

AMENDMENT TO LICENSE AGREEMENT

BETWEEN

**STATUE CRUISES, LLC**

AND

**CITY OF NEW YORK  
PARKS & RECREATION**

FOR THE OPERATION OF THREE LANDING SLIPS AT THE BATTERY,

MANHATTAN, NEW YORK

**M5-E-M**

DATED: \_\_\_\_\_, 20172018

**FIRST AMENDMENT TO LICENSE AGREEMENT** (“Amendment”) made this \_\_\_ day of \_\_\_\_\_, ~~2017~~2018, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and Statue Cruises, LLC (“Licensee”), a corporation organized under the laws of the State of New York, whose address is Pier 3, the Embarcadero, San Francisco, CA 94111.

**WHEREAS**, the parties to this Amendment are parties to that certain License Agreement dated December 12, 2007 (the “License” or “License Agreement”); and

**WHEREAS**, the effects of Superstorm Sandy severely damaged both Liberty and Ellis Islands rendering them unavailable to the public for immediate use, as well as for the use and purposes identified in the License over an extended period of time; and

**WHEREAS**, the expiration date of Licensee’s National Park Services (“NPS”) Agreement has been extended to September 30, 2019; and

**WHEREAS**, the parties desire to extend the Term of the License to make the Termination Date of the License coterminous with Licensee’s NPS Agreement;

**WHEREAS**, the parties desire to amend the terms of the License Agreement subject to and in accordance with the terms of this Amendment.

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

**1.1** Unless otherwise noted in this Amendment, all capitalized terms in this Amendment shall have the meaning ascribed to them in the License Agreement.

**1.2** Section 1.1 of the License Agreement is hereby amended by deleting Section 1.1 in its entirety and inserting the following new 1.1:

(j) Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to maintain and operate the Licensed Premises, which is comprised of three (3) landing facilities, adjacent walkways, and structures in The Battery, Manhattan, more

particularly described in Section 2.1(j) herein, for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee, for the enjoyment and convenience of the public in accordance with the terms herein and to the satisfaction of the Commissioner.

**1.3** Section 2.1(i) of the License Agreement is hereby amended by deleting Section 2.1(i) in its entirety and inserting the following new Section 2.1(i):

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year, except for Year 12 or Operating Year 12, which shall which shall refer to the period between January 1, 2019 and September 30, 2019.

**1.4** Section 2.1(j) of the License Agreement is hereby amended by deleting Section 2.1(j) in its entirety and inserting the following new Section 2.1(j):

(j) “Licensed Premises” shall mean the area so denoted on Exhibit C attached hereto, as may be amended from time to time, that is, three (3) landing slips as authorized in writing by Parks currently numbered 3, 4, and 5, and adjacent walkways located in the Battery, Manhattan, and shall include any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping, and upon amendment of the license agreement between Parks and The Battery Conservancy (“TBC”) for the operation and maintenance of a food and beverage concession in the New Amsterdam Plein & Pavilion (“Pavilion”), in the Battery, Manhattan, and with Parks written approval, the information wing(s) of the Pavilion as denoted in Exhibit D attached hereto. Parks may authorize Licensee to utilize a different landing slip from slip(s) currently authorized, subject to availability, provided however, that the number of landing slips used by Licensee within the Licensed Premises at any time shall be no more than three (3) during the Term of this License. Upon approval, such landing slip shall be

deemed a portion of the Licensed Premises. The vessels operated by the Licensee are not part of the Licensed Premises.

**1.5** Section 2.1(1)(i) of the License Agreement is hereby amended by deleting Section 2.1(1)(i) in its entirety and inserting the following new Section 2.1(1)(i):

(i) “Gross Receipts” shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from: (1) the sale of ferry tickets, whether at individual, charter, or group rates; and (2) the sale of wares, merchandise (excluding Parks Merchandise as defined below) or services of any kind at the Battery, provided that Gross Receipts shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee 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 for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof, not including reservations made at the Licensed Premises for facilities outside of New York City. All sales made or services rendered by Licensee 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 from Licensed Premises may be made at a location other than at the Licensed Premises.

**1.6** Section 2.1 of the License Agreement is hereby amended by inserting the following Section 2.1(n):

(n) “Parks Merchandise” shall mean any and all goods bearing Parks trademarks sold by Licensee under this License Agreement, which shall be provided by Parks at Parks discretion. All revenue from the sale of Parks Merchandise shall be paid to Parks monthly with the monthly fee installments along with a report of inventory levels.

**1.7** Section 3.1 of the License Agreement is amended by deleting Section 3.1(a) in its entirety and inserting the following new Section 3.1(a):

(a) September 30, 2019;

**1.8** Section 3.1 of the License Agreement is amended by inserting the following at the end of Section 3.1:

This License may be renewed for two (2) additional one (1) year terms, exercisable at Parks' discretion provided that the expiration date of the NPS Agreement has been extended for at least the same term. In the event the NPS Agreement is terminated during the renewal term, the renewal shall terminate on the same date as the NPS Agreement.

**1.9** Section 3.7 of the License Agreement is amended by deleting Section 3.7 in its entirety and inserting the following new Section 3.7:

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

**1.10** Section 3.10 of the License Agreement is amended by deleting Section 3.10 in its entirety and inserting the following new Section 3.10:

Should NPS require Licensee to terminate this License in order to move to another location and to enter into a similar license for those facilities and after formal notification by NPS to Parks documenting such directive to Licensee, Parks agrees not to pursue any claims for lost revenues related to such early termination of said License.

