



NYC Parks

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Parks & Recreation

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## MEMORANDUM

**TO:** Hon. Gale A. Brewer, President of the Borough of Manhattan  
Mr. Lucian Reynolds, District Manager, Manhattan Community Board 1

**FROM:** Andrew Coppola, Senior Project Manager *ac*

**SUBJECT:** Notice of Joint Public Hearing, March 9, 2020: Intent to award a concession agreement to The View at Battery Park NYC, Inc. for the renovation, operation and maintenance of a high-quality restaurant in Battery Park, Manhattan.


**DATE:** February 19, 2020

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NOTICE OF A JOINT PUBLIC HEARING of the Franchise and Concession Review Committee and Parks to be held on Monday, March 9, 2020 at 22 Reade Street, Borough of Manhattan, commencing at 2:30 p.m. relative to:

INTENT TO AWARD as a concession for the renovation, operation and maintenance of a high-quality restaurant in Battery Park, Manhattan, for a five (5) year term, to The View at Battery Park NYC, Inc. Compensation under the License Agreement will be as follows: Operating Year 1: 5% of annual Gross Receipts; Operating Year 2: Minimum annual fee of \$120,000 plus 5% of annual Gross Receipts after \$3 Million; Operating Year 3: Minimum annual fee of \$120,000 plus 5% of annual Gross Receipts after \$3 Million; Operating Year 4: Minimum annual fee of \$150,000 plus 5% of annual Gross Receipts after \$3 Million; and Operating Year 5: Minimum annual fee of \$150,000 plus 5% of annual Gross Receipts after \$3 Million.

A draft copy of the License Agreement may be reviewed or obtained at no cost, commencing on Monday, March 2, 2020 through Monday, March 9, 2020 between the hours of 9:00 a.m. and 5:00 p.m., excluding weekends and holidays at the New York City Department of Parks & Recreation, located at 830 Fifth Avenue, Room 313, New York, NY 10065.

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

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

# CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

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

<b>AGENCY:</b> <u>NYC</u> <u>Department of Parks &amp; Recreation</u>	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>The View at Battery Park NYC, Inc</u> <b>Address:</b> <u>46 Langdon Terrace, Bronxville, NY 10708</u> <b>Telephone #</b> <u>(347)231-2722</u>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>The renovation, operation and maintenance of a high-quality restaurant at The Battery, Manhattan.</u>
<b># VOTES required for proposed action</b> <b>=</b> <u>4</u> <input type="checkbox"/> N/A	<input checked="" type="checkbox"/> <b>EIN</b> <input type="checkbox"/> <b>SSN #</b> <u>832684493</u>	<b>CONCESSION I.D.#</b> <u>M5-F-R</u>
<b>Not-for-Profit Organization</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		

**LOCATION OF CONCESSION SITE(S\*) Address** 10 Battery Place, New York NY 10004  
☐ N/A \*Attach additional sheet      **Borough** Manhattan **C.B.** 1 **Block #** 3 **Lot #** 1

## SELECTION PROCEDURE (\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids  
☐ Competitive Sealed Proposals\* ( ☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_\_/\_\_\_/\_\_\_ )  
☐ Different Selection Procedure: \* ( ☐ Sole Source Agreement   ☐ Other \_\_\_\_\_ )  
 > FCRC approved different selection procedure on \_\_\_/\_\_\_/\_\_\_.  
☒ Negotiated Concession\*

## CONCESSION AGREEMENT TERM

**Initial Term: From** Notice to Proceed **To** Five (5) years  
 from Notice to Proceed

**Renewal Option(s) Term:** N/A  
**Total Potential Term:** Five (5) Years

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

## ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ **Annual Fee(s)** \$ \_\_\_\_\_

☐ **% Gross Receipts** \_\_\_\_\_ %

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

☒ **Other:**

Operating Year 1: 5% of annual Gross Receipts

Operating Year 2: Minimum annual fee of \$120,000 plus 5% of annual Gross Receipts after \$3 Million

Operating Year 3: Minimum annual fee of \$120,000 plus 5% of annual Gross Receipts after \$3 Million

Operating Year 4: Minimum annual fee of \$150,000 plus 5% of annual Gross Receipts after \$3 Million

Operating Year 5: Minimum annual fee of \$150,000 plus 5% of annual Gross Receipts after \$3 Million

## NOTIFICATION REQUIREMENTS

**Subject concession was awarded by CSB or CSP.**

☐ YES ☒ NO

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

☐ The subject concession is a Significant Concession and the Agency completed its consultations with each affected CB/BP regarding the scope of the solicitation by \_\_\_/\_\_\_/\_\_\_, which was at least 30 days prior to its issuance.

