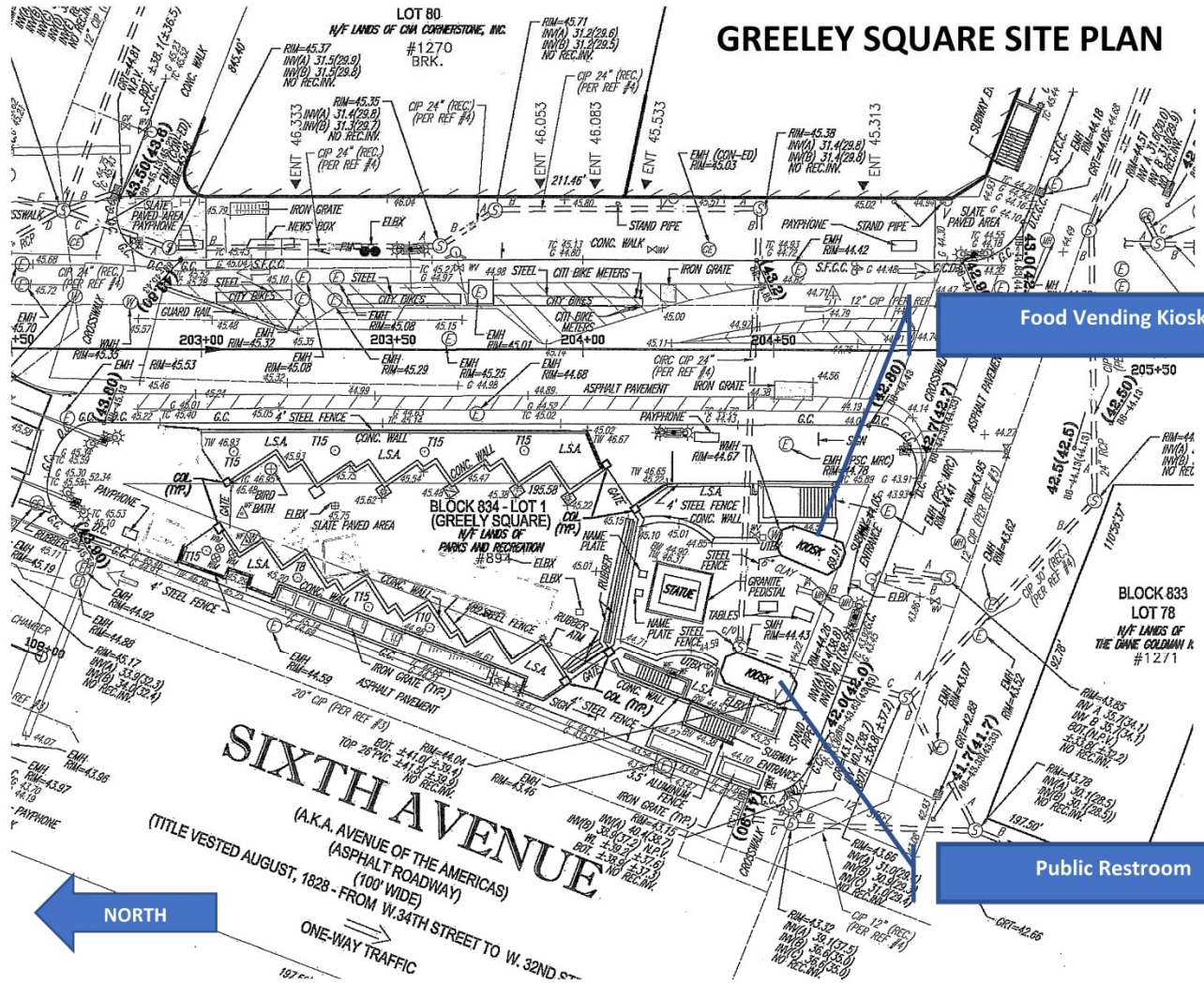
ss:

COUNTY OF

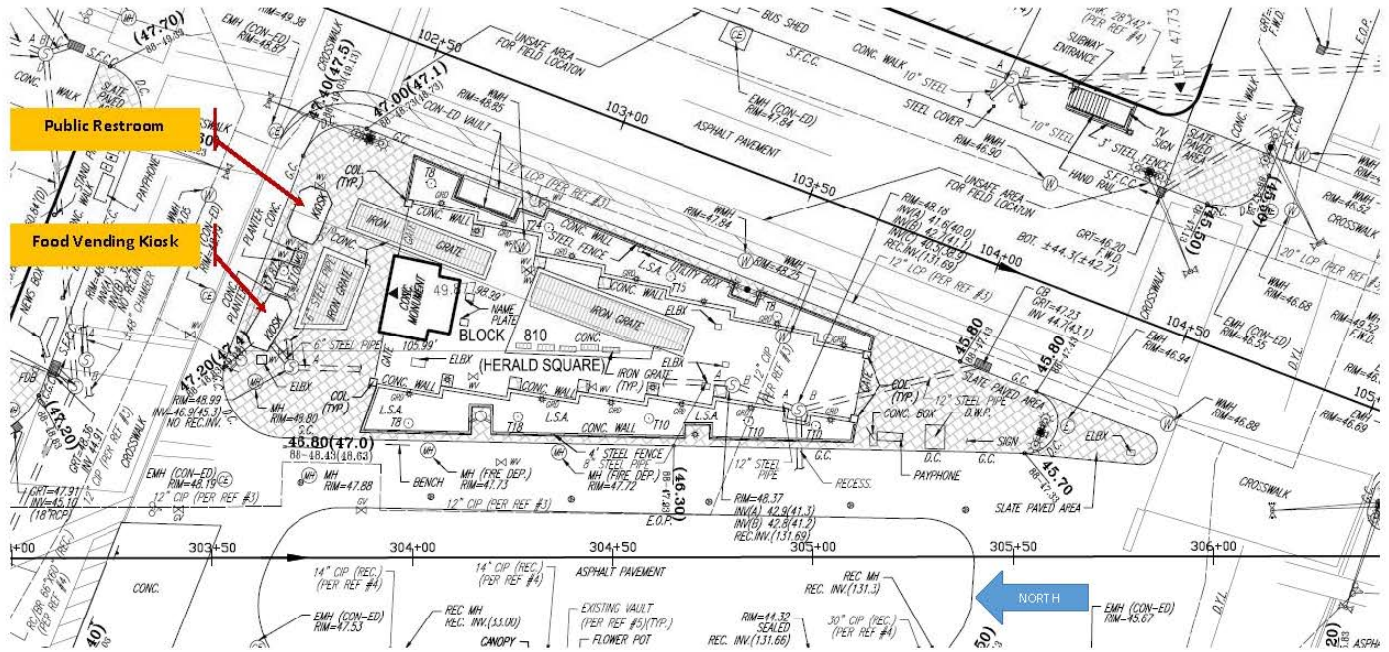
On this day of , 2017 before me personally came _____ to me known and who, being duly sworn by me, did depose and say that (s)he is the _____ of 34th Street Partnership, Inc. and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

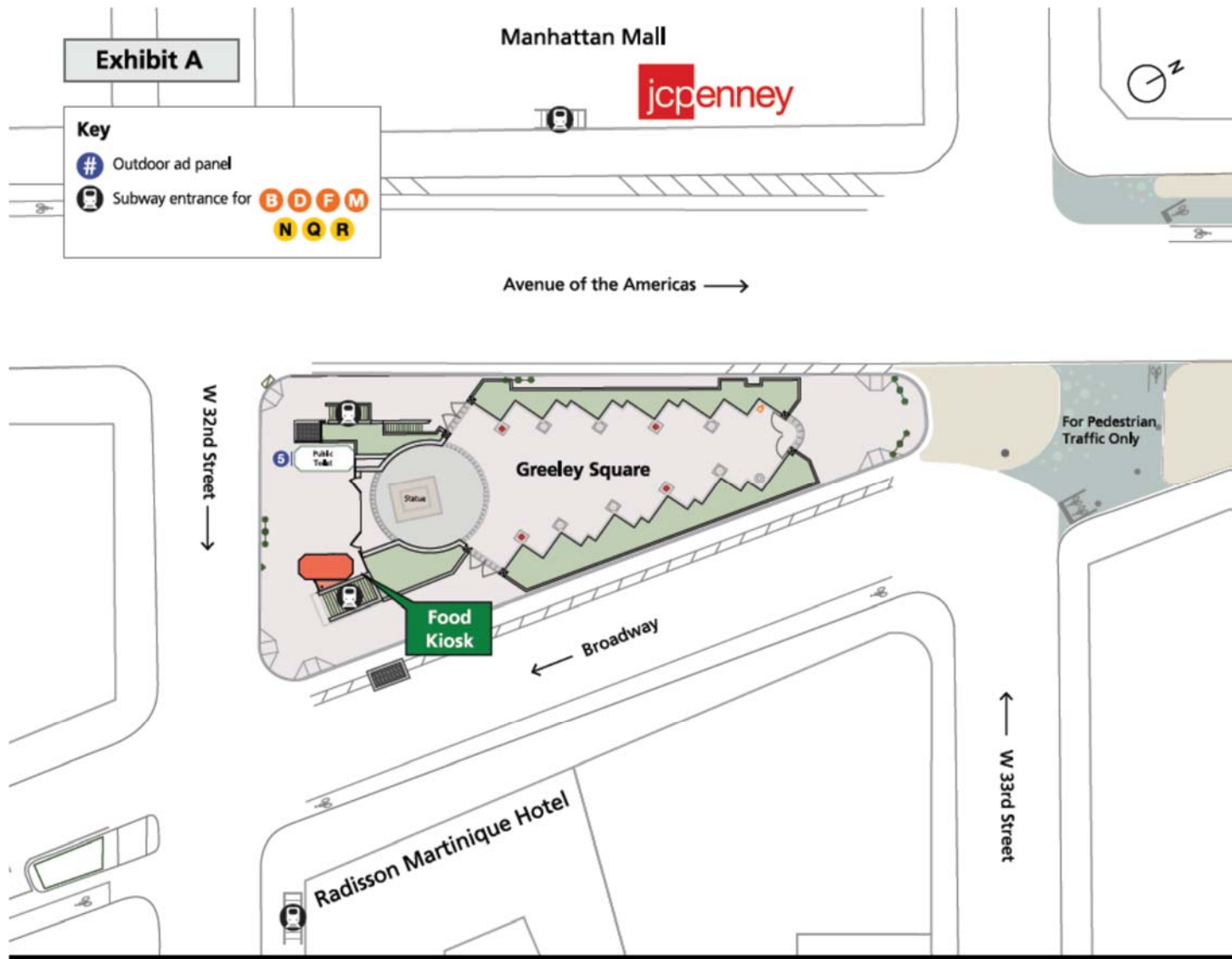
Notary Public

EXHIBIT A
LICENSED PREMISES



Herald Square Site Plan (2016 Survey)