**1.11** Section 4.1(a) of the License Agreement is amended by deleting Section 4.1(a) in its entirety and inserting the following new Section 4.1:

Licensee shall make the License Fee payments listed below to the City for each Operating Year, consisting of the higher of the minimum annual fee or an annual percentage of gross receipts derived from the operation of the Licensed Premises:

Operating Year	Minimum Annual Fee	VS. Percentage of Gross Receipts
1	\$2,000,000	8.0%
2	\$2,000,000	8.0%
3	\$2,000,000	8.0%
4	\$2,000,000	8.0%
5	\$2,000,000	8.0%
6	\$2,000,000	8.5%
7	\$2,000,000	8.5%
8	\$2,000,000	8.5%
9	\$2,000,000	8.5%
10	\$2,000,000	8.5%
11	\$2,500,000	8.5%
12	\$1,875,000	8.5%
Option Year 1 (if applicable)	\$2,500,000	8.5%
Option Year 2 (if applicable)	\$2,500,000	8.5%

**1.12** Section 4 of the License Agreement is amended by inserting the following Section 4.11:

**4.11** At Parks request and upon (1) the execution of a new agreement with TBC (the “New TBC Agreement”) providing that TBC may receive a portion of the license fee payments from this License Agreement and (2) subject to any additional City approvals which may be necessary, including FCRC approval and registration of the New TBC Agreement, Licensee shall be required to pay portions of the license fee payments to TBC, which funds shall be used by TBC for the operation and maintenance of the area in and around the Pavilion and provide additional maintenance support to The Battery as shall be set forth in more detail in the New TBC Agreement.

**1.13** Section 5.1 of the License Agreement is amended by deleting Section 5.1 in its entirety and inserting the following new Section 5.1:

Parks, the Comptroller, and other duly authorized representatives of the City shall have the right, during business hours upon reasonable notice, to examine, audit, or photocopy the records, books of account, and data of the Licensee for the purpose of examination, audit, or review, or any purpose they deem necessary related to Licensee’s obligations under this License Agreement. Licensee shall also permit the inspection by Parks, the Comptroller, or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee’s books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or, at Licensee’s option, Licensee shall pay the food, board, and travel costs incidental to two auditors conducting such examination or audit at said location.

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

**1.14** Section 9.2 of the License Agreement is amended by deleting the 3<sup>rd</sup> sentence in Section 9.2 in its entirety and replacing it with the following:

Annexed hereto and made a part hereof as Exhibit B1 is the Schedule of Approved Hours and Fees, including the schedule of sailings for the 2017-2018 Operating Year.

**1.15** Section 9.25 of the License Agreement is amended by deleting Section 9.25 in its entirety and inserting the following new Section 9.25:

**9.25** The sale or advertising of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes is strictly prohibited. In addition, the use of alcohol, smoking, or the use of electronic cigarettes at the Licensed Premises is prohibited. Licensee will be required to adhere to and enforce this policy.

**1.16** Section 9.29 of the License Agreement is amended by deleting Section 9.29 in its entirety and inserting the following new Section 9.29:

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

**1.17** Section 9 of the License Agreement is amended by inserting the following Section 9.30:

**9.30** Contingent upon Parks prior written approval, Licensee may operate a visitor information, ticket, and merchandise booth in the information wing(s) of the New Amsterdam Plein & Pavilion in Peter Minuit Plaza as denoted in Exhibit D.

**1.18** Section 9 of the License Agreement is amended by inserting the following Section 9.31:

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

**1.19** Section 12.8 of the License Agreement is amended by deleting Section 12.8 in its entirety and inserting the following new Section 12.8:

**12.8** At its sole cost and expense, Licensee shall maintain the three landing slips as assigned by Parks, slips currently numbered 3, 4, and 5, and the adjacent walkways as denoted in Exhibit C, at all times. Such maintenance shall include snow removal, batter piling repairs, curb repairs, and removal of all litter, debris, and garbage.

**1.20** Section 16 of the License Agreement is amended by inserting the following Section 16:

To guarantee prompt payment of moneys to due a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall 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 Capital Improvement Project before commencing such work. Such bond or other capital undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

**1.21** Section 20.1(b) of the License Agreement is amended by deleting Section 20.1(b) in its entirety and inserting the following new Section 20.1(b):

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

**1.22** Section 24 of the License Agreement is hereby amended by deleting Section 24 in its entirety and inserting the following new Section 24:

**24.1 Licensee Responsibility**

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

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

C. As between the City and the Licensee, the Licensee shall be solely responsible for injuries to any and all persons, including death, and damage to any and all property arising out of or related to the operations under this License, whether or not due to the negligence of the Licensee, including but not limited to injuries or damages resulting from the acts or omissions of any of its employees, agents, servants, sublicensees, contractors, subcontractors, or any other person. Notwithstanding the foregoing, Licensee shall not be responsible for injuries or damages to the extent due to the negligence or intentional misconduct of the City or its officials and employees.

D. The 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 the Licensee or the Licensed Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the 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.

#### **24.2 Indemnification and Related Obligations**

A. To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License

(regardless of whether or not the Licensee itself has been negligent) and/or the Licensee's failure to comply with the law or any of the requirements of this License (collectively, "Losses"). Notwithstanding the foregoing, Licensee shall not be responsible for Losses to the extent due to the negligence or intentional misconduct of the City or its officials and employees. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.

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

**1.23** Section 26 of the License Agreement is hereby amended by deleting Section 26 in its entirety and inserting the following new Section 26:

**26.1 Licensee's Obligation to Insure**

A. From the date this Amendment to License Agreement is executed through the date of expiration or termination of the Agreement, the Licensee shall ensure that the types of insurance indicated in this Section are obtained and remain in force, and that such insurance adheres to all requirements herein.

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

**26.2 Commercial General Liability Insurance, Protection & Indemnity Insurance, and Pollution Insurance**

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury

(including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims 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 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26. “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 Form CG 20 26.

C. If the Licensee maintains Marine Protection & Indemnity Insurance or Vessel Pollution Insurance or both, such policies of insurance shall list the City, including its officials and employees, as additional insured. Such coverage, if maintained, shall be in an amount that is commercially reasonable.

### **26.3 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance**

The 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.

### **26.4 Commercial Automobile Liability Insurance**

A. With regard to all operations under this License, the 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 CA 00 01. 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.