☐ The subject concession is a Significant Concession and the Agency included this concession in the Agency's Plan and completed consultations with each affected CB/BP pursuant to §1-10 of the Concession Rules.

☐ The subject concession was determined not to be a Major Concession and the Agency sent notification of such determination to each affected CB/BP by \_\_\_/\_\_\_/\_\_\_, which was at least 40 days prior to issuance of the solicitation.

**If NO**, check the applicable box below:

☐ The Agency certifies that each affected CB/BP received written notice by \_\_\_/\_\_\_/\_\_\_, which was at least 40 days in

advance of the FCRC meeting on \_\_\_/\_\_\_/\_\_\_ at which the agency sought and received approval to use a different selection procedure.

- ☒ The Agency certifies that each affected CB/BP received written notice on 12/09/2019, at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on 12/09/2019.
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on \_\_\_/\_\_\_/\_\_\_.

**Law Department approved concession agreement on \_\_\_/\_\_\_/\_\_\_**

**Award is a major concession.**

☐ YES ☒ NO

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

☐ CPC approved on \_\_\_/\_\_\_/\_\_\_ ☐ City Council approved on \_\_\_/\_\_\_/\_\_\_ or ☐ N/A

**AUTHORIZED AGENCY STAFF**

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

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

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

**Name** Alexander Han **Title** Director of Concessions

**Signature** \_\_\_\_\_ **Date** \_\_\_/\_\_\_/\_\_\_

**CERTIFICATE OF PROCEDURAL REQUISITES**

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

**Signature** \_\_\_\_\_ **Date** \_\_\_/\_\_\_/\_\_\_

**City Chief Procurement Officer**

**RECOMMENDATION FOR AWARD OF CONCESSION AGREEMENT MEMORANDUM:**  
**NEGOTIATED CONCESSION**

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The renovation, operation and maintenance of a high-quality restaurant in Battery Park, Manhattan.

**Instructions:** *Check all applicable boxes and provide all applicable information requested below.*

**A. NEGOTIATIONS**

**1. A Notice of Intent to Enter into Negotiations was:**

- ☒ published in 5 consecutive editions of the City Record from 12/09/2019 to 12/13/2019, and the last date of such notice appeared no fewer than ten days before negotiations were expected to begin.
- ☒ posted on the City's website simultaneously with its publication from 12/09/2019 to 12/13/2019.
- ☒ provided to the members of the Committee within five days of its publication on 12/09/2019.

**2. Major Concession Notice & Summary of Terms and Conditions:**

- ☒ The Agency certifies that it provided a notice to each affected CB/BP that the concession was determined to be non-major along with a summary of the terms and conditions of the proposed concession at the time that Notice of Intent to Enter into Negotiations was published on 12/09/2019. The Agency further certifies that it sent a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP on 12/09/2019.

**OR**

- ☐ The Agency certifies that it provided a notice to each affected CB/BP that the concession has been determined to be a major concession and it shall be subject to review and approval pursuant to §§ 197(c) and (d) of the New York City Charter following the Agency selection of the successful concessionaire. The Agency further certifies that the notice to each affected CB/BP included a summary of the terms and conditions of the proposed concession and was sent at the time that Notice of Intent to Enter into Negotiations was published on \_\_\_/\_\_\_/\_\_\_. The Agency further certifies that it sent a copy of this notice to the members of the Committee within five days of the notice to each affected CB/BP on \_\_\_/\_\_\_/\_\_\_.

3. ☐ **The Agency certifies that outreach was specifically conducted to M/WBEs.**

**B. EVALUATION/SELECTION/BASIS FOR AWARD**

- ☒ Three (3) potential concessionaires responded to the Notice of Intent to Enter into

## Negotiations.

- ☒ The Agency negotiated with all qualified potential concessionaires that had expressed interest

**OR**

- ☐ The Agency determined that it was in the City's best interest to negotiate with fewer potential concessionaires, and the CCPO approved such determination on \_\_/\_\_/\_\_.
- ☐ The Agency negotiated with \_\_\_\_\_ potential concessionaires.