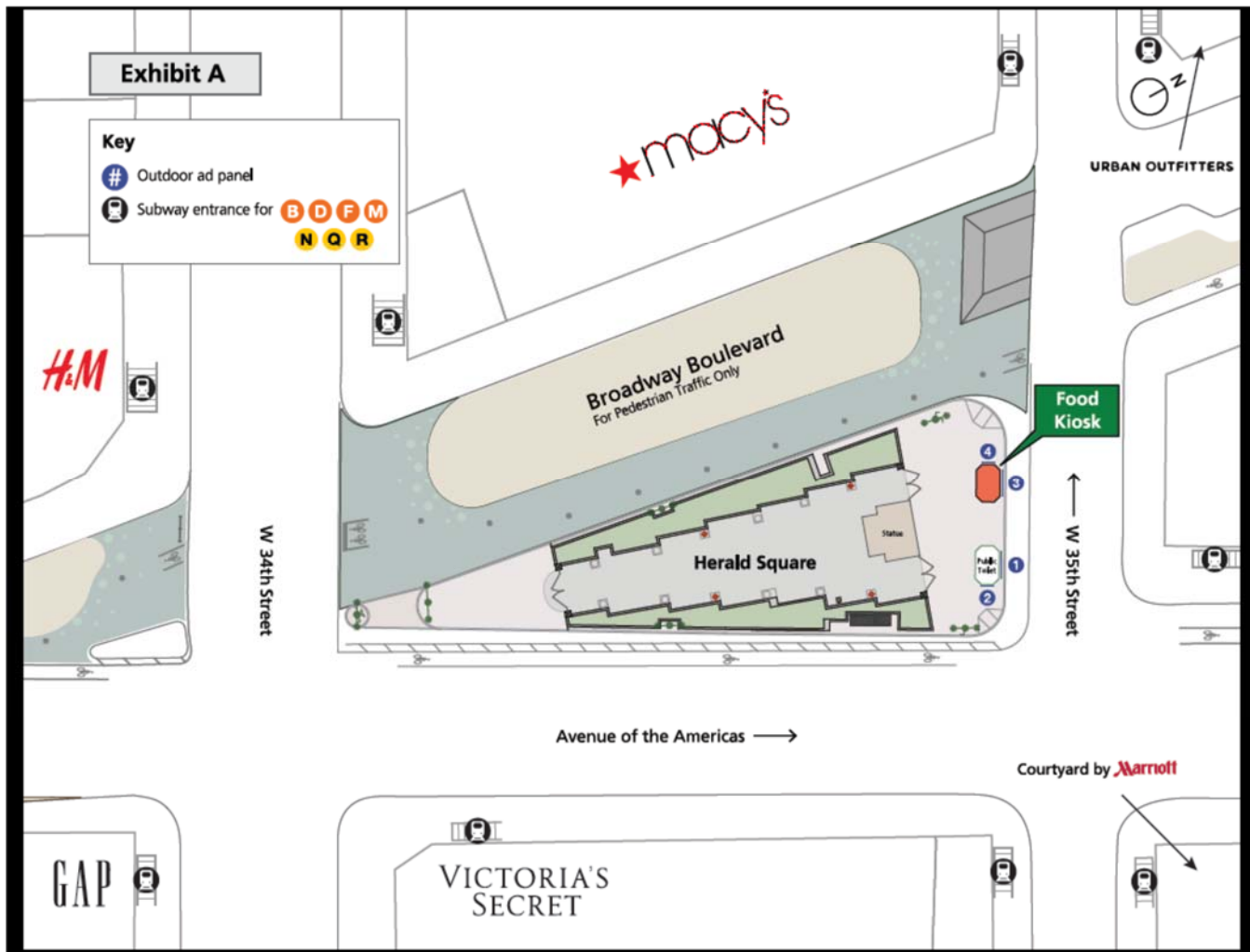


EXHIBIT B
REPORT FORM

Local Law 28 of 2008 Partnership Reporting Form						
Reporting Period: July 1 - June 30 Fiscal Year: XXXX						
Partner	Park Location	Borough	Fiscal Year- end	Total Spending - Maintenance and Operations	Total Spending - Program- ming	Total Spending - Capital
34 th Street Partnership, Inc.	Herald and Greeley Squares	Manhattan	30-Jun			

EXHIBIT C

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.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

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

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

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the

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

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 PSLI 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 PSLI 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 PSLI 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 PSLI. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLI.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLI. 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 PSLI 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 PSLI.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLI, 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 PSLI 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 PSLI 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 PSLI 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 PSLI 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 PSLI may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT D

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent
(typewritten)]

[Signature of authorized official, broker, or agent]

State of)

) ss.:

County of)

Sworn to before me this _____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____

LICENSE AGREEMENT

BETWEEN

34TH STREET PARTNERSHIP, INC.

AND

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

for

THE OPERATION AND MAINTENANCE OF HERALD AND GREELEY SQUARES

MANHATTAN, NEW YORK

M 32, 36-O

DATED: _____, 2017

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LICENSE AGREEMENT (this “License Agreement”, “Agreement” or “License”) made this ___day of _____, 2017 between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 (Fax No. 212-360-3434), and 34th Street Partnership, Inc. (“Licensee”), a New York not-for-profit corporation, whose address is 1065 Avenue of the Americas, Suite 2400, New York, NY 10018 (Fax No. (212) 719-3499).

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

WHEREAS, Herald and Greeley Squares located between Broadway and Sixth Avenues and between 34th and 35th Streets and 32nd and 33rd Streets, respectively, in Manhattan, New York are properties under the jurisdiction of Parks; and

WHEREAS, pursuant to its Certificate of Incorporation, Licensee was formed in 1992 for the purpose of managing the 34th Street Business Improvement District (the “BID”), an area which includes Herald and Greeley Squares, and, by that certain Contract with the City of New York, Department of Small Business Services, dated as of July 1, 2012 (“SBS Contract”), Licensee currently provides maintenance services, supplementary sanitation and security services, public programming as well as the capital improvements and the maintenance thereof for the BID; and

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

WHEREAS, Licensee and Parks have developed an effective public/private partnership through which Licensee, under the review and approval of the Commissioner, has undertaken substantial responsibility for public programming, specific maintenance, and capital improvements at Herald and Greeley Squares (also referred to herein as the “Squares,” “Licensed Premises” or “Premises” and are further denoted and described in Exhibit A attached hereto) pursuant to that certain Agreement dated as of June 9, 1997 between Parks and Licensee pursuant to which Licensee has operated and maintained the Squares since that date; and

WHEREAS, Licensee in 1999 made \$2,987,000 in capital improvements to the Squares funded by bonds issued by the BID in the amount of \$24,180,000; and

WHEREAS, Licensee has strong relationships with businesses, community boards and other local organizations, providing meaningful input on the programs and operation of the BID; and

WHEREAS, Parks desires to provide for the operation of food concessions and special events at Herald and Greeley Squares and the maintenance of Herald and Greeley Squares for the accommodation of and use by the public; and

WHEREAS, Licensee has extensive experience operating food concessions and special events, providing amenities and performing maintenance activities in Herald and Greeley Squares; and

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

WHEREAS, the Franchise and Concession Review Committee (“FCRC”) authorized Parks to enter into a Sole Source License Agreement with Licensee for the operation of food concessions and special events and the placement of advertising at Herald and Greeley Squares and for the revenue therefrom to be used exclusively for the maintenance and operation of Herald and Greeley Squares as set forth herein for the accommodation of and use by the public; and

WHEREAS, Licensee desires to operate food concessions and special events and place advertising at Herald and Greeley Squares and maintain and operate Herald and Greeley Squares in accordance with the terms set forth herein; and

WHEREAS, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the operation of food concessions and special events and placement of advertising at Herald and Greeley Squares and the maintenance and operation of Herald and Greeley Squares;

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

1. GRANT OF LICENSE

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

(b) (1) Licensee is hereby authorized and agrees to provide food concessions approved by Parks (“Food Concessions”), from mobile food units, kiosks and/or booths, subject to the approval of Parks. Parks has heretofore approved one food kiosk in Herald Square and one food kiosk in Greeley Square. Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain, Food Concessions in the Squares.

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

(i) Temporary or seasonal markets for food or other Parks appropriate items (e.g., holiday market, farmers’ market and food kiosks) for sale approved by Parks (“Temporary Markets”). Subject to the approval of Parks, Licensee shall have the right to operate and maintain, or to grant sublicenses to third parties to operate and maintain, Temporary

Markets in the Squares. Food Concessions and Temporary Markets may take the form of mobile food units, kiosks and/or booths. The design and placement of all Food Concessions and Temporary Markets are subject to Parks' written approval;

(ii) Special Events (as defined in 56 RCNY Section 1-02) permitted by Parks ("Licensee's Special Events") at Herald and Greeley Squares. Subject to this Section 1 and Section 13, Licensee shall have the right to host or contract with third parties to operate, Special Events in the Squares;

(iii) Advertising (as set forth in this subdivision (iii) and as defined in Section 2): Licensee shall have the exclusive right to sell and display Advertising on the Advertising Panels (as hereinafter defined) at the Squares, subject to the prohibitions contained in Section 10.12(b), (c) and (d) and the following conditions: Advertising shall only be placed within the five (5) existing Advertising Panels (or any replacement thereof) (the "Advertising Panels") located on the existing food and toilet kiosks as shown on Exhibit A (or any replacement thereof approved by Parks in accordance with this Agreement) in the Squares during the term of this License. No Advertising shall be placed on any fences, park furniture or free standing structures of any kind other than the kiosks. All Advertising displayed or placed in the Advertising Panels is subject to Parks' prior written approval. Notwithstanding the foregoing, Advertising on the Advertising Panels of Macy's products shall not require the approval of Parks so long as such Advertising does not violate the prohibitions contained in Section 10.12 (b), (c) and (d) (the foregoing exception to the requirement to obtain Parks' approval for Advertising being the "Macy's Advertising Exception"). In addition, notwithstanding the restriction that Advertising be contained in the Advertising Panels and the prohibitions contained in Section 10.12, for Special Events in which a product or service is being promoted, temporary promotional signage may be permitted in the Licensed Premises for the duration of the applicable Special Event, subject to approval by Parks of such Special Event and signage.