## **26.5 Property Insurance**

A. At the direction of the Commissioner, the Licensee shall maintain commercial property insurance on buildings, structures, equipment, and/or fixtures (“Concession Structures”) that the Licensee occupies in connection with its operations under this Agreement. If the Commissioner so directs, such coverage shall be written on a special causes of loss form similar to the coverage provided by ISO Forms CP 00 10, CP 10 30, and CP 10 40 (earthquake coverage) on a replacement cost basis. Such insurance shall list the City of New York as an additional insured and loss payee as its interests may appear. Licensee’s replacement cost basis coverage liability shall only be to the extent of the proportion of the Concession Structures occupied and used by Licensee and is not otherwise insured.

B. In the event of any loss to any of the Concession Structures, the 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, the 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.

## **26.6 Flood Insurance**

A. At the direction of the Commissioner, the Licensee shall maintain flood insurance

through the National Flood Insurance Program (NFIP) for each building used in connection with its operations under this Agreement that is otherwise uninsured. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the NFIP for the building, but only to the extent of the proportion of the building occupied and used by Licensee and is not otherwise insured. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

B. In the event the Licensee purchases flood insurance excess to the limits available under the NFIP, the Licensee shall assure that the City is listed as a loss payee under all such policies.

### **26.7 General Requirements for Insurance Coverage and Policies**

A. Policies of insurance required under this Section 26 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 & Poor's rating of at least A, a Moody's Investors Service rating of A3, or a Fitch's Ratings rating of A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Law Department, unless prior written approval is obtained from the New York City Law Department.

B. Policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

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

D. There shall be no self-insurance program or self-insured retention exceeding \$10,000 with regard to any insurance required under this Section 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, the Licensee shall ensure that any such self-insurance program

provides the City with all rights that would be provided by traditional insurance under this Section, 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 Section shall be the greater of (i) the minimum limits set forth in this Section or (ii) the limits provided to the Licensee under all primary, excess and umbrella policies covering operations under this Agreement.

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

## **26.8 Proof of Insurance**

A. Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the Commissioner prior to or upon execution of this Amendment.

B. For Workers' Compensation, Employer's Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation and disability benefits insurance coverage.

C. For all insurance required under this Section other than Workers' Compensation, Employer's Liability, and Disability Benefits Insurance, the 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 required by the Commissioner (attached hereto as **Exhibit F**) or certified copies of all policies referenced in such Certificate of Insurance.

D. Proof of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such proof of insurance shall comply with subsections (B) and (C) directly above.

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

F. The Licensee shall provide the City with a copy of any policy of insurance required under this Section upon request by the Commissioner or the New York City Law Department.

#### **26.09 Miscellaneous**

A. The Licensee may satisfy its insurance obligations under this Section 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. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and

employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).

C. The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City 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 Section, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than 20 days after such event. 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, together with its officials and employees, as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The 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. The Licensee's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

F. Insurance coverage in the minimum amounts provided for in this Section shall not relieve the Licensee of any liability under this License, 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 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 Section, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim.

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

I. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, 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, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Section.

**1.24** Section 29.1 of the License Agreement is hereby amended by deleting Section 29.1 in its entirety and inserting the following new Section 29.1:

(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) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless

Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

(d) 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 the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of Licensee.

**1.25** **Exhibit A** to the License Agreement is amended by adding **Exhibit A1**, attached to this Amendment. All references to **Exhibit A** in the License Agreement are hereby deleted and replaced with **Exhibit A1**.

**1.26** **Exhibit B** to the License Agreement is amended by deleting **Exhibit B** in its entirety and replacing it with **Exhibit B1**, attached to this Amendment.

**1.27** All references to “Battery Park” in the License Agreement shall be deemed amended to read “The Battery”.

**1.28** Except as amended by this Amendment, the License Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the License Agreement, the terms of this Amendment shall govern and prevail in all instances.

**1.29** This Amendment may be executed in several counterparts, which shall constitute one and the same instrument. The License granted as set forth in Paragraph 1.2 of this Amendment shall become effective upon the date the Amendment is fully executed by the parties. The concession shall become effective upon registration with the Comptroller and commence on January 1, 2018 or such other date as set forth in a written notice to proceed issued by Parks to Licensee.

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

CITY OF NEW YORK  
PARKS & RECREATION

STATUE CRUISES, LLC

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

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

Name:

Name:

Title:

Title:

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

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

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

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

STATE OF NEW YORK )

)ss:

COUNTY OF NEW YORK )

| On this \_\_ day of \_\_\_\_\_, ~~2017-2018~~ before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing 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 NEW YORK )

| On this \_\_ day of \_\_\_\_\_, ~~2017-2018~~ before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of Statue Cruises, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

**EXHIBIT A1**

**Year 11**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
01/01/18	\$208,333.33	
02/01/18	\$208,333.33	
03/01/18	\$208,333.33	
04/01/18	\$208,333.33	
05/01/18	\$208,333.33	
06/01/18	\$208,333.33	VS 8.5% OF GROSS
07/01/18	\$208,333.33	
08/01/18	\$208,333.33	
09/01/18	\$208,333.33	
10/01/18	\$208,333.33	
11/01/18	\$208,333.33	
12/01/18	\$208,333.33	

**Year 12**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
01/01/19	\$208,333.33	
02/01/19	\$208,333.33	
03/01/19	\$208,333.33	
04/01/19	\$208,333.33	
05/01/19	\$208,333.33	VS 8.5% OF GROSS
06/01/19	\$208,333.33	
07/01/19	\$208,333.33	

08/01/19	\$208,333.33	
09/01/19	\$208,333.33	

**Option Year 1**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/19	\$208,333.33	
11/01/19	\$208,333.33	
12/01/19	\$208,333.33	
01/01/20	\$208,333.33	
02/01/20	\$208,333.33	
03/01/20	\$208,333.33	VS 8.5% OF GROSS
04/01/20	\$208,333.33	
05/01/20	\$208,333.33	
06/01/20	\$208,333.33	
07/01/20	\$208,333.33	
08/01/20	\$208,333.33	
09/01/20	\$208,333.33	