### **Basis for Award:**

**Instructions:** *Attach a summary of the negotiations reflecting, as applicable:*

- whether potential concessionaires responded to the notice of intent to enter into negotiations;*
- the number of potential concessionaires the agency negotiated with; and/or*
- the basis for the selection, including all relevant materials submitted by the potential concessionaires.*

In response to the Notice of Intent to Enter into Negotiations dated 12/09/2019, the following three (3) potential concessionaires expressed interests in the concession and met with Parks:

1. Gieto and Paul Nicaj from The View at Battery Park NYC, Inc. ("The View");
2. Michael Scollan, Darryl Stopp, Adam Weiss, and Billy Reilly from Tribeca Rooftop NYC ("Apogee Events"); and
3. Joe Tranchina.

Parks employees from the Revenue Division (David Cerron, Alex Han, and Andrew Coppola) held an in-person meeting with Gieto and Paul Nicaj from The View on December 30, 2019; an in-person meeting with Michael Scollan, Darryl Stopp, Adam Weiss, and Billy Reilly (phone dial-in) from Apogee Events on January 2, 2020; and had a phone conference with Mr. Tranchina on January 8, 2020 (he was not available in-person). After discussing 1) the scope of the concession (including the required capital improvements, the Battery Coastal Resilience project, the short five-year term of the license, license fees, and the proposal process), 2) operating experience of the potential concessionaires; and 3) their planned operations at the Battery at each meeting, a template License Agreement with proposed terms tailored to the Battery was provided for each party to review and respond within 48 hours from the meeting time to submit a completed version of the License Agreement inclusive of the entity's name, fee offer, a detailed planned operation, menus, hours of operations, etc. On December 30, 2019, Gieto and Paul Nicaj submitted a filled out template License Agreement as well as the proposed menus; on January 3, 2020, Parks received an e-mail from Apogee Events that they were no longer interested in pursuing this concession; and subsequently, on January 10, 2020, Joe Tranchina called and informed Parks that he was no longer interested in the concession, and later confirmed this in an email on January 15, 2020.

As a result of the voluntarily withdrawal from Apogee Events and Mr. Tranchina, Gieto and Paul Nicaj from The View became the sole proposer in the negotiated concession process. In consideration of the operating experience, financial capability, planned operation and fee offer from The View, Parks decided it would be in the best interest of the City to select The View as the operator. If approved by the FCRC, Parks is able to satisfy the goals originally identified by the agency to justify the use of the negotiated concession method: a short-term solution designed to ensure continuity of service to the public and a continued revenue stream for the City.

- ☒ The Agency certifies that the concession manager has maintained a written record of the conduct of negotiations and the basis for every determination to continue or suspend negotiations with each potential concessionaire.

### **C. PUBLIC HEARING**

☐ **N/A – Subject award not a significant concession]**

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

☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

☒ Subject concession is **not a Citywide** concession. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 2/21/2020.

☒ Downtown Express, a NYC local newspaper published in the affected borough(s) on 2/20/20 and 3/5/20.

☒ Our Town Downtown, a NYC local newspaper published in the affected borough(s) on 2/27/20 and 3/5/20.

☒ A Public Hearing was conducted on 03/09/2020.

OR

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

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

**(Cal. No. 3 )**

**RESOLVED**, that the Franchise and Concession Review Committee authorizes the New York City Department of Parks & Recreation (“Parks”), pursuant to Section 1-14 of the Concession Rules of the City of New York, to enter into a negotiated concession agreement with The View at Battery Park NYC, Inc. for the renovation, operation and maintenance of a high-quality restaurant in Battery Park, Manhattan. The concession agreement provides for a term of five (5) years. Compensation to the City will be as follows: Operating Year 1: 5% of annual Gross Receipts; Operating Year 2: Minimum annual fee of \$120,000 plus 5% of annual Gross Receipts after \$3 Million; Operating Year 3: Minimum annual fee of \$120,000 plus 5% of annual Gross Receipts after \$3 Million; Operating Year 4: Minimum annual fee of \$150,000 plus 5% of annual Gross Receipts after \$3 Million; and Operating Year 5: Minimum annual fee of \$150,000 plus 5% of annual Gross Receipts after \$3 Million.

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

**March 11, 2020**

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

LICENSE AGREEMENT

BETWEEN

THE VIEW AT BATTERY PARK NYC, INC.

AND

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

*for*

THE RENOVATION, OPERATION AND MAINTENANCE OF A HIGH-QUALITY  
RESTAURANT AT

THE BATTERY

MANHATTAN

**M5-F-R**

DATED: \_\_\_\_\_, 2020



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**LICENSE AGREEMENT** (“License Agreement” or “License”) made this \_\_\_\_ day of \_\_\_\_\_, 2020 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 (revenue@parks.nyc.gov), and The View At Battery Park NYC, Inc. (“Licensee” or “Concessionaire”), a New York State Corporation, whose address is 46 Langdon Terrace, Bronxville, NY 10708.