(c) (i) Licensee may sublicense portions of Herald and Greeley Squares (the "Sublicensed Premises") for the operation of Food Concessions or Temporary Markets to sublicensees approved in advance in writing by Parks (the "Sublicensees"). The terms and conditions of any such sublicense ("Sublicenses") shall be subject to the prior written approval of Parks. Any Sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the Sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation of Food Concessions and/or Temporary Markets shall be equally applicable to any Sublicensee that operates a Food Concession or that operates a Temporary Market, except as may be otherwise expressly noted in this Agreement. Licensee shall require any Sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the operation of the Food Concessions and Temporary Markets and shall be responsible for assuring such compliance. If any Sublicensee does not comply with this License insofar as applicable to it, such Sublicensee's operations shall be terminated by Licensee upon direction of Parks. No Sublicense may be assigned without the prior written consent of Parks.

(ii) In selecting a Sublicensee for a Food Concession or Temporary Market, Licensee shall issue a solicitation in the basic form of a request for proposals (“RFP”) with terms and conditions approved by Parks. The RFP shall be advertised in the City Record and other appropriate publication(s) approved by Parks. Parks shall require Licensee to conduct a background check of any proposed Sublicensee for a Food Concession or Temporary Market in accordance with Parks’ usual procedures and requirements and subject to Parks’ approval. Parks’ disapproval of the successful proposer shall be deemed reasonable if the successful proposer fails the background check.

(iii) Licensee has granted a sublicense to Belgo BRP LLC, a New York limited liability company, to operate a Food Concession using the food kiosk at Herald Square under the name Wafels and Dinges pursuant to a License Agreement dated as of July 10, 2013. Parks hereby approves such Food Concession.

(iv) Licensee has granted a sublicense to Nuchas GSQ, LLC to operate a Food Concession using the food kiosk at Greeley Square pursuant to a License Agreement dated as of August 27, 2013. Parks hereby approves such Food Concession.

(v) Licensee has granted a sublicense to Urban Space Holdings, Inc., a New York corporation, to operate a Temporary Market at Greeley Square under the name Broadway Bites pursuant to a License Agreement dated as of September 27, 2015. Parks hereby approves such Temporary Market.

(d) Licensee may operate the Licensed Premises for Licensee’s Special Events. All Licensee’s Special Events on any portion of the Licensed Premises must be approved in advance in writing by the Commissioner or the Commissioner’s designee, which approval shall not be unreasonably withheld. Licensee shall give the Commissioner at least thirty (30) days (or such lesser period as approved by Parks) advance written notice of any tentatively scheduled Licensee’s Special Event. Licensee’s Special Events may not restrict public access to the Licensed Premises without Parks’ prior written consent. Licensee’s Special Events shall not require a sublicense, but the sponsor or host of the event must enter into an agreement with Licensee that is acceptable to Parks before the commencement of load-in for such Licensee’s Special Event.

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

(f) All Gross Receipts (as hereinafter defined) received by Licensee from any Advertising, Sponsorships (as hereinafter defined), Sublicenses and from any of Licensee’s Special Events, Food Concessions or Temporary Markets shall be accounted for separately and apart from all other funds of Licensee within the general ledger accounts of Licensee and will be used by Licensee exclusively to pay Expenses (as hereinafter defined). Any Excess Revenues (as hereinafter defined in Section 2.1(f)) for any Fiscal Year and any disbursements therefrom shall be maintained by Licensee in the separate general ledger accounts referenced above, and any Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the certification described in clause (viii) of Section

4.1(f). Notwithstanding the foregoing, within thirty (30) days of providing Parks with the statement of Gross Receipts as described in Section 4.1. (a), Licensee may propose in writing to the Commissioner that up to \$100,000 of the Excess Revenues be used to provide maintenance, operations, or programming on the Licensed Premises or other property under the jurisdiction of Parks within the BID that are supplemental to services required under this License or any other agreement that Licensee has with the City. The proposal must contain sufficient supporting documentation. The Commissioner, in his reasonable discretion, may approve or reject the proposal, or request additional information or a revised proposal from Licensee. In the event the Commissioner rejects Licensee's proposed use of the Excess Revenues, or requests additional information, he shall set forth the reason in writing and Licensee shall have an additional thirty (30) days to resubmit a proposal. In the event Licensee's recommendation is still not approved, then said Excess Revenues shall be used exclusively to pay Expenses incurred in any subsequent Fiscal Year, subject to submission to Parks of the certification described in clause (viii) of Section 4.1(f).

(g) (i) Subject to the approval of the Commissioner, Licensee, as part of its mission and in connection with Licensee's Special Events, may provide free services and programming open to the public in the Licensed Premises, including, without limitation, horticulture, education, athletics, maintenance, tours, food, products, programs, and concerts. If Licensee's Special Event is promoted as open to the public without an admission charge, then the public shall not be charged a fee for admission to such Special Event.

(ii) All aspects of Licensee's Special Events shall comply with the Parks Department Rules and Regulations, including, but not limited to obtaining Parks permits where applicable. Licensee is responsible for securing any/all ancillary permits required as they pertain to outside agency regulations. These may include, but not be limited to NYPD Amplified Sound permits, Department of Buildings' structural or temporary place of assembly permits, Department of Health permits and Fire Department permits. Any sound or music equipment shall be operated in accordance with the Rules of the City of New York, Title 56 RCNY §1-05(d), the Administrative Code of the City of New York, §24-et seq., and only at times and at a sound level acceptable to the Commissioner. Licensee must make every effort to ensure that any and all sounds and/or music from its operation of the Licensed Premises is in such a manner so as to avoid or minimize disturbance or discomfort to the surrounding community. Amplified sound and music must not exceed the decibel level allowed by City noise regulations. A cabaret license will be strictly prohibited at the Licensed Premises.

(h) All Advertising, menus and merchandise (items and prices), Sponsorships, and hours of operation of Licensee and any Sublicensee are subject to Parks' prior written approval.

1.2 All menus and prices of a Food Concession must be approved in advance in writing by Parks. Licensee, if it is selling food to the public, and any Sublicensee, shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by Licensee or any Sublicensee, as applicable, to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene ("DOHMH") permits. A

person may operate a Food Concession only if it has obtained the permits and authorizations required by DOHMH. At all times that a Food Concession is operating, a staff person with a valid DOHMH food handler's license must be present. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

1.3 The operation of a mobile food unit in the Squares shall require a DOHMH Vendor License for each person designated as an operator of a mobile food unit and a DOHMH Mobile Food Vending Unit Permit for each mobile food unit. All persons designated as mobile food unit operators must have a valid DOHMH Vendor License in order to operate. All mobile food units must pass a DOHMH inspection in order to receive a DOHMH Mobile Food Vending Unit Permit. All mobile food units operating under this Agreement or a Sublicense must first pass a DOHMH inspection. Licensee or any Food Sublicensee, as applicable, must submit to Parks a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit before the operation of a mobile food unit can commence. Licensee or any Sublicensee, as applicable, must provide Parks with documentation that it has been issued a valid DOHMH Vendor License and DOHMH Mobile Food Vending Unit Permit for each mobile food unit. If Licensee or any Sublicensee operates a mobile food unit without a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit, Parks will instruct the operator thereof to cease operations and such operator will be subject to fines. When warranted, Officers of the Parks Enforcement Police, New York City Police Department, FDNY and DOHMH may confiscate the mobile food units, including goods.

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

1.5 It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee or to any Sublicensee, but that, during the Term of this License, Licensee and any Sublicensee shall have the use of the Licensed Premises for the purposes herein provided.

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

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

good faith to review any submissions and respond with its approval or comments as expeditiously as practical, notwithstanding anything to the contrary contained in Section 12.3 or elsewhere in this Agreement.

(b) (i) Except as set forth in subparagraph (ii) below, all intellectual property rights in the Herald Square and Greeley Square names, signage, structures, historical location, monuments, or other items or material that depict, are sited in, or refer to Herald Square and Greeley Square and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property (i) developed or designed by the City or its employees, contractors, or others on behalf of the City, or (ii) in the case of trademarks, used by the City in commerce, unless Licensee is a prior user of any trademark in commerce, are the property of the City ("City IP"). To the extent that Licensee uses any City IP in the course of performing its non-profit activities ("Partnership Activities"), Licensee shall obtain the prior written permission and approval from Parks for such use. If Parks permits Licensee to use the City IP for non-commercial purposes, such use will be non-exclusive, royalty-free, world-wide, non-transferrable and non-sublicensable and any revenue generated by Licensee therefrom will be for not-for-profit purposes and will be used by Licensee only in support of Herald Square, Greeley Square or other Parks property notwithstanding the exception set forth in Section 1.1.(f). To the extent that Licensee seeks to make commercial use of City IP (i.e. through merchandise sales, licensing or other use intended to or which does generate revenue), such use shall require the prior, written agreement of Parks, on terms to be agreed by the parties, and any revenue derived by Licensee shall be used exclusively to benefit Herald Square, Greeley Square, or other Parks property notwithstanding the exception set forth in Section 1.1.(f). Upon Parks' request, Licensee shall provide Parks with an accounting reasonably satisfactory to Parks of revenue derived from and expenditures made from any use of City IP. To the extent that prior permission and approval of Parks has already been obtained to use City IP (whether for non-commercial or commercial purposes, as the case may be), it is hereby continued as previously agreed upon, subject to the use and monetary restrictions contained in this subparagraph (i). Nothing in this subparagraph (i) prohibits Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from using the words "Herald Square" or "Greeley Square" as part of the business address thereof or in the ordinary course of business thereof, and nothing in this subparagraph (i) requires Licensee, any Sublicensee or any other person claiming by or through Licensee or any Sublicensee from obtaining permission from Parks to use the words "Herald Square" or "Greeley Square" as provided in this sentence; provided, however, that Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee specifically acknowledge that the Herald Square or Greeley Square names or words as described in this subparagraph (i) are included within the definition of City IP and no permitted use by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall result in any ownership interest, title or other right on the part of Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee in such words or name, and further provided that any permitted use of such City IP by Licensee, any approved Sublicensee or any other person claiming by or through Licensee or any approved Sublicensee shall immediately terminate when such person ceases to operate in the Squares.