**Option Year 2**

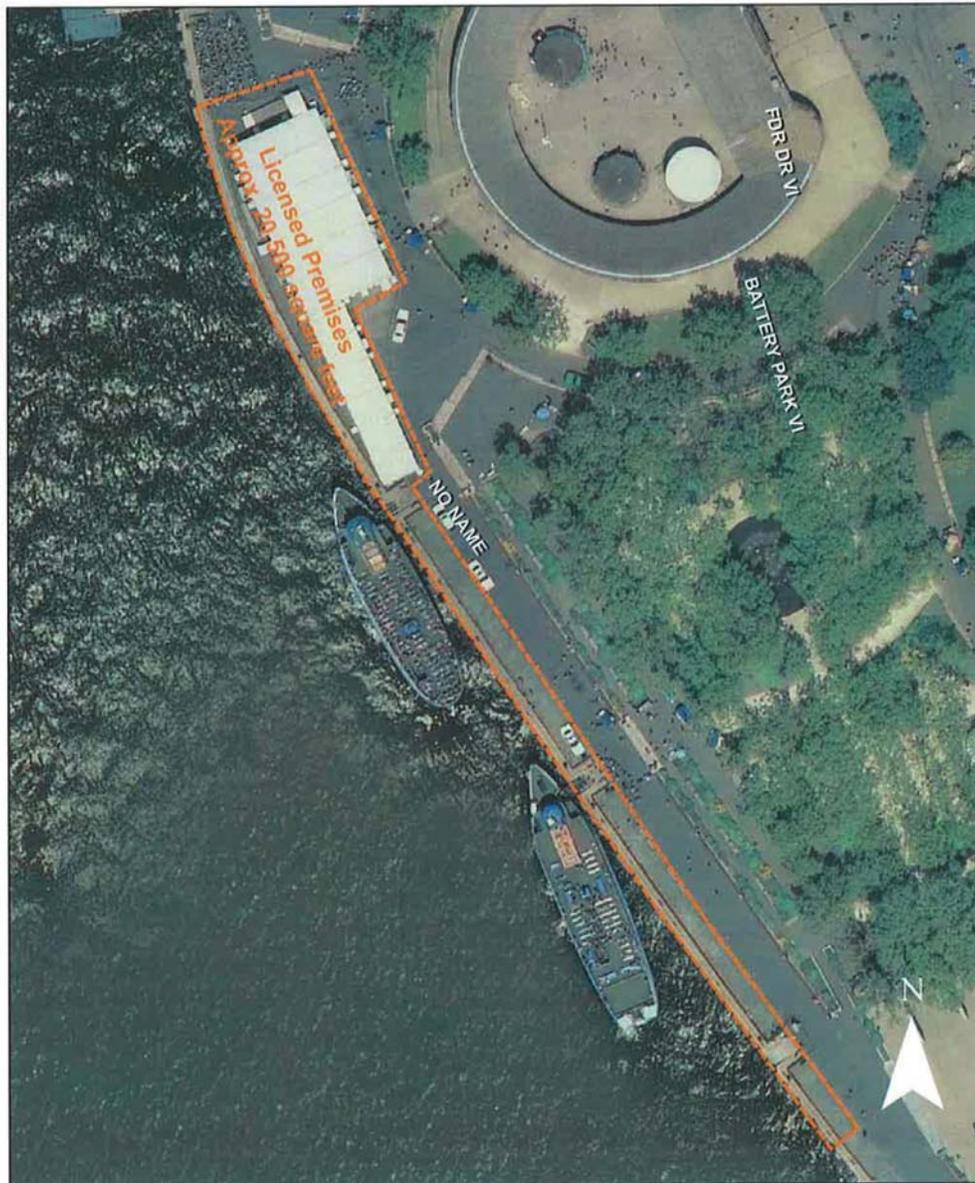
<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/20	\$208,333.33	
11/01/20	\$208,333.33	
12/01/20	\$208,333.33	
01/01/21	\$208,333.33	
02/01/21	\$208,333.33	
03/01/21	\$208,333.33	VS 8.5% OF GROSS
04/01/21	\$208,333.33	
05/01/21	\$208,333.33	
06/01/21	\$208,333.33	
07/01/21	\$208,333.33	
08/01/21	\$208,333.33	
09/01/21	\$208,333.33	

**EXHIBIT B1**

**EXHIBIT C**

# License Agreement #M5-E-M

Battery Park  
Manhattan, New York



City of New York Parks and Recreation

Michael R. Bloomberg, Mayor

Adrian Benepe, Commissioner

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

0 35 70 140 210 280 Feet

----- Limit Line



## EXHIBIT E

### 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.<sup>1</sup> 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](http://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

---

<sup>1</sup> 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 PSLL does not apply to any of the following:

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

## Records

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

## Enforcement and Penalties

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

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

## More Generous Policies and Other Legal Requirements

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

## **EXHIBIT F**

**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]

\_\_\_\_\_  
[Name and title of authorized official, broker, or agent (typewritten)]

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_

AMENDMENT TO LICENSE AGREEMENT

BETWEEN

**STATUE CRUISES, LLC**

AND

**CITY OF NEW YORK  
PARKS & RECREATION**

FOR THE OPERATION OF THREE LANDING SLIPS AT THE BATTERY,

MANHATTAN, NEW YORK

**M5-E-M**

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

**FIRST AMENDMENT TO LICENSE AGREEMENT** (“Amendment”) made this \_\_\_ day of \_\_\_\_\_, 2018, between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065 and Statue Cruises, LLC (“Licensee”), a corporation organized under the laws of the State of New York, whose address is Pier 3, the Embarcadero, San Francisco, CA 94111.