## **WITNESSETH**

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

**WHEREAS**, the premises located at 10 Battery Place (Block 3, Lot 1), Manhattan, New York 10004 is property under the jurisdiction of Parks; and

**WHEREAS**, the parking lot east and a portion of the outdoor seating area north of 10 Battery Place are under the jurisdiction of Department of Transportation (“DOT”) and managed by Parks through an agreement with DOT; and

**WHEREAS**, Parks desires to provide for the renovation, operation and maintenance of a high-quality restaurant located at the Licensed Premises (as hereinafter defined in Section 2.1(j)) for the accommodation of and use by the public; and

**WHEREAS**, Parks has complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) to enter into a short-term negotiated concession agreement with Licensee for the renovation, operation and maintenance of a high-quality restaurant at the Licensed Premises; and

**WHEREAS**, the Licensee desires to renovate, operate and maintain a high-quality restaurant located at the Licensed Premises in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the renovation, operation and maintenance of a high-quality restaurant at the Licensed Premises;

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

## **1. GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to operate, renovate, and maintain a high-quality restaurant at the Licensed Premises for the use and enjoyment of the general public (the “Concession”), as hereinafter defined, in accordance with the provisions herein and to the satisfaction of the Commissioner. All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks’ prior written approval. Licensee will be responsible for all costs associated with the renovation, operation, and maintenance of the Licensed Premises.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders which are or may become necessary to renovate, operate, and maintain the Licensed Premises in accordance with the terms of this License and to perform the Capital Improvements required by this License Agreement. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Failure to fulfill any of the obligations set forth herein for any reason may be deemed as a default by the Commissioner.

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

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or his representatives and to other City, State, and Federal officials having jurisdiction for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement. Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present to observe the operations at the Licensed Premises.

**1.5 (a)** Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any part of the Licensed Premises shall be subject to the prior written approval of the Commissioner provided, however, that the Commissioner hereby approves the use of the trade name "The View at Battery Park". Licensee represents and warrants that Licensee has all right, title and interest in the approved trade name above, or has acquired or properly licensed such right, title and interest, and that to the extent Licensee shall cease to possess such right, title, or interest, it shall immediately notify Parks and cease to use such trade name in connection with the operations under this License Agreement.

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

## **2. DEFINITIONS**

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

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

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

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

(b) “Capital Improvements” shall mean all construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include all Alterations and “Additional Fixed Equipment,” as that term is defined in Section 2.1(h) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed Premises. Capital Improvements shall include those activities described in Section 6.1 and the Schedule of Capital Improvements attached as **Exhibit D**.

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

(d)

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

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

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

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

(g) “Final Completion” or “Finally Complete” shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is required by Licensee pursuant to this License in connection with the construction of said improvement. Notwithstanding the issuance of any such certification, Licensee shall be liable for any claims related to such construction and shall be responsible for any other obligations (including maintenance, repair and indemnity) set forth in this License Agreement.

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

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

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

(i)

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

(ii) Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities.

(iii) Gross Receipts shall also include all sales made by any other operator or operators using the Licensed Premises, provided that Gross Receipts shall also include Licensee’s income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee’s subcontractors or sublicensees.

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

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

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

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

(j) “Licensed Premises” or “Premises” shall mean the area designated as such on **Exhibit A**, attached hereto, and shall include the structures, as well as any improvements, constructed thereon, including, without limitation, all buildings or structures, specific area within the parking lot, walkways, curbs, trees and landscaping.

(k) “Licensee’s Special Events” shall mean any catered or private function (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties), for a Parks-appropriate purpose at the Licensed Premises excluding “Parks’ Special Events” as defined in Section 13 of this Agreement. Subject to prior written approval from Parks, Licensee may conduct Licensee’s Special Events at the Licensed Premises. Licensee shall submit to Parks for approval all plans for any Licensee’s Special Events at the Licensed Premises. Notwithstanding the foregoing, Park’s prior written approval shall not be required for Licensee’s Special Events that take place entirely within the 2<sup>nd</sup> floor event space. In no event shall the entire Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved by Parks in advance in writing or sponsored by Parks, and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events. Licensee must document each of Licensee’s Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All catered events must be primarily related to dining activities. All revenue generated through such Special Events must be reported to Parks as Gross Receipts. Notwithstanding anything to the contrary in this Section 2.1(k), Parks reserves the right to review Licensee’s use of the Licensed Premises for Licensee’s Special Events and require



that Licensee obtain Parks' prior written approval for all Licensee's Special Events, of any type, if, in the reasonable determination of the Commissioner, the nature and frequency of Licensee's Special Events constitutes an unreasonable limitation on the use and enjoyment of the Licensed Premises by the general public.