(ii) Any and all trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property rights that Licensee has or acquires that meet the following requirements (“Licensee Specific IP”) are the property of Licensee: such intellectual property (1) was created by or on behalf of Licensee, any Sublicensee, their respective employees, contractors, or others, other than at the specific direction of the City or Parks, and (2) includes no City IP (as defined in subparagraph (i) above) unless Parks grants prior written permission and approval for the use of City IP for use within Licensee Specific IP. The Licensee Specific IP shall be used exclusively in connection with Licensee’s activities, as shall Licensee’s ability to use any City IP that is incorporated into Licensee Specific IP with the City’s permission. Any revenue that Licensee derives from the use, licensing, or other exploitation of Licensee Specific IP shall be used during the Term of this License Agreement exclusively in connection with Licensee’s activities, but such restriction shall terminate on the expiration or termination of this License Agreement. Licensee hereby grants a non-exclusive, royalty-free, worldwide, non-transferrable and non-sublicenseable license to the City and Parks to make use of, display and maintain Licensee Specific IP. Parks shall make no commercial use of Licensee Specific IP (e.g., merchandise sales, licensing or other use intended to or which does generate revenue) without the prior written approval of Licensee.

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

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

(B) The parties will not use the name or logos of the other party, its subsidiaries or affiliates in any sales or marketing publication or advertisement

without prior full disclosure of such use and the written consent of the other party, such consent not to be unreasonably withheld, conditioned, or delayed.

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

1.8 In addition to the requirements of Sections 1.1(d) and (g) above concerning Licensee's Special Events, Licensee and any Sublicensee, as applicable, must obtain a Parks permit for any Special Event attended by over twenty (20) people or any Special Event pursuant to which Licensee derives or retains revenues through fees or other charges. The Licensee shall use reasonable effort to provide Parks with no less than thirty (30) days (or lesser period as shall be acceptable to Parks) prior written notice of any proposed Special Event.

2. DEFINITIONS

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

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

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

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

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

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

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

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

(h) “Expenses” means all costs incurred by Licensee in operating, repairing, maintaining and managing the Squares and in performing Licensee obligations and providing services required or permitted by this Agreement, including sanitation, security, programming, Special Events and horticulture, performing Alterations, installing Additional Fixed Equipment and Expendable Equipment, and performing other work that does not constitute an Alteration. Such costs include, but are not limited to, personnel costs, third-party contract costs, insurance, costs of supplies and depreciation of Capital Improvements, Fixed and Additional Fixed Equipment and Expendable Equipment, if the foregoing have been installed by Licensee. The personnel whose cost is included as an Expense includes those persons performing services at the Licensed Premises, such as sanitation and security, horticultural, programming and Special Events, as well as those persons responsible for the supervision of the Squares and responsible for supervision of persons performing the aforementioned services. The salaries of managers, supervisors and other shared costs will be allocated among the Squares, the BID and Bryant Park each Fiscal Year in accordance with the allocation set forth in the Annual Operating Budget and Operating Plan for such Fiscal Year to be submitted by Licensee to the Commissioner for review and approval pursuant to clause (iv) of Section 4.1(f). The categories of Expenses each Fiscal Year shall be consistent with the line items contained in the Annual Operating Budget and Operating Plan of Licensee for such Fiscal Year. Expenses shall exclude the salary of the President and/or BID Director of Licensee or any successor title and the costs and expenses attributable to Licensee’s charitable fund-raising staff.

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

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

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

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

(k) (i) “Gross Receipts” shall include without limitation all funds or other consideration received by Licensee and any Sublicensee, without deduction or set-off of any kind, from Advertising on the kiosks, the sale of food and beverages, wares, merchandise or services of any kind from the Food Concessions, Temporary Markets and Licensee’s Special Events, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee or any Sublicensee. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside, or away from the Licensed Premises, and shall include all receipts of Licensee or any Sublicensee for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee or any Sublicensee outside thereof. For example, if Licensee or any Sublicensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

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

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

(A) With respect to non-catered food and beverage service, a “Gratuity” shall mean a charge that: (i) is separately stated on the bill or invoice given to Licensee’s or any Food Sublicensee’s customer or otherwise proffered by the customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) Licensee or any Food Sublicensee receives and pays over in total to its employees (other than management) who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including but not limited to, wait staff, bartenders, captains, bussing personnel and similar staff who are paid a cash wage as a “food service worker” pursuant to NY Labor Law §652(4). Licensee and any Food Sublicensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in

accordance with the foregoing provisions. Such documentation shall be signed and verified by an officer of Licensee or any Food Sublicensee, as applicable. "Regular Salary" for purposes of this subsection shall mean the set hourly wage for the applicable employee.

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

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

(m) "Licensee's Gross Receipts" shall mean the Gross Receipts of Licensee, and expressly excluding Gross Receipts of any Sublicensee.

(n) "Sponsor" shall mean a person contributing money to Licensee in exchange for acknowledgment of its contribution.

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

(p) "Sponsorship Recognition" shall mean a sign, graphic or other display that recognizes the financial contribution of the Sponsor identified therein to Licensee, the Squares, a Licensee's Special Event or other program at the Squares.

(q) "Sublicensee's Gross Receipts" shall mean the Gross Receipts of any Sublicensee, and expressly excluding the Gross Receipts of Licensee.

3. TERM OF LICENSE

3.1 This License shall become effective upon Parks giving written notice to proceed to Licensee ("Commencement Date") and, unless terminated sooner in accordance with this License Agreement, shall terminate ten years from the Commencement Date or on the last day of

any subsequent renewal periods that are exercised pursuant to this License (“Termination Date” or “Expiration Date”). The period between the Commencement Date and the Expiration Date, including any exercised renewal periods, shall be referred to as the “Term.” The parties hereto, by mutual agreement, shall have the option to renew this License for up to two (2) additional five-year periods. Each such option must be exercised by either party at least 12 months before what would otherwise be the Termination Date. If either party timely exercises a renewal option, the other party shall use best efforts to respond to such exercise by written notice given within thirty (30) days of such exercise, which notice shall state whether the other party accepts or rejects such exercise or requests additional time to make a decision.

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

3.3 Parks may terminate this License for cause as follows:

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

(b) The following shall constitute events of default for which this License may be terminated on one day’s notice: the appointment of any receiver of Licensee’s assets; the making of a general assignment for the benefit of creditors by Licensee; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; and the levy of any attachment or execution which substantially interferes with Licensee’s operations under this License and which

attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty days.

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

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

3.6 Licensee shall, on or prior to the date that is fifteen (15) days following the expiration or sooner termination of this License (the fifteen (15) day period beginning on the expiration or sooner termination of this License being the "Removal Period", and the last day of the Removal Period being the "Removal Deadline"), remove from the Licensed Premises and shall cause any Sublicensee to remove, all Personal Equipment, all Capital Improvements and Alterations that are not Additional Fixed Equipment, and Additional Fixed Equipment to which the City has not taken title pursuant to Section 7.2(a) and Section 8.3 (such equipment being "Removal Equipment"). Licensee acknowledges that any Removal Equipment remaining on the Licensed Premises after the Removal Deadline shall be deemed to be abandoned. Licensee shall remain liable to the City for the cost of removal or disposal of Removal Equipment, should Licensee fail to remove all Removal Equipment from the Licensed Premises by the Removal Deadline. During the Removal Period, Licensee shall have the right to enter the Licensed Premises to remove any Removal Equipment, provided that Licensee shall maintain the insurance required by Article 20 hereof during the Removal Period and shall indemnify, defend and hold the City and its officials harmless against and all claims and demands of third parties for injury, including death, or property damage, arising out of any such entry and removal, and all liens, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, reasonable attorneys' fees and disbursements), arising from any such claims and demands. In addition, if the removal of Removal Equipment results in damage to the Squares and Licensee or such Sublicensee fails to repair such damage to the Commissioner's reasonable satisfaction and upon such deadline as reasonably determined by the Commissioner, then Licensee shall be responsible for the cost of such repair which shall be promptly paid to Parks upon Parks' written demand to Licensee (the cost of such removal and the cost of such repair being collectively, "Removal Costs").

3.7 In addition to Removal Costs, Licensee shall be liable to Parks for the following damages if Parks terminates this Agreement pursuant to Section 3.3: (i) if Parks terminates this Agreement pursuant to Section 3.3 on account of the failure of Licensee to comply with Licensee's maintenance obligations under this Agreement, the reasonable costs borne by Parks to perform the specific maintenance obligations that Licensee failed to perform in accordance with this Agreement, and (ii) if at the time of any such termination, Licensee commenced an Alteration and failed to complete such Alteration, Licensee shall be liable for the cost to

complete such Alteration which shall be promptly paid to Parks upon Parks' written demand to Licensee; provided, however, that unless the performance by Licensee of such Alteration was the basis for Parks terminating this Agreement pursuant to Section 3.3, at the parties' mutual election Licensee shall have the right to complete such Alteration at Licensee's expense and the termination of this Agreement on account thereof shall be suspended until such Alteration is completed to the extent necessary for the purposes of completing such Alteration. During such time, the Insurance and Indemnification requirements of this Agreement shall remain in force. Except for Removal Costs and such other damages and other sums as are set forth in Sections 3.6 and 3.7, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.3. Except for Removal Costs, Licensee shall not be liable to Parks for any damages if Parks terminates this Agreement pursuant to Section 3.2. Notwithstanding the foregoing, the expiration or sooner termination of this License shall not affect the performance by Licensee of its obligations under the SBS Contract, and the limitation of liability set forth in Sections 3.6 and 3.7 shall not apply to any liability imposed on Licensee for failure to perform its obligations under the SBS Contract, or any of Licensee's obligations under Article 19. 3.8 If this License is terminated as provided in Section 3.2 or 3.3 hereof, and/or upon the expiration of the License, Parks may, without notice, re-enter and repossess the Licensed Premises without being liable to indictment, prosecution or damages therefor and may dispossess Licensee and any Sublicensee by summary proceedings or other legal means.

3.8 Except as otherwise provided in Section 3.7, if this License is terminated as provided in Section 3.3 hereof, Parks may complete all repair, maintenance and construction work required to be performed by Licensee or any Sublicensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable, which will not be at Licensee's expense, and Parks may relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this Agreement or to otherwise affect any such liability.