**WHEREAS**, the parties to this Amendment are parties to that certain License Agreement dated December 12, 2007 (the “License” or “License Agreement”); and

**WHEREAS**, the effects of Superstorm Sandy severely damaged both Liberty and Ellis Islands rendering them unavailable to the public for immediate use, as well as for the use and purposes identified in the License over an extended period of time; and

**WHEREAS**, the expiration date of Licensee’s National Park Services (“NPS”) Agreement has been extended to September 30, 2019; and

**WHEREAS**, the parties desire to extend the Term of the License to make the Termination Date of the License coterminous with Licensee’s NPS Agreement;

**WHEREAS**, the parties desire to amend the terms of the License Agreement subject to and in accordance with the terms of this Amendment.

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

**1.1** Unless otherwise noted in this Amendment, all capitalized terms in this Amendment shall have the meaning ascribed to them in the License Agreement.

**1.2** Section 1.1 of the License Agreement is hereby amended by deleting Section 1.1 in its entirety and inserting the following new 1.1:

(j) Commissioner hereby grants to Licensee and Licensee hereby accepts from Commissioner this License to maintain and operate the Licensed Premises, which is comprised of three (3) landing facilities, adjacent walkways, and structures in The Battery, Manhattan, more

particularly described in Section 2.1(j) herein, for the purposes of embarking and discharging passengers on a regular schedule in the operation of passenger ferries between The Battery and Liberty and Ellis Islands, embarking and discharging passengers of vessels on sightseeing cruises and other ferry operations, which may include but are not limited to ferry service to Governors Island, and day and night charters of vessels, owned, operated or chartered by Licensee, for the enjoyment and convenience of the public in accordance with the terms herein and to the satisfaction of the Commissioner.

**1.3** Section 2.1(i) of the License Agreement is hereby amended by deleting Section 2.1(i) in its entirety and inserting the following new Section 2.1(i):

(i) “Year” or “Operating Year” shall both refer to the period between the Commencement Date in any calendar year and the day before the anniversary of the Commencement Date in the following calendar year, except for Year 12 or Operating Year 12, which shall which shall refer to the period between January 1, 2019 and September 30, 2019.

**1.4** Section 2.1(j) of the License Agreement is hereby amended by deleting Section 2.1(j) in its entirety and inserting the following new Section 2.1(j):

(j) “Licensed Premises” shall mean the area so denoted on Exhibit C attached hereto, as may be amended from time to time, that is, three (3) landing slips as authorized in writing by Parks currently numbered 3, 4, and 5, and adjacent walkways located in the Battery, Manhattan, and shall include any other improvements constructed thereon, including without limitation all sidewalks, curbs, pathways, trees and landscaping, and upon amendment of the license agreement between Parks and The Battery Conservancy (“TBC”) for the operation and maintenance of a food and beverage concession in the New Amsterdam Plein & Pavilion (“Pavilion”), in the Battery, Manhattan, and with Parks written approval, the information wing(s) of the Pavilion as denoted in Exhibit D attached hereto. Parks may authorize Licensee to utilize a different landing slip from slip(s) currently authorized, subject to availability, provided however, that the number of landing slips used by Licensee within the Licensed Premises at any time shall be no more than three (3) during the Term of this License. Upon approval, such landing slip shall be

deemed a portion of the Licensed Premises. The vessels operated by the Licensee are not part of the Licensed Premises.

**1.5** Section 2.1(1)(i) of the License Agreement is hereby amended by deleting Section 2.1(1)(i) in its entirety and inserting the following new Section 2.1(1)(i):

(i) “Gross Receipts” shall include without limitation all funds received by Licensee, without deduction or set-off of any kind, from: (1) the sale of ferry tickets, whether at individual, charter, or group rates; and (2) the sale of wares, merchandise (excluding Parks Merchandise as defined below) or services of any kind at the Battery, provided that Gross Receipts shall exclude the amount of any federal, state or City taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales. Gross Receipts shall include all funds received for orders placed with Licensee 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 for services to be rendered or orders taken at the Licensed Premises for services to be rendered by Licensee outside thereof, not including reservations made at the Licensed Premises for facilities outside of New York City. All sales made or services rendered by Licensee 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 from Licensed Premises may be made at a location other than at the Licensed Premises.

**1.6** Section 2.1 of the License Agreement is hereby amended by inserting the following Section 2.1(n):

(n) “Parks Merchandise” shall mean any and all goods bearing Parks trademarks sold by Licensee under this License Agreement, which shall be provided by Parks at Parks discretion. All revenue from the sale of Parks Merchandise shall be paid to Parks monthly with the monthly fee installments along with a report of inventory levels.

**1.7** Section 3.1 of the License Agreement is amended by deleting Section 3.1(a) in its entirety and inserting the following new Section 3.1(a):

(a) September 30, 2019;

**1.8** Section 3.1 of the License Agreement is amended by inserting the following at the end of Section 3.1:

This License may be renewed for two (2) additional one (1) year terms, exercisable at Parks' discretion provided that the expiration date of the NPS Agreement has been extended for at least the same term. In the event the NPS Agreement is terminated during the renewal term, the renewal shall terminate on the same date as the NPS Agreement.

**1.9** Section 3.7 of the License Agreement is amended by deleting Section 3.7 in its entirety and inserting the following new Section 3.7:

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

**1.10** Section 3.10 of the License Agreement is amended by deleting Section 3.10 in its entirety and inserting the following new Section 3.10:

Should NPS require Licensee to terminate this License in order to move to another location and to enter into a similar license for those facilities and after formal notification by NPS to Parks documenting such directive to Licensee, Parks agrees not to pursue any claims for lost revenues related to such early termination of said License.