(l) "Substantial Completion" or "Substantially Complete" shall mean, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as incomplete or outstanding items as provided for in Section 6.14 herein, and that the improvement may be utilized by the public.

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

(n) "Consumer Price Index" and "CPI" shall mean the Consumer Price Index for all urban consumers; all items indexed (C.P.I.-U.) for the New York, New York/Northeastern New Jersey area, by the United States Department of Labor, Bureau of Labor Statistics. In the event the index shall hereafter be converted to a different standard reference base or otherwise revised, the determination of the increase shall be made with the use of conversion factor, formula or table for converting the index as may be published by the Bureau of Labor Statistics for the New York City geographic area. In the event the index shall cease to be published, then for the purpose of this License Agreement there shall be substituted for the index such other index as Parks and Licensee shall agree upon.

(o) "CPI Adjustment" means an adjustment made by multiplying the dollar amount to be adjusted by a fraction, the numerator of which shall be the CPI for the calendar month prior to the month in which the adjustment is to occur, and the denominator of which shall be the CPI for the calendar month prior to the Commencement Date.

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

**3.1** This License shall become effective upon registration with the Comptroller's Office, and commence upon the date written in a written "Notice to Proceed" issued to Licensee ("Commencement Date") and shall terminate five (5) years from the Commencement Date or upon the sooner termination of this License pursuant to any provision of Article 3 of this License ("Termination Date" or "Expiration Date"). The period between the Commencement Date and the Termination Date shall be referred to as the "Term." In no event shall the Concession become effective prior to registration with the Comptroller.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, its officials, employees and agents shall

not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

**3.3** Parks may terminate this License for cause as follows:

(a) Should Licensee breach or fail to comply with any of the provisions of this License or any Federal, State, or local law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee as determined by Commissioner, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control as determined by Commissioner, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) days' notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers, and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

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

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

**3.5** In the event Commissioner terminates this License for reasons related to Section 3.3 above, any property of the Licensee on the Licensed Premises may be held and used by Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all indebtedness of the Licensee hereunder, at the time of termination of this License, is paid in full.

**3.6** Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the Licensed Premises without any further notice by City and without resort to any judicial proceeding by the City. Upon

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

**3.7** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises after the expiration or sooner termination of this License is intended by Licensee to be abandoned. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this Agreement. Pursuant to Section 4.4 herein, City may use the Security Deposit to recover such damages in part or in whole.

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

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

(a) Parks may draw down on the Security Deposit in accordance with Section 4.4; and

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed or re-permitted at an equal or higher fee (if at a lower fee, then only the net difference shall be owed by Licensee); and

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability.

**3.10** No receipt of moneys by Parks from Licensee after the termination of this License Agreement, or after the giving of any notice of the termination of this License Agreement, shall reinstate, continue or extend the Term or affect any notice theretofore given to Licensee, or operate as a waiver of the right of Parks to enforce the payment of fees payable by Licensee hereunder or thereafter falling due, or operate as a waiver of the right of Parks to recover possession of the Licensed Premises by proper remedy. After the service of notice to terminate this License

Agreement or the commencement of any suit or summary proceedings or after a final order or judgment for the possession of the Licensed Premises, Parks may demand, receive and collect any moneys due or thereafter falling due without in any manner affecting the notice, proceeding, order, suit or judgment, all such moneys collected being deemed payments on account of the use and occupation of the Licensed Premises or, at the election of Parks, on account of Licensee's liability hereunder.

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

#### **4. PAYMENT TO CITY**

**4.1** Licensee shall pay the City License fees for each Operating Year consisting of the minimum annual fee plus a percentage of annual Gross Receipts (where applicable) derived from the operation of the Licensed Premises as set forth below:

<u>OPERATING YEAR</u>	<u>MINIMUM ANNUAL FEE</u>	<u>- AND -</u>	<u>% OF ANNUAL GROSS RECEIPTS</u>
1	\$0		5%
2	\$120,000		5% after \$3 Million
3	\$120,000		5% after \$3 Million
4	\$150,000		5% after \$3 Million
5	\$150,000		5% after \$3 Million