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

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

4. FINANCIAL RECORDS AND REPORTS

4.1 (a) On or before the one hundred twentieth (120) day following the end of each Fiscal Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Licensee's Gross Receipts, signed and verified by an officer of Licensee, reporting any Licensee's Gross Receipts generated from operations under this License Agreement during the preceding Fiscal Year. The obligation to submit a final report of Licensee's Gross Receipts shall

survive the termination of this License. Licensee shall indicate on its statement of Licensee's Gross Receipts whether or not these amounts are inclusive of sales tax collected.

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

(c) Within one hundred twenty (120) days after the end of each Fiscal Year, Licensee shall submit detailed income and expense statements for itself for operating the Squares during the preceding Fiscal Year. Such statements shall be in sufficient detail to show that Licensee is in full compliance with Section 1.1(f) hereof. The application of any Excess Revenues shall be shown by supplemental statement submitted concurrently with such detailed income and expenses statements. Without limiting the generality of the foregoing, such statements shall identify each employee for whom personnel costs are included in Expenses and the percentage of such employee's personnel costs that are included in Expenses. If any other Expenses are shared among the Squares, the BID and/or Bryant Park, such statement shall identify which Expenses are so shared and explain how they are allocated among the foregoing locations.

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

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

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

(i) Financial Statement: Licensee shall furnish to the Commissioner a detailed financial statement audited in conformance with GAAP for each Fiscal Year during the Term and any renewal thereof, which shall include the aggregate amount of all salaries of all paid staff whose personnel costs are included in Expenses and shall be audited by an independent Certified Public Accountant retained at the cost and expense of Licensee. Such

annual statement shall be submitted to the Commissioner no later than one hundred twenty (120) days after the close of each Fiscal Year of the Term of this Agreement together with a supplemental statement setting forth an itemization of such salaries.

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

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

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

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

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

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

(viii) Use of Excess Revenues: If Licensee derives Excess Revenues in a particular Fiscal Year and expends all or any portion of such Excess Revenues in any subsequent Fiscal Year, Licensee shall submit, within thirty (30) days following each expenditure of such Excess Revenues, a certification from Licensee's Chief Financial Officer identifying the specific Expenses to which such Excess Revenues were applied and certifying that such Excess Revenues were applied solely to pay Expenses, subject to the exception set forth in Section 1.1(f). If Licensee is unable to make such a certification, Licensee must immediately remit such Excess Revenues to the City. In addition, if there are any Excess

Revenues at the end of the Term, or any renewal thereof, or upon the earlier termination of this License, Licensee may apply such Excess Revenues to any Expenses arising under this License provided that Licensee provides a certification from Licensee's Chief Financial Officer identifying the specific Expenses to which such Excess Revenues were applied and certifying that such Excess Revenues were applied solely to pay such Expenses and Licensee shall remit the remaining balance of such Excess Revenues to the City within six (6) months from the end of the Term, or any renewal thereof, or upon the earlier termination of this License. However, if Licensee provides the Commissioner with a certification from Licensee's Chief Financial Officer identifying the specific Expenses that cannot reasonably be determined within six (6) months of the termination of the License and the Commissioner reasonably agrees with such certification, Licensee can retain such Excess Revenues only so long as is reasonably necessary to determine the specific Expenses in question and must remit remaining balance of such Excess Revenues to the City immediately.

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

(b) Licensee shall, and shall cause any Sublicensee to, use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by Parks and/or the Comptroller, and Parks and/or the Comptroller shall have the right to examine the recordkeeping procedures of the Licensee and any Sublicensee prior to the commencement of the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee and any Sublicensee. Licensee shall, and shall cause any Sublicensee to, maintain each year's records, books of account and data for a minimum of ten (10) years from the date of creation of the record.

5. RIGHT TO AUDIT

5.1 Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee and any Sublicensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall, and shall cause any Sublicensee to, also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee and any Sublicensee, including, but not limited to, cash registers and recording

machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully with and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's or any Sublicensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee or such Sublicensee, as applicable, must pay the food, board and travel costs incidental to two auditors conducting such examination or audit at said location.

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

6. CAPITAL IMPROVEMENTS

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

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

6.3 In addition, subject to all legal requirements, including, but not limited to, compliance with all applicable prevailing wage requirements, and subject to Parks' approval, the Licensee may enter into contracts for approved Parks Capital Improvements and may supplement Parks and/or other public capital funds with the Licensee funds for the development of such approved Parks projects.

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

7. ALTERATIONS

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

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

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

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

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

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

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

7.4 To guarantee prompt payment of moneys due to a contractor or such contractor's subcontractors and to all persons furnishing labor and materials to the contractor or such subcontractor in the prosecution of any Alteration with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee will be required to post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Alteration. Notwithstanding the above, to the extent that an Alteration is funded in whole or in part through a separate contract with the State or City, Licensee will comply with the terms of such contract regarding payment bonds for the work to be performed under such contract, including any requirements to obtain a payment bond pursuant to State Finance Law 137 or Section 5 of the Lien Law, as applicable.

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

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

8. FIXED AND EXPENDABLE EQUIPMENT

8.1 Licensee shall, to the reasonable satisfaction of the Commissioner and either at its sole cost and expense or through any Sublicensee, provide and replace, if necessary, all equipment and materials necessary for the successful operation of this License. Licensee shall,

and shall cause any Sublicensee to, put, keep, repair, preserve and maintain in good order all equipment found on, placed in, installed in or affixed to the Licensed Premises.

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

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

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

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

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

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

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

9. UTILITIES

9.1 Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee and any Sublicensee, at their sole cost and expense, shall directly pay for all utility costs associated with Licensee's or any Sublicensee's operations at the Licensed Premises, including but not limited to all DEP water and sewer charges and all charges for electricity. Licensee shall, and shall cause any Sublicensee to, at their sole cost and expense, connect to and/or, if necessary, upgrade any existing utility service or create a new utility system, and obtain the appropriate permits and approvals, and/or install or cause to be installed, and maintained, all gas, electric, sewer and telephone utilities, service lines, conduits, pipes, meters and supplies of power necessary for the proper operation of this License. This includes establishing a dedicated meter and/or submeter that captures utility usage on the Licensed Premises and an account with the appropriate service providers. Utilities, as described in this License Agreement, may include, but shall not be limited to, electricity, gas, heat, coolant, telephone, and water and sewer charges. Licensee shall, and shall cause any Sublicensee to, not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, state or City agencies or entities as have jurisdiction over the construction and operation of the Licensed Premises. Licensee shall, and shall cause any Sublicensee to, remove any unsuitable existing materials as required. Licensee shall, and shall cause any Sublicensee to, adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

10. OPERATIONS

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

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

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

keep alcohol consumption discrete. Licensee must keep in mind that this is a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

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

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

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

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

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

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

10.6 Licensee shall, and shall cause any Sublicensee to, obtain the prior written approval of Parks prior to entering into any marketing or Sponsorship agreement with respect to operations at the Licensed Premises. In the event Licensee or any Sublicensee breaches this provision, Licensee shall or shall cause its Sublicensee, as applicable, to take any action that the City may deem necessary to protect the City's interest.

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

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

10.9 Licensee shall, and shall cause any Sublicensee to, at its sole cost and expense, provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to: (a) collecting and safeguarding all monies generated under this License; (b) maintaining the Licensed Premises; and (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

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

10.11 Licensee and any Sublicensee may establish an Advertising and promotion program. Licensee and any Sublicensee shall have the right to print or to arrange for the printing of programs or brochures containing any Advertising matter except Advertising which contains tobacco, electronic cigarette or alcoholic beverage Advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to Advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee and any Sublicensee may release news items to the media as they sees fit. If the Commissioner in his or her discretion, however, determines any Advertising or other releases to be unacceptable, then Licensee shall, and shall cause such Sublicensee (as applicable) to, cease or alter such advertisements or releases as directed by the Commissioner. Notwithstanding anything to the contrary contained in this Agreement, the Commissioner shall have prior approval as to all Advertising and promotional materials, subject to the Macy's Advertising Exception.

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

(b) Licensee shall not permit and shall cause any Sublicensee not to permit Advertising in the Squares except for Advertising in the Advertising Panels as set forth on

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

(c) The display or placement of tobacco or electronic cigarette Advertising shall not be permitted. The display or placement of Advertising of alcoholic beverages shall not be permitted, but Licensee or any Sublicensee may display signage approved by Parks setting forth its offerings of alcoholic beverages.

(d) In the event advertising is allowed, the following standards will apply: Any type of Advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall also be prohibited. Licensee shall, and shall cause its Sublicensees to, immediately remove any such prohibited material displayed or placed upon notice from Parks at Licensee's sole cost and expense.

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

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

10.14 Licensee shall not, and shall cause any Sublicensee not to, block any sidewalk, pathway, park entrance or other pedestrian walkway with Licensee's equipment or supplies.

Licensee shall, and shall cause any Sublicensee to, place their equipment and supplies in such manner that at least a six (6) foot walkway is available to pedestrians at all times.

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

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

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

10.18 Inspectors from Parks will visit the Licensed Premises unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies Licensee will be obligated to rectify in a timely fashion. If Licensee fails to remedy the deficiency within the timeframe set forth in the directive and if the deficiency falls within one of the categories set forth in the list below, Parks may, at its option, assess liquidated damages. In no event shall the timeframe set forth in any such directive be less than seven (7) days. If Licensee fails to provide the cleaning, maintenance, and operational services required by this License Agreement, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If Licensee fails to cure the violation within the timeframe set in the notice, Parks may, at its option, in addition to any other remedies available to it, suspend or terminate this License Agreement and/or assess liquidated damages if the violation falls within one of the categories set forth in the list below. In no event shall the timeframe set forth in any such notice be less than seven (7) days. Parks may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages will be assessed in accordance with the following schedule:

PROVISION	LIQUIDATED DAMAGES PER OCCURRENCE
Unauthorized Menu Items or Merchandise	\$150
Missing or Unauthorized Price List	\$250
Overcharging	\$350
Expanding beyond the designated location of a kiosk, mobile food unit or booth	\$350

Blocked Exits	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Unauthorized tapping into utilities used, operated or owned by the City	\$350
Mobile Food Unit Leaking Fluids	\$350
Mobile Food Unit/Structure Obviously Damaged or in Poor Repair	\$250
Unauthorized Advertising	\$350
Roving or Vending at Unauthorized Location	\$250
Improper Storage	\$350
Graffiti, Dirty Mobile Food Unit or Umbrella or Restroom not maintained	\$350
Permit Decal Expired or Not Displayed	\$250
Operating without applicable permit(s) or license(s)	\$250
311 sign not displayed	\$250

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

(1) Filing an Appeal

If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days along with a statement of reasons why it believes the assessment was erroneous. The statement of reasons must be notarized. Any evidence supporting Licensee's appeal (such as photographs, documents, witness statements, etc.) should also be included.