**1.11** Section 4.1(a) of the License Agreement is amended by deleting Section 4.1(a) in its entirety and inserting the following new Section 4.1:

Licensee shall make the License Fee payments listed below to the City for each Operating Year, consisting of the higher of the minimum annual fee or an annual percentage of gross receipts derived from the operation of the Licensed Premises:

Operating Year	Minimum Annual Fee	VS. Percentage of Gross Receipts
1	\$2,000,000	8.0%
2	\$2,000,000	8.0%
3	\$2,000,000	8.0%
4	\$2,000,000	8.0%
5	\$2,000,000	8.0%
6	\$2,000,000	8.5%
7	\$2,000,000	8.5%
8	\$2,000,000	8.5%
9	\$2,000,000	8.5%
10	\$2,000,000	8.5%
11	\$2,500,000	8.5%
12	\$1,875,000	8.5%
Option Year 1 (if applicable)	\$2,500,000	8.5%
Option Year 2 (if applicable)	\$2,500,000	8.5%

**1.12** Section 4 of the License Agreement is amended by inserting the following Section 4.11:

**4.11** At Parks request and upon (1) the execution of a new agreement with TBC (the “New TBC Agreement”) providing that TBC may receive a portion of the license fee payments from this License Agreement and (2) subject to any additional City approvals

which may be necessary, including FCRC approval and registration of the New TBC Agreement, Licensee shall be required to pay portions of the license fee payments to TBC, which funds shall be used by TBC for the operation and maintenance of the area in and around the Pavilion and provide additional maintenance support to The Battery as shall be set forth in more detail in the New TBC Agreement.

**1.13** Section 5.1 of the License Agreement is amended by deleting Section 5.1 in its entirety and inserting the following new Section 5.1:

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

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

**1.14** Section 9.2 of the License Agreement is amended by deleting the 3<sup>rd</sup> sentence in Section 9.2 in its entirety and replacing it with the following:

Annexed hereto and made a part hereof as Exhibit B1 is the Schedule of Approved Hours and Fees, including the schedule of sailings for the 2017-2018 Operating Year.

**1.15** Section 9.25 of the License Agreement is amended by deleting Section 9.25 in its entirety and inserting the following new Section 9.25:

**9.25** The sale or advertising of alcohol, cigarettes, cigars, any other tobacco products or electronic cigarettes is strictly prohibited. In addition, the use of alcohol, smoking, or the use of electronic cigarettes at the Licensed Premises is prohibited. Licensee will be required to adhere to and enforce this policy.

**1.16** Section 9.29 of the License Agreement is amended by deleting Section 9.29 in its entirety and inserting the following new Section 9.29:

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

**1.17** Section 9 of the License Agreement is amended by inserting the following Section 9.30:

**9.30** Contingent upon Parks prior written approval, Licensee may operate a visitor information, ticket, and merchandise booth in the information wing(s) of the New Amsterdam Plein & Pavilion in Peter Minit Plaza as denoted in Exhibit D.

**1.18** Section 9 of the License Agreement is amended by inserting the following Section 9.31:

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

**1.19** Section 12.8 of the License Agreement is amended by deleting Section 12.8 in its entirety and inserting the following new Section 12.8:

**12.8** At its sole cost and expense, Licensee shall maintain the three landing slips as assigned by Parks, slips currently numbered 3, 4, and 5, and the adjacent walkways as denoted in Exhibit C, at all times. Such maintenance shall include snow removal, batter piling repairs, curb repairs, and removal of all litter, debris, and garbage.

**1.20** Section 16 of the License Agreement is amended by inserting the following Section 16:

To guarantee prompt payment of moneys to due a contractor or his or her subcontractors and to all persons furnishing labor and materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall 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 Capital Improvement Project before commencing such work. Such bond or other capital undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion.

**1.21** Section 20.1(b) of the License Agreement is amended by deleting Section 20.1(b) in its entirety and inserting the following new Section 20.1(b):

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

**1.22** Section 24 of the License Agreement is hereby amended by deleting Section 24 in its entirety and inserting the following new Section 24:

**24.1 Licensee Responsibility**

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

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

C. As between the City and the Licensee, the Licensee shall be solely responsible for

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

D. The 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 the Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the 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.

#### **24.2 Indemnification and Related Obligations**

A. To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys’ fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not the Licensee itself has been negligent) and/or the Licensee’s failure to comply with the law or any of the requirements of this License (collectively, “Losses”). Notwithstanding the foregoing, Licensee shall not be responsible for Losses to the extent due to the negligence or intentional misconduct of the City or its officials and

employees. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.

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

**1.23** Section 26 of the License Agreement is hereby amended by deleting Section 26 in its entirety and inserting the following new Section 26:

**26.1 Licensee's Obligation to Insure**

A. From the date this Amendment to License Agreement is executed through the date of expiration or termination of the Agreement, the Licensee shall ensure that the types of insurance indicated in this Section are obtained and remain in force, and that such insurance adheres to all requirements herein.

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

**26.2 Commercial General Liability Insurance, Protection & Indemnity Insurance, and Pollution Insurance**

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least Five Million Dollars (\$5,000,000) per occurrence for bodily injury (including death) and property damage and Five Million Dollars (\$5,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This

insurance shall protect the insureds from claims 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 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be “occurrence” based rather than “claims-made.”

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26. “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 Form CG 20 26.

C. If the Licensee maintains Marine Protection & Indemnity Insurance or Vessel Pollution Insurance or both, such policies of insurance shall list the City, including its officials and employees, as additional insured. Such coverage, if maintained, shall be in an amount that is commercially reasonable.

### **26.3 Workers’ Compensation, Employers Liability, and Disability Benefits Insurance**

The 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.

### **26.4 Commercial Automobile Liability Insurance**

A. With regard to all operations under this License, the 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 CA 00 01. 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.

## **26.5 Property Insurance**

A. At the direction of the Commissioner, the Licensee shall maintain commercial property insurance on buildings, structures, equipment, and/or fixtures (“Concession Structures”) that the Licensee occupies in connection with its operations under this Agreement. If the Commissioner so directs, such coverage shall be written on a special causes of loss form similar to the coverage provided by ISO Forms CP 00 10, CP 10 30, and CP 10 40 (earthquake coverage) on a replacement cost basis. Such insurance shall list the City of New York as an additional insured and loss payee as its interests may appear. Licensee’s replacement cost basis coverage liability shall only be to the extent of the proportion of the Concession Structures occupied and used by Licensee and is not otherwise insured.