**4.2** The minimum annual fee for each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first day of each month of each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments to be provided by Parks upon its giving Notice to Proceed. Each monthly payment is due and payable on the date specified on the Schedule of Minimum Annual Fee Payments regardless of whether Licensee has received a bill for it from Parks. If at any time Licensee's percentage fee for a particular Operating Year becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the percentage fee on the thirtieth (30<sup>th</sup>) day of each month for the prior month's Gross Receipts.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of any License fees, percentage fees or any other charges shall become overdue for ten (10) days following the date on which such fees are due and payable as provided in this License, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by

Licensee without notice or demand. For example, a monthly payment, in the amount of \$1,000.00, due on the first (1<sup>st</sup>) day of the month must be received no later than the tenth (10<sup>th</sup>) day of the month. If no payment is received, a two percent (2%) late charge in the amount of \$20.00 will be assessed on the eleventh (11<sup>th</sup>) day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10<sup>th</sup>) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly License fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or his right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

**4.4 (a)** Upon affixing its signature to this License, Licensee shall deposit with the City the amount of thirty-seven thousand, five hundred dollars (\$37,500.00) as its security deposit ("Security Deposit"). The Security Deposit may be in the form of an interest bearing instrument or other format approved by Parks. The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

**(b)** The City shall not be obligated to place or to keep cash deposited hereunder in interest-bearing bank accounts.

**(c)** If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, including but not limited to the completion of the minimum capital improvement requirement as set forth in Section 6.1, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of License fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within five (5) business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License.

**4.5 (a)** On or before the thirtieth (30<sup>th</sup>) day following each month of each Operating Year, Licensee shall submit to Parks, in the form annexed hereto as **Exhibit B** or other form satisfactory to Parks, a statement of Gross Receipts, signed and verified to be true and correct by an officer of

Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. The statement shall include the following phrase: "I hereby certify the above statement to be true and correct." Each of the reports of Gross Receipts shall report the Gross Receipts generated at the Licensed Premises in the following categories:

Beverages	Gross Receipts from beverages sold at the restaurant at the Licensed Premises
Food	Gross Receipts from food sold at the restaurant at the Licensed Premises.
Catering Sales	Gross Receipts from catered events at the Licensed Premises.
Catered Event Deposits	Gross Receipts from deposits for catered events at the Licensed Premises.
Gift Cards	Gross Receipts from the sale of gift cards redeemable at the Licensed Premises.
Merchandise	Gross Receipts from the sale of merchandise at the Licensed Premises.
Miscellaneous	Any other sources of income realized from the Licensee's operations at the Licensed Premises, including reservation of the Licensed Premises for Licensee's Special Events.

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

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

**4.6** On or before the sixtieth (60<sup>th</sup>) day following the end of each Operating Year, Licensee shall submit to Parks a detailed income and expense statement pertaining to operations under this License, signed and verified by an officer of Licensee. The reports referenced in the preceding sentence shall be in a format approved by Parks.

**4.7 (a)** Licensee, during the Term of this License, shall maintain, and shall cause any sub-licensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is

not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Upon request, Licensee shall provide to Parks any contracts, information, or documentation related to Licensee's Special Events. Licensee shall also establish a dedicated bank account for all deposits related to this Concession's generated revenue. All accounting and internal control related records shall be maintained for a minimum of ten (10) years after the date of creation of the record. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements.

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

(c) The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks and/or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of Gross Receipts payments during a period with missing or lost records, Parks may, at its sole discretion, use the highest grossing month over the past five (5) years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior year's month is the same month for which records are missing. For example, if April 2007's Gross Receipts are missing and the highest April Gross Receipts occurred in April 2004, then April 2007's "revised" Gross Receipts shall be calculated using April 2004's figures multiplied by the applicable CPI increases during that period. Licensee shall pay any assessment based upon such reasonable projections by Parks or the Comptroller within fifteen (15)

days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

**4.8** In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sub-licensees, or subcontractors have breached any of the provisions contained in this Article 4, Licensee may be subject to a charge of five hundred dollars (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

**4.9** License fees shall be made payable to the City of New York Department of Parks & Recreation and delivered or mailed in time to arrive by the due date at the following address:

City of New York Department of Parks & Recreation  
Revenue Division  
The Arsenal - Room 407  
830 Fifth Avenue  
New York, NY 10065

## **5. RIGHT TO AUDIT**

**5.1** Parks, the Comptroller and other duly authorized representatives of the City shall have the right to examine or audit the records, books of account and data of the Licensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location fifty (50) miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