If no appeal is received within 10 days of the date the assessment is mailed, the assessment shall be considered final and charged to Licensee's account.

(2) Adjudication of Appeal

The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY

10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks.

The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

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

(b) Notwithstanding the foregoing, Parks agrees that while this License Agreement is in effect, Parks will not authorize another person (i) to operate Food Concessions in the Squares or (ii) to place Advertising on the Advertising Panels.

11. MAINTENANCE, SANITATION AND REPAIRS

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

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

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

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

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

(v) Power washing, as needed.

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

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

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

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

(x) With respect to Greeley Square, the sculpture and pedestal shall be cleaned periodically of soiling, environmental particulates, and bird guano. The sculpture's protective coating shall be renewed annually following cleaning, in keeping with professional standards. The pedestal's masonry shall be pointed as necessary. In performing this maintenance, subject to the mutual agreement of the parties, Licensee may either (i) make arrangements to utilize the Parks' Arts and Antiquities Monuments Unit and provide reimbursement to Parks for the costs and expenses relating to such maintenance including staff time and equipment or (ii) retain the services of an outside qualified firm selected by Licensee but subject to Parks Arts & Antiquities' approval. In the latter instance, Licensee shall advise Parks prior to the occurrence of remedial care and shall submit visual and written documentation of the maintenance in keeping with Parks' standards.

(xi) With respect to the James Gordon Bennett Monument (Clock Tower) in Herald Square, the lower portion of the monument (from the apex of the statuary group to the ground) shall be cleaned periodically of soiling, environmental particulates and bird guano. Bird prevention may be installed, in consultation with Parks Art & Antiquities. Protective finishes on all bronze sculptural or decorative elements, including the door on the rear shall be renewed annually. Methods and procedures shall be conducted in consultation with and pre-approved by Parks Art & Antiquities. Licensee shall ensure the consistent operation of the clock, have the clock reset for daylight savings in the spring and eastern standard time in the fall, arrange for periodic maintenance and lubrication of the clock mechanism and proper physical operation of the clock and statuary group (bell ringers). The lights in the bronze owls will be functional at all times, and keyed to the clock timer. Trees and foliage will be pruned back on a regular basis to permit views of the monument, and cafe tables shall not be placed in manner that obscures the monument or blocks the engraved inscription.

(b) Licensee shall comply with the rating standards for all applicable enumerated categories set forth in the Parks Inspection Program ("PIP") to the extent such standards and categories apply to the Licensed Premises. Notwithstanding this provision, Licensee shall maintain the Licensed Premises in accordance with Parks' standards, including, but not limited to, the applicable categories as set forth in the, PIP Manual and/or any other standards that Parks may require in the future. Licensee acknowledges receipt of the PIP Manual.

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

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

(b) Licensee may not cut down, replant or remove any tree from Herald or Greeley Squares without prior written approval from the Commissioner, except that Licensee may replace potted trees as needed without prior approval. Any plans developed by Licensee for gardens or other horticultural installations in Herald or Greeley Square shall be submitted for the Commissioner's approval in advance of any planting.

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

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

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

11.3 This paragraph describes Licensee's current security services for the Squares. These security services are intended to supplement any services provided by the City, including services provided by the New York City Police Department and Emergency Medical Services provided by the New York City Fire Department, it being agreed, however, that nothing in this Agreement obligates the City to provide any such services. A uniformed security officer of Licensee patrols by foot Greeley Square each day, 7 days a week, from 7 a.m., when an officer unlocks the gate at Greeley Square, to 9 p.m., when an officer locks the gate at Greeley Square. Herald Square is part of a foot patrol route assigned to another uniformed security officer of Licensee. The patrol route that includes Herald Square also includes the area bounded by 34th Street on the south, 36th Street on the north, Broadway (primarily on the west) and Avenue of the Americas (primarily on the east). This patrol also occurs each day, 7 days a week, from 7 a.m., when an officer unlocks the gate at Herald Square, to 9 p.m., when an officer locks the gate at Herald Square. Each security officer of Licensee possesses a New York State security license

and has received annual training certified by New York State. In addition, each officer receives daily “roll call” instructions, during which the officers are given instructions for the day, particularly if the area will be the location of a special event (such as a parade or protest). Security officers are unarmed and have no authority to arrest persons. Security officers are equipped with two-way radios, which allows them to notify Licensee’s security operations center of unusual events, for which a response from New York Police Department or Emergency Medical Service is recommended. Security officers are expected to enforce rules of the Squares (e.g., patrons are forbidden to remove alcohol from the Squares or to sit on the monuments), interact with people and intervene to prevent or de-escalate disputes, patrol the toilet facilities to reduce illegal behavior inside the toilet facilities, and observe the conduct of people who may be emotionally disturbed or whose conduct may be influenced by the consumption of alcohol or illegal drugs to intervene in the event their conduct interferes with the enjoyment of the Squares by others. Licensee shall continue to provide security services generally consistent with the foregoing during the Term.

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

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

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

11.7 Licensee shall have no responsibility for maintaining the LinksNYC kiosk on the Licensed Premises.

12. APPROVALS

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

12.2 Whenever any act, consent, approval or permission is required of the City, Parks or the Commissioner under this License (a “Parks Approval”), the same shall be valid only if it

is, in each instance, in writing and signed by the Commissioner or his or her duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, Parks, the Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the Commissioner or his duly authorized representative.

12.3 Parks shall use reasonable efforts to respond to Licensee's request for a Parks Approval within 30 days following Parks' receipt of such request. For those matters as to which Parks has agreed in this Agreement not to unreasonably withhold its approval, if Parks rejects Licensee's request for a Parks Approval, Parks shall use reasonable efforts to provide specific reasons for such rejection, and if following a rejection by Parks, Licensee revises its submission to address the specific reasons for such rejection and resubmits such request to Parks, Parks shall use reasonable efforts to respond to Licensee's resubmitted request for a Parks Approval within ten (10) days following receipt of such resubmission. Issuance by Parks of a permit for an event, including Special Events permit for a Licensee's Special Event shall constitute approval by Parks of such Special Event. Licensee's submission of an application for a Special Events permit for a Licensee's Special Event, with all relevant back-up information, shall constitute notice by Licensee to Parks of Licensee's Special Event for purposes of this Agreement. Notwithstanding the review period prescribed above or elsewhere in this Agreement, the parties acknowledge there will be occasions in which Licensee requires a significantly shorter response period than the period prescribed herein (e.g., a proposal for a promotional Special Event is made to Licensee three (3) days prior to the proposed date of the promotional Special Event). Parks shall use reasonable efforts to accommodate Licensee's shorter approval requests. Further, notwithstanding the foregoing, the Commissioner in his sole discretion may entertain an appeal of a denial submitted by Licensee within five (5) days of such denial.

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

13. PARKS' SPECIAL EVENTS

13.1 For the purposes of this Section 13 the term "Parks' Special Event(s)" shall mean any Special Event at the Licensed Premises sponsored by Parks. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use of the Licensed Premises or any portion thereof. For each Parks Special Event, Parks shall comply with the following conditions: (a) Parks shall give Licensee not less than thirty (30) days (or such lesser period as agreed by the parties) advance notice of any Parks' Special Event, and any annual event will be on a date mutually agreed to by Parks and Licensee, (b) Parks shall not sponsor or permit a Parks' Special Event on a date that will conflict with a Licensee's Special Event for which Licensee has submitted to Parks an application for a Special Event Permit and such Special Event Permit has been approved by Parks, (c) Parks shall be responsible for maintenance and clean-up associated with any such Parks' Special Event and may delegate such maintenance and clean-up obligation to a third-party, but such delegation shall not relieve Parks of primary responsibility to Licensee

for such maintenance and clean-up, and (d) each Sublicensee, in its own discretion, may elect to operate or not to operate during any Parks' Special Event. Subject to the foregoing conditions, Licensee shall, and shall require that each Sublicensee, cooperate with Parks in connection with Parks' Special Events. Such events shall not, without the prior written consent of Licensee, prohibit the Licensee or any Sublicensee from reasonable access to the Licensed Premises. Furthermore, Parks reserves the right to grant permits for "Demonstrations" as defined in Section 1-02 of Parks' Rules and Regulations at the Licensed Premises where appropriate under Parks' Rules and Regulations and where such Demonstrations do not unreasonably interfere with previously scheduled and Parks-approved Licensee's Special Events as reasonably determined by Parks.

14. PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES

14.1 Except for Sublicenses approved by Parks, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent or more of the shares of or interest in Licensee (unless it is agreed to, in writing, by Parks and signed by the Commissioner or Commissioner's designee), or any equipment furnished as provided herein, or any interest therein, or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

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

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

14.2 No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten percent (10%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the

Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises.

14.3 No consent to or approval of any assignment or 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.

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

15. PARKS CONSTRUCTION

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

16. COMPLIANCE WITH LAWS

16.1 Licensee shall faithfully perform and carry out the provisions of this License and cause its agents, employees, and Sublicensees to conform to all rules, regulations, and orders prescribed as of the date hereof or which may hereafter be reasonably prescribed by the Commissioner, provided the Commissioner shall use reasonable efforts to give Licensee notice of any rules, regulations, or orders hereafter prescribed by Parks, and shall comply with all laws, regulations, rules, and orders of any kind whatsoever and of any agency or entity of government whatsoever applicable to the Licensed Premises and the Licensee's use and occupation thereof. This provision includes, but is not limited to, the Parks' Rules and Regulations as set forth in 56 RCNY §1-01 et seq., New York City Administrative Code §18-137, the New York State Not-for-Profit Corporation Law, applicable tax and labor laws relating to non-discrimination in employment, and laws protecting youths from child abuse and maltreatment.

16.2 Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively "Environmental Laws"). Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of on the Licensed Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

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

17. NON-DISCRIMINATION

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

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

18. NO WAIVER OF RIGHTS

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

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

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

(b) Licensee shall take all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License.