B. In the event of any loss to any of the Concession Structures, the 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, the 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.

## **26.6 Flood Insurance**

A. At the direction of the Commissioner, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building used in connection with its operations under this Agreement that is otherwise uninsured. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the NFIP for the building, but only to the extent of the

proportion of the building occupied and used by Licensee and is not otherwise insured. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

B. In the event the Licensee purchases flood insurance excess to the limits available under the NFIP, the Licensee shall assure that the City is listed as a loss payee under all such policies.

### **26.7 General Requirements for Insurance Coverage and Policies**

A. Policies of insurance required under this Section 26 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 & Poor's rating of at least A, a Moody's Investors Service rating of A3, or a Fitch's Ratings rating of A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the Law Department, unless prior written approval is obtained from the New York City Law Department.

B. Policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

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

D. There shall be no self-insurance program or self-insured retention exceeding \$10,000 with regard to any insurance required under this Section 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, the Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Section, 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 Section shall be the greater of (i) the minimum limits set forth in this Section or (ii) the limits provided to the Licensee under all primary, excess and umbrella policies covering operations under this Agreement.

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

### **26.8 Proof of Insurance**

A. Certificates of Insurance for all insurance required in this Section must be submitted to and accepted by the Commissioner prior to or upon execution of this Amendment.

B. For Workers' Compensation, Employer's Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker's Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation and disability benefits insurance coverage.

C. For all insurance required under this Section other than Workers' Compensation, Employer's Liability, and Disability Benefits Insurance, the 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 required by the Commissioner

(attached hereto as **Exhibit F**) or certified copies of all policies referenced in such Certificate of Insurance.

D. Proof of insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this License. Such proof of insurance shall comply with subsections (B) and (C) directly above.

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

F. The Licensee shall provide the City with a copy of any policy of insurance required under this Section upon request by the Commissioner or the New York City Law Department.

#### **26.09 Miscellaneous**

A. The Licensee may satisfy its insurance obligations under this Section 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. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 26.2, and such insurance shall include the City, including its officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, including its officials and employees, as an Additional Insured (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).

C. The Licensee shall be solely responsible for the payment of all premiums for all policies and all deductibles to which they are subject, whether or not the City 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 Section, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than 20 days after such event. 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, together with its officials and employees, as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The 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. The Licensee's failure to secure and maintain insurance in complete conformity with this Section, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Section shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

F. Insurance coverage in the minimum amounts provided for in this Section shall not relieve the Licensee of any liability under this License, 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 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 Section, the Licensee shall at all times fully cooperate with the City with regard to such potential or actual

claim.

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

I. In the event the Licensee receives notice, from an insurance company or other person, that any insurance policy required under this Section shall expire or be cancelled or terminated (or has expired or been cancelled or terminated) for any reason, the Licensee shall immediately forward a copy of such notice to both the Commissioner, 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, the Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Section.

**1.24** Section 29.1 of the License Agreement is hereby amended by deleting Section 29.1 in its entirety and inserting the following new Section 29.1:

(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) No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License Agreement or arising out of this License Agreement or in any way connected with this License Agreement unless Licensee shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, all as herein provided.

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of

the termination or conclusion of this License, or within six (6) months after the accrual of the cause of action, whichever first occurs.

(d) 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 the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of Licensee.

**1.25** **Exhibit A** to the License Agreement is amended by adding **Exhibit A1**, attached to this Amendment. All references to **Exhibit A** in the License Agreement are hereby deleted and replaced with **Exhibit A1**.

**1.26** **Exhibit B** to the License Agreement is amended by deleting **Exhibit B** in its entirety and replacing it with **Exhibit B1**, attached to this Amendment.

**1.27** All references to “Battery Park” in the License Agreement shall be deemed amended to read “The Battery”.

**1.28** Except as amended by this Amendment, the License Agreement shall remain in full force and effect. In the event of any inconsistency between the terms of this Amendment and the License Agreement, the terms of this Amendment shall govern and prevail in all instances.

**1.29** This Amendment may be executed in several counterparts, which shall constitute one and the same instrument. The License granted as set forth in Paragraph 1.2 of this Amendment shall become effective upon the date the Amendment is fully executed by the parties. The concession shall become effective upon registration with the Comptroller and commence on January 1, 2018 or such other date as set forth in a written notice to proceed issued by Parks to Licensee.

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

CITY OF NEW YORK  
PARKS & RECREATION

STATUE CRUISES, LLC

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

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

Name:

Name:

Title:

Title:

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

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

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY

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

STATE OF NEW YORK )

)ss:

COUNTY OF NEW YORK )

On this \_\_ day of \_\_\_\_\_, 2018 before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of the City of New York Department of Parks & Recreation, and the said person described in and who executed the forgoing 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 NEW YORK )

On this \_\_ day of \_\_\_\_\_, 2018 before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of Statue Cruises, LLC, and the said person described in and who executed the forgoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

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Notary Public

**EXHIBIT A1**

**Year 11**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
01/01/18	\$208,333.33	
02/01/18	\$208,333.33	
03/01/18	\$208,333.33	
04/01/18	\$208,333.33	
05/01/18	\$208,333.33	
06/01/18	\$208,333.33	VS 8.5% OF GROSS
07/01/18	\$208,333.33	
08/01/18	\$208,333.33	
09/01/18	\$208,333.33	
10/01/18	\$208,333.33	
11/01/18	\$208,333.33	
12/01/18	\$208,333.33	

**Year 12**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
01/01/19	\$208,333.33	
02/01/19	\$208,333.33	
03/01/19	\$208,333.33	
04/01/19	\$208,333.33	
05/01/19	\$208,333.33	VS 8.5% OF GROSS
06/01/19	\$208,333.33	
07/01/19	\$208,333.33	
08/01/19	\$208,333.33	
09/01/19	\$208,333.33	