**5.2** The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License.

**5.3** 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.

## **6. CAPITAL IMPROVEMENTS**

**6.1 (a)** Licensee shall expend or cause to be expended during the Term of this License a minimum of five hundred thousand dollars (\$500,000.00) for Capital Improvements as defined in



Section 2.1(b) herein. The architectural and design fees necessary to implement the Capital Improvements shall be included in the foregoing amount, but not the Design Review Fee referenced in Section 6.2 herein. Such Capital Improvements shall include, but are not limited to, the items listed in the Schedule of Capital Improvements attached hereto as **Exhibit D**. Licensee shall perform and complete all such Capital Improvements in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld. All Additional Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this Article 6 shall become the property of Parks upon installation, at Parks' option.

(b) Licensee must provide Americans with Disabilities Act ("ADA") accessibility throughout the Licensed Premises, including, but not limited to, installing ADA accessible counters in the food service facility area, installing ramps, as needed, and providing ADA signage. Licensee shall comply with all City, State, and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required.

(c) The Licensed Premises is located within the 100-year flood zone as defined by the Federal Emergency Management Administration ("FEMA"). Accordingly, Licensee shall, at a minimum, comply with the updated building codes to strengthen requirements for new and substantially improved buildings pursuant to Department of City Planning's comprehensive analysis of retrofitting buildings in floodplain and NYC Building Code and any other applicable City, State or Federal laws, rules, regulations, or codes.

(d) Licensee is prohibited from installing any permanent structure and/or fixed equipment at the parking lot east and portion of the seating area north of the Premises (exact area designated on **Exhibit A**), which are under the jurisdiction of DOT.

**6.2 (a)** At Parks' discretion, Licensee may be required to provide a construction security deposit, in an amount and format approved by Parks, to ensure that all capital work is completed. If required, this security deposit, preferably in the form of a letter of credit, must be in place before any capital work commences.

(b) Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of five thousand dollars (\$5,000.00) representing one percent (1%) of the cost of the minimum guaranteed Capital Improvements described in Section 6.1 above, as a fee for design review by Parks personnel (the "Design Review Fee").

(c) To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred

percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a "Capital Improvement Project" shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 6.2(c); (i) Licensee guarantees payment in accordance with the provisions of **Exhibit G**, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of moneys due to all persons furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project.

**6.3** The total cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in **Exhibit D** shall be included in the total cost in addition to architectural/engineering fees incurred by the Licensee. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon his request. Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 6.1, including any amount needed above any estimated cost shown. If Licensee performs all Capital Improvements for less than the amount listed in Section 6.1, any excess monies shall be remitted to City as additional license fees with thirty (30) days following Commissioner's determination of Final Completion. If Licensee fails to expend the amount listed in Section 6.1 herein by the date of expiration or sooner termination of this License, the City may also require any unexpended monies to be remitted to the City as additional License fees.

**6.4** Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In such situations, the Licensee shall propose for the Commissioner's approval (which shall not be unreasonably withheld) a revised completion schedule and if approved, Licensee shall complete such Capital Improvements in accordance with such approved revised schedule. In the event Licensee fails to finally complete a particular improvement by the date specified for completion in **Exhibit D**, Licensee may be required to pay the City liquidated damages of one hundred dollars (\$100.00) per day until the outstanding improvement is completed, provided that such failure is not the result of delay by Parks or any City, State, or Federal permitting authority and provided further that Parks has given Licensee a notice to cure such failure to complete and Licensee has failed to cure within the period specified in such notice. In the event of any delay by Parks or any City, state, or federal permitting authority,

the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. Licensee's failure to comply with the schedule for Capital Improvements for a period of thirty (30) days following written notice shall constitute a default upon which Commissioner may terminate this License Agreement by giving thirty (30) days' written notice. In the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Licensed Premises, Parks and Licensee shall attempt in good faith to negotiate a mutually acceptable solution, provided that in no event shall Licensee expend or cause to be expended less than five hundred thousand dollars (\$500,000.00) for Capital Improvements.

**6.5** Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Buildings ("DOB"), the New York City Public Design Commission, and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a Registered Architect or Licensed Professional Engineer, who will oversee the entire construction project. Licensee shall submit the architect's or engineer's qualifications to Parks for prior written approval. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All necessary permits and approvals for capital work must be obtained from DOB, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, public assembly permit and letters of no objection, as needed. All designs, outdoor signage, capital work and construction will require prior written approval from Parks, the Public Design Commission of the City of New York, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to his satisfaction. The Commissioner's determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.