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

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

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

employees, contractors, or agents arising from the negligence by Licensee or any Sublicensee in the performance of its maintenance obligations under this Agreement). Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Party from being completely indemnified, the Indemnified Party shall be partially indemnified by Sublicensee to the fullest extent permitted by law.

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

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

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

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

20. INSURANCE

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

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

20.2 (a) Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury and not less than Five Million Dollars (\$5,000,000) in the aggregate on a per location basis (it being agreed that Herald Square and Greeley Square shall be deemed to be a single location for purposes of the per location requirement), and Five Million Dollars products completed operations coverage, which amounts may be obtained by a combination of primary and excess/umbrella coverage carried by Licensee. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”

(b) Licensee shall require that each Sublicensee and each of its construction contractors maintain Commercial General Liability insurance in the amount of at least One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death), One Million Dollars (\$1,000,000) for personal and advertising injury, One Million Dollars (\$1,000,000) in the aggregate, and One Million Dollars (\$1,000,000) products completed operations coverage. This insurance shall protect the insureds from claims for property damage and/or bodily injury, including death, and personal and advertising injury that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office (“ISO”) Form CG 0001, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”

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

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

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

20.4 (a) With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001.

(b) If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

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

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

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

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

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

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

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

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

(d) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

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

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

- (i) C-105.2 Certificate of Worker's Compensation Insurance;
- (ii) U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
- (iii) Request for WC/DB Exemption (Form CE-200);

(iv) Equivalent or successor forms used by the New York State Workers' Compensation Board; or

(v) Other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

(c) For all insurance required under this Article other than Workers Compensation, Employer's Liability, and Disability Benefits insurance, Licensee shall submit one or more Certificates of Insurance in a form acceptable to the Commissioner. All such Certificates of Insurance shall (a) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (b) be accompanied by the provision(s) or endorsement(s) in the Licensee's policy/ies (including its general liability policy) by which the City has been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by either a duly executed "Certification by Insurance Broker or Agent" in the form annexed hereto as Exhibit D or as otherwise required by the Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

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

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

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

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

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

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

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, Licensee shall, and/or shall cause its Sublicensees and construction contractors, as applicable, to, notify in writing all

insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License Agreement (including notice to Commercial General Liability insurance carriers for events relating to Licensee's own employees) no later than 20 days after such event or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured, including its officials and employees, as well as the Named Insured." For any policy where the City is a Loss Payee, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Loss Payee as its interests may appear." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. Licensee shall simultaneously send a copy of such notice to the City of New York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

21. WAIVER OF COMPENSATION

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

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

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

22. INVESTIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

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

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

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

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

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

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

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

24. WAIVER OF TRIAL BY JURY

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

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

25. CUMULATIVE REMEDIES - NO WAIVER

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

26. EMPLOYEES

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

27. INDEPENDENT STATUS OF LICENSEE

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

28. CONFLICT OF INTEREST

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

29. PROCUREMENT OF AGREEMENT

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

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

30. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

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

31. ALL LEGAL PROVISIONS DEEMED INCLUDED

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

32. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS

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

33. JUDICIAL INTERPRETATION

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

34. MODIFICATION OF AGREEMENT

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

35. NOTICES

35.1 Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to the Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with the Commissioner. Notices may also be given by facsimile transmission to the fax numbers for each party provided at the beginning of this License Agreement. Notices to Licensee shall also be given to Licensee at the following address: 34th Street Partnership, Inc., 1065 Avenue of the Americas, Suite 2400, New York, New York 10018, Attention: Dan Pisark (Fax No. (212) 719-3499). Notwithstanding the foregoing, notices seeking or relating to a Parks Approval may be sent by email to the applicable Parks representative set forth in Section 12.4, as updated from time to time.

36. LICENSEE ORGANIZATION, POWER AND AUTHORITY

36.1 Licensee and the individual executing this License Agreement on behalf of Licensee each represents and warrants that Licensee is a not-for-profit corporation duly organized, validly existing and in good standing under the laws of the State of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

37. MISCELLANEOUS

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

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

CITY OF NEW YORK DEPARTMENT OF
PARKS & RECREATION

34th STREET PARTNERSHIP, INC.

By:_____

By:_____

Dated:_____

Dated:_____

APPROVED AS TO FORM AND
CERTIFIED AS TO LEGAL AUTHORITY

Acting Corporation Counsel

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this day of , 2017 before me personally came
_____ to me known, and known to be the
_____ of the Department of Parks and Recreation of the
City of New York, and the said person described in and who executed the foregoing instrument
and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the
purpose mentioned therein.

Notary Public

STATE OF NEW YORK

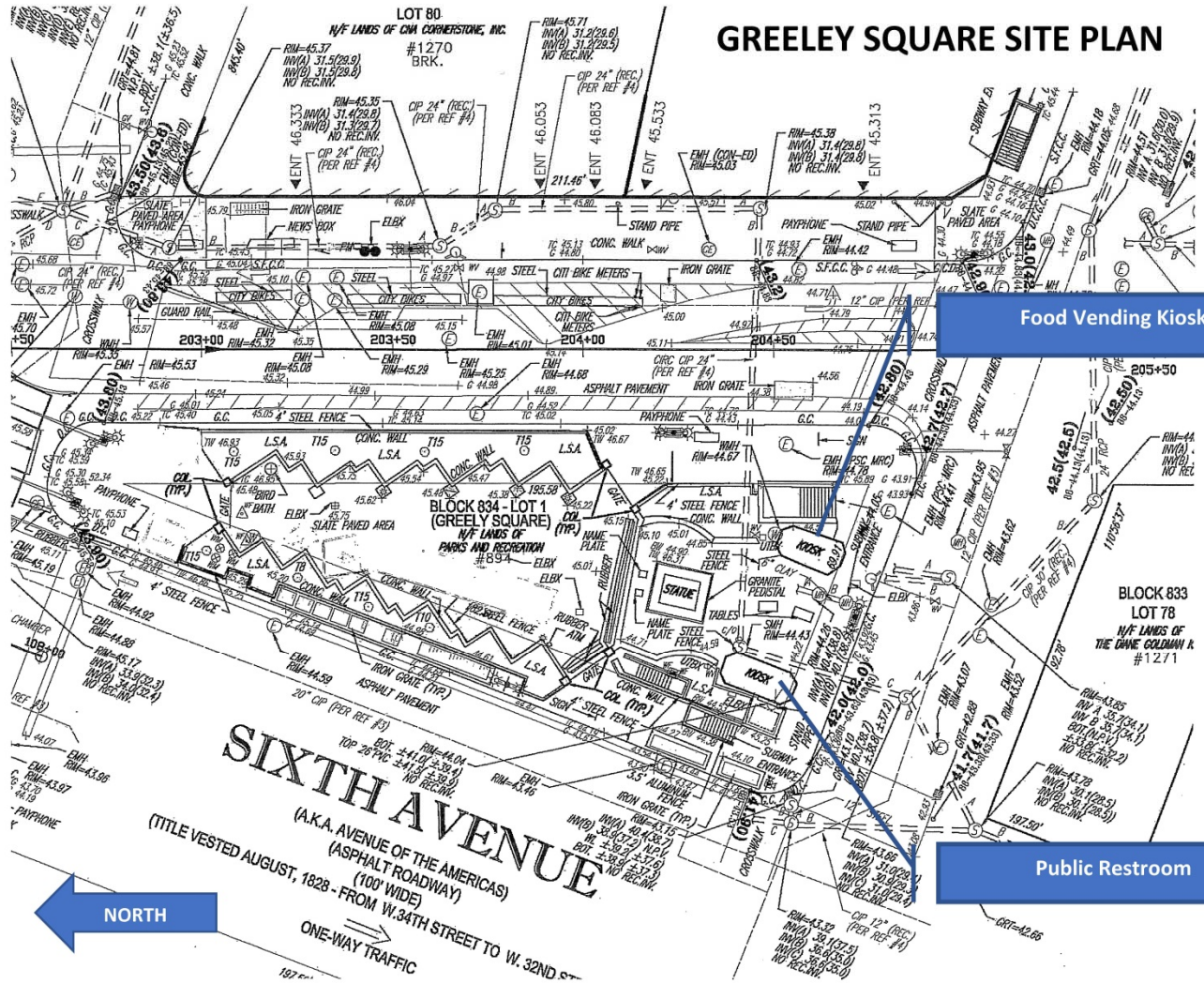
ss:

COUNTY OF

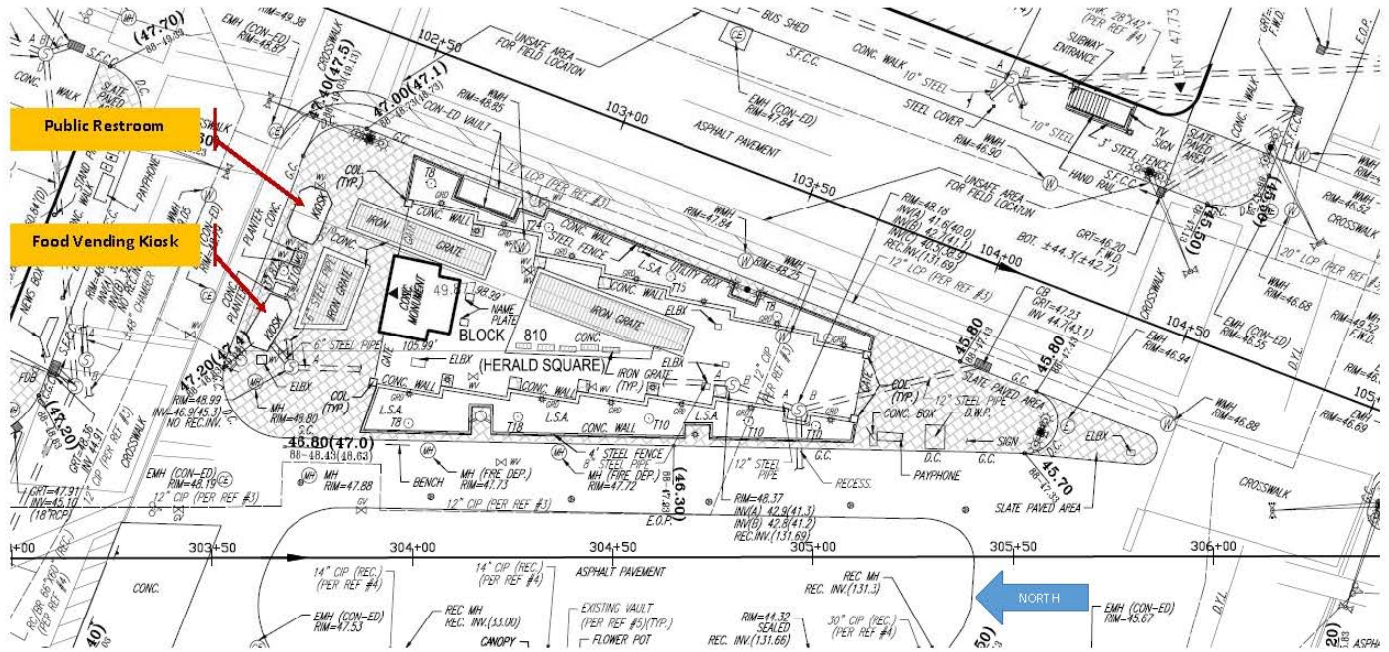
On this day of , 2017 before me personally came _____
to me known and who, being duly sworn by me, did depose and say that (s)he is the
_____ of 34th Street Partnership, Inc. and that (s)he was
authorized to execute the foregoing instrument on behalf of that company and acknowledged that
(s)he executed the same on behalf of that company for the purposes mentioned therein.