**Option Year 1**

<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/19	\$208,333.33	
11/01/19	\$208,333.33	
12/01/19	\$208,333.33	
01/01/20	\$208,333.33	
02/01/20	\$208,333.33	
03/01/20	\$208,333.33	VS 8.5% OF GROSS
04/01/20	\$208,333.33	
05/01/20	\$208,333.33	
06/01/20	\$208,333.33	

07/01/20	\$208,333.33	
08/01/20	\$208,333.33	
09/01/20	\$208,333.33	

**Option Year 2**

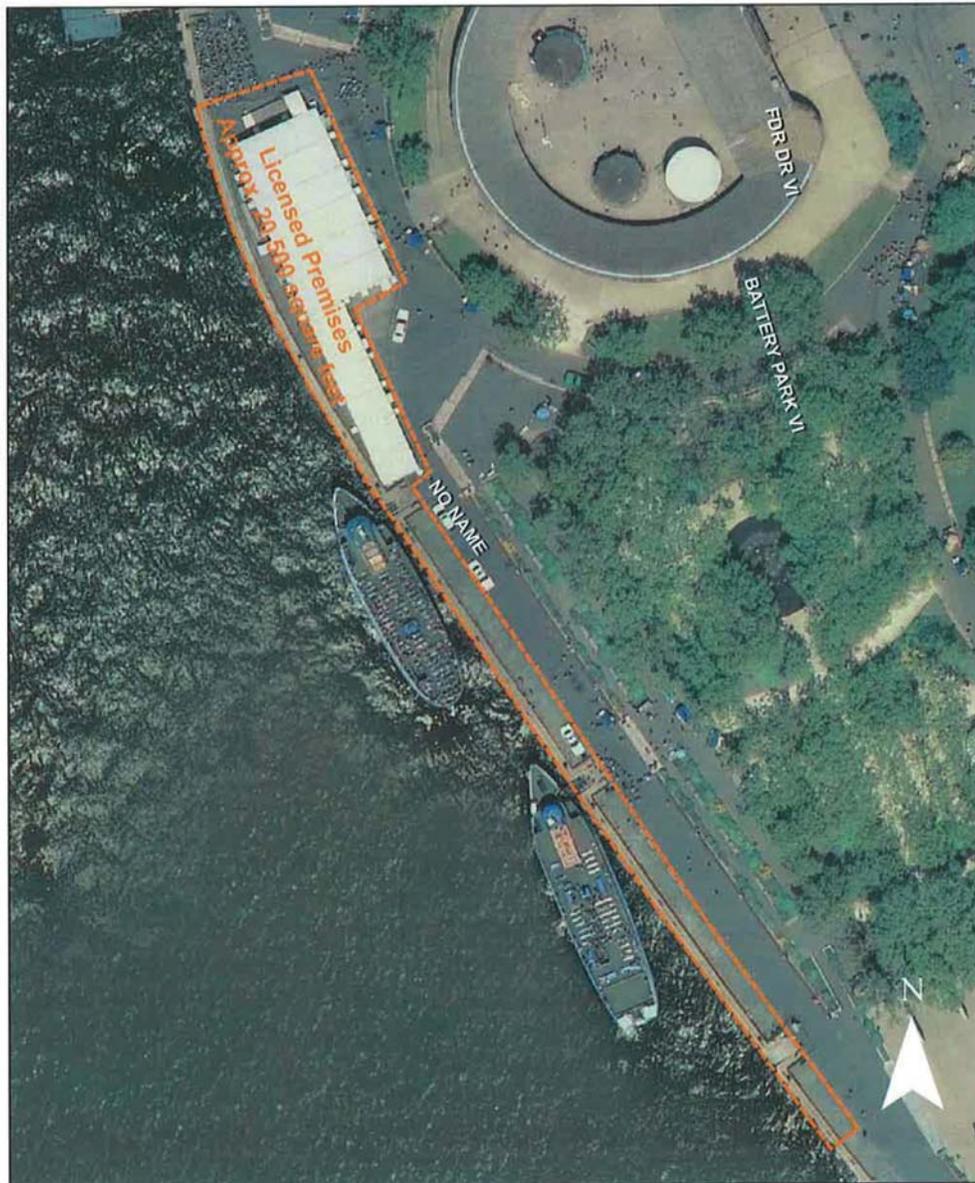
<b><u>DUE DATE</u></b>	<b><u>AMOUNT</u></b>	<b><u>% FEE</u></b>
10/01/20	\$208,333.33	
11/01/20	\$208,333.33	
12/01/20	\$208,333.33	
01/01/21	\$208,333.33	
02/01/21	\$208,333.33	
03/01/21	\$208,333.33	VS 8.5% OF GROSS
04/01/21	\$208,333.33	
05/01/21	\$208,333.33	
06/01/21	\$208,333.33	
07/01/21	\$208,333.33	
08/01/21	\$208,333.33	
09/01/21	\$208,333.33	

**EXHIBIT B1**

**EXHIBIT C**

# License Agreement #M5-E-M

Battery Park  
Manhattan, New York



City of New York Parks and Recreation

Michael R. Bloomberg, Mayor

Adrian Benepe, Commissioner

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

0 35 70 140 210 280 Feet

----- Limit Line



## EXHIBIT E

### 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.<sup>1</sup> 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](http://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

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<sup>1</sup> 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 PSLL does not apply to any of the following:

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

## Records

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

## Enforcement and Penalties

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

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

## More Generous Policies and Other Legal Requirements

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

## **EXHIBIT F**

**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]

\_\_\_\_\_  
[Name and title of authorized official, broker, or agent (typewritten)]

State of .....)

) ss.:

County of .....)

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
NOTARY PUBLIC FOR THE STATE OF \_\_\_\_\_