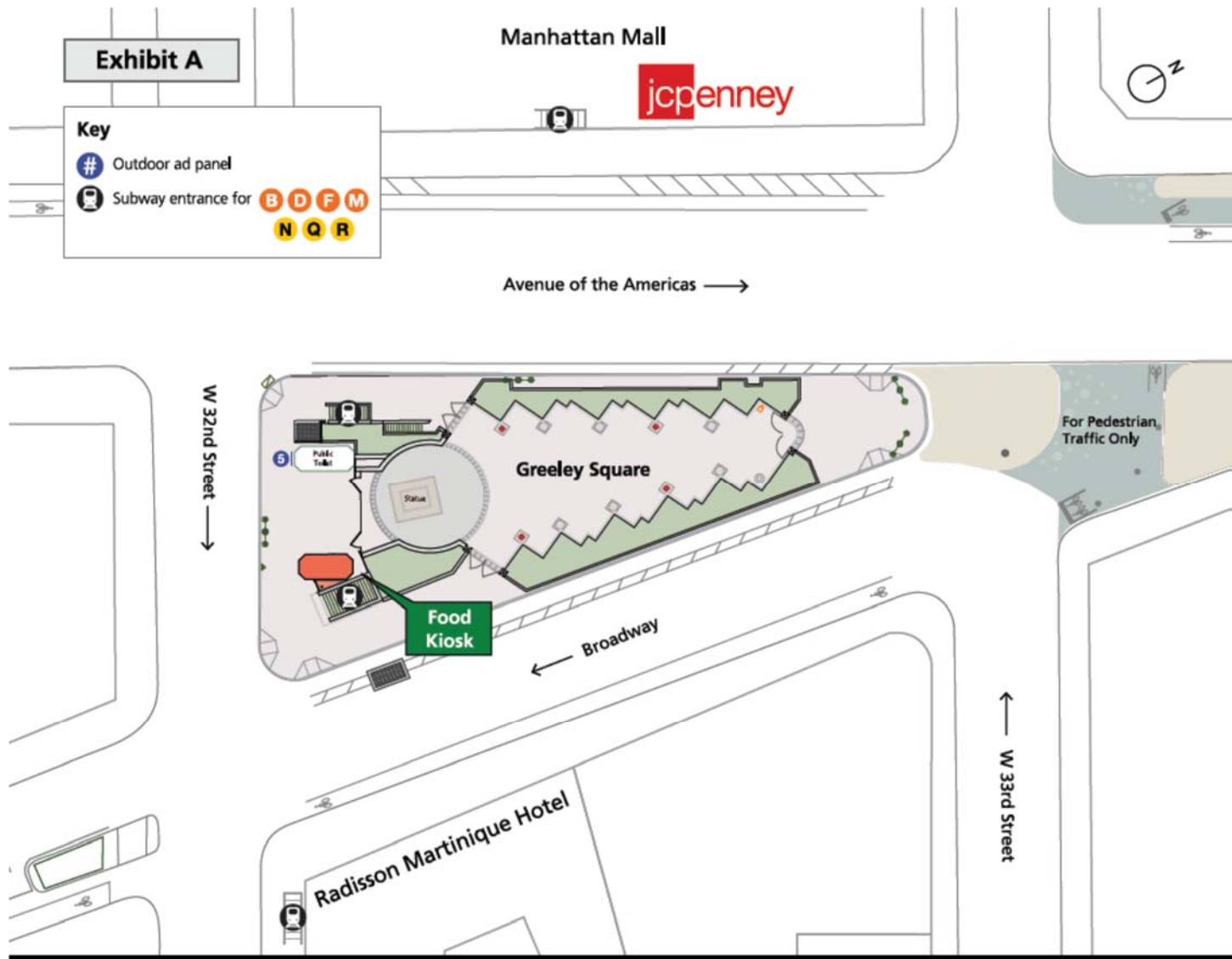
Notary Public

EXHIBIT A
LICENSED PREMISES



Herald Square Site Plan (2016 Survey)





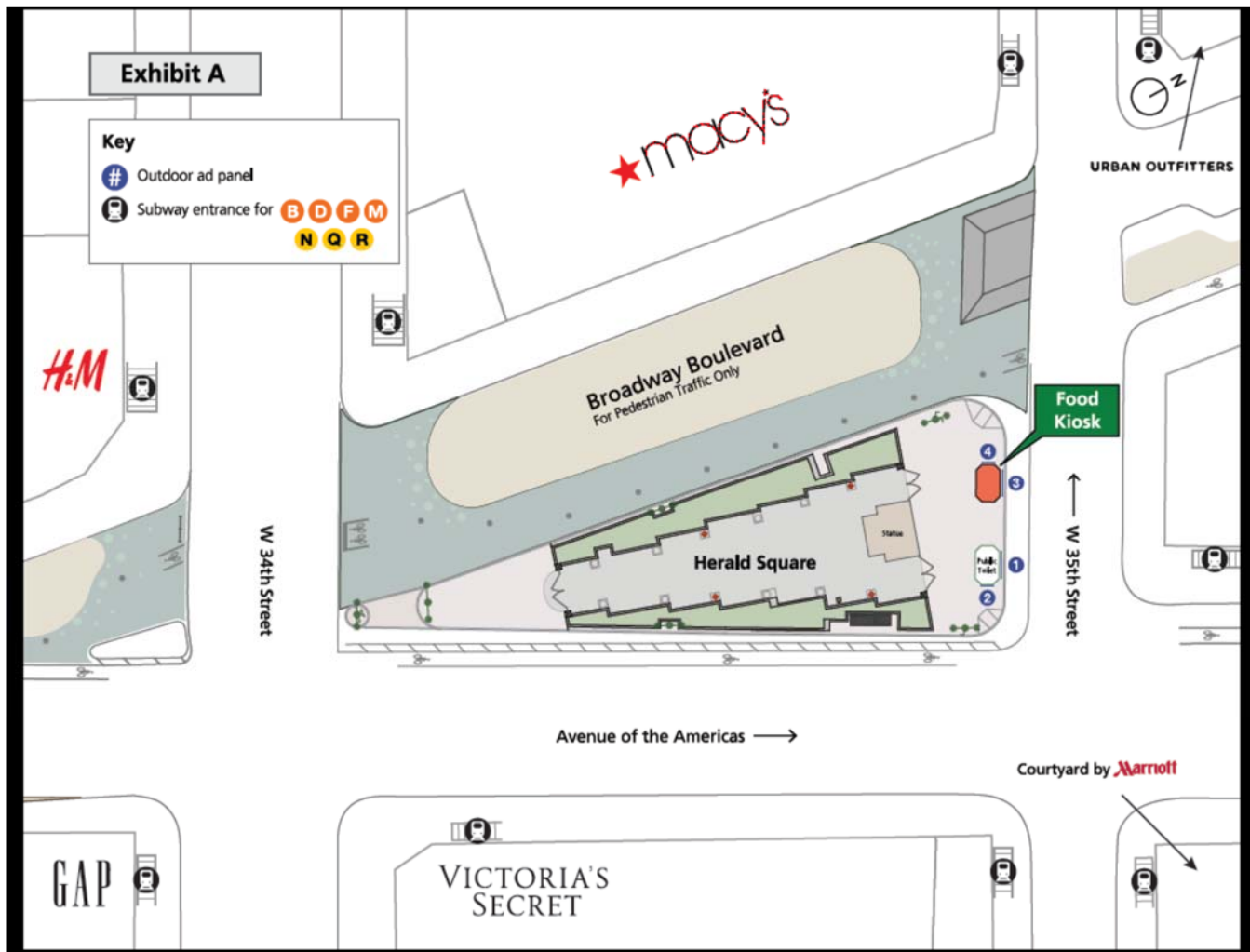


EXHIBIT B
REPORT FORM

Local Law 28 of 2008 Partnership Reporting Form						
Reporting Period: July 1 - June 30 Fiscal Year: XXXX						
Partner	Park Location	Borough	Fiscal Year- end	Total Spending - Maintenance and Operations	Total Spending - Program- ming	Total Spending - Capital
34 th Street Partnership, Inc.	Herald and Greeley Squares	Manhattan	30-Jun			

EXHIBIT C

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.¹ Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

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

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

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

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

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

Pursuant to the PSLL and the Rules:

Applicability, Accrual, and Use

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the

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

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 PSLI 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 PSLI 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 PSLI 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 PSLI. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLI.

Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLI. 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 PSLI 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 PSLI.

Enforcement and Penalties

Upon receiving a complaint alleging a violation of the PSLI, 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 PSLI 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 PSLI 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 PSLI 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 PSLI 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 PSLI may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

EXHIBIT D

CERTIFICATES OF INSURANCE

Instructions to New York City Agencies, Departments, and Offices

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

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

-- OR --

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

CITY OF NEW YORK
CERTIFICATION BY INSURANCE BROKER OR AGENT

The undersigned insurance broker or agent represents to the City of New York that the attached Certificate of Insurance is accurate in all material respects.

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent
(typewritten)]

[Signature of authorized official, broker, or agent]

State of)

) ss.:

County of)

Sworn to before me this _____ day of _____ 20__

NOTARY PUBLIC FOR THE STATE OF _____