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

**6.7** For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses from Parks' Revenue Division prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks and a building permit issued by the DOB, insofar as it has jurisdiction over Capital Improvements.

Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, sign-offs, public assembly permits, Department of Health and Mental Hygiene (“DOHMH”) permits, fire department certificates and all other permits and approvals including, but not limited to, New York City Department of Environmental Protection (“DEP”), New York State Department of Environmental Conservation, New York State Historic Preservation Office, New York City Landmarks Preservation Commission and/or other government agency approvals and permits necessary for any alterations to the existing Premises. Licensee shall notify Commissioner of the specific date on which construction shall begin.

**6.8** Licensee shall perform all Capital Improvements in accordance with all Federal, State and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall, except as may be approved by Parks, be new free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain, in License's name, all manufacturer's warranties and guarantees for all such equipment and materials included in its Capital Improvements, as applicable. Licensee shall assign to the City all guarantees and other warranties with respect to any portion of the Licensee's Capital Improvements when and if, as set forth in this License Agreement, the City exercises its option to take title to such equipment and materials, as may be requested by the City from time to time. Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guarantees and warranties. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

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

**6.10** Unless otherwise provided, Licensee shall choose the means and methods of completing the Capital Improvements unless Commissioner reasonably determines that such means and methods constitute or create a hazard to the Capital Improvements or to persons or property or will not produce finished Capital Improvements.

**6.11** No temporary storage or other ancillary structures and staging areas may be erected and maintained without Parks' prior written approval.

**6.12** Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from Parks. Any attachments to the trees, such as lights, will not be permitted.

**6.13** During performance of the Capital Improvements and up to the date of Final Completion, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss, or injury. In the event of such damage, loss, or injury, Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

**6.14** Licensee shall provide written notice to Commissioner when it believes that the Capital Improvements are Substantially Completed. After receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection Commissioner and Licensee shall jointly develop a single final list of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all items on that list within a reasonable time as determined by the Commissioner.

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

**6.16** Licensee shall provide Parks with discharges for any and all liens which may be filed or levied against the Capital Improvements during construction of such improvements. Licensee shall use its best efforts to discharge such liens within thirty (30) business days of receipt of lien by Licensee.

**6.17** Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one (1) year period subsequent to the date of the Final Completion of such Capital Improvements. Failure to comply with this Section 6.17 shall constitute a default and may result in the termination of this License.

**6.18** Neither Parks, nor the City, nor the agencies, officers, agents, employees, or assigns thereof, shall be bound, precluded, or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent, or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms, unless such determination, decision, approval, order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 6.18 signed by the Commissioner or Commissioner's authorized representative.

**6.19** Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment accepted by Parks as Capital Improvements shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee, at the termination or expiration of this License, to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee.

**6.20** Prior to the commencement of any construction, Licensee shall have an asbestos inspection performed on the existing structures at the Licensed Premises to the extent required by DOB or other applicable authority. In the event that asbestos removal is deemed necessary, Licensee will remove the asbestos, at its sole cost and expense, according to City, State, and Federal regulations.

## **7. ALTERATIONS**

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

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

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

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

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

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

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

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

**8.2** City has title to all Fixed Equipment on the Premises as of the date of Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent the City chooses not to exercise such option, Licensee shall at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment, other than Fixed Equipment, and restore the Licensed Premises to the satisfaction of the Commissioner after the expiration or earlier termination of this License Agreement.

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

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

**8.5** Title to all Expendable Equipment obtained by Licensee (other than that applied toward Capital Improvements) shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

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

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

**8.8** Licensee shall install Energy Star approved or other similarly efficient appliances and equipment.

## **9. UTILITIES**

**9.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures utility usage at the Licensed Premises and an account with the appropriate service providers. Licensee will be required to pay

for any and all utility costs connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, electricity as well as paying all water and sewer charges that DEP assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

## **10. OPERATIONS**

**10.1 (a)** Licensee, at its sole cost and expense, shall renovate, operate and maintain the Licensed Premises as high-quality restaurant for the use and enjoyment of the general public and in such manner as the Commissioner shall prescribe and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate when the park in which the Licensed Premises is located is open. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks' prior written approval. All services, menu items and merchandise and all rates, fees and prices to be charged by Licensee must also be approved in advance in writing by Parks. Annexed hereto as **Exhibit C** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the request is granted by the Commissioner, Licensee will continue to be responsible for all other obligations under this License Agreement, including the payment of all License fees.

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

**(c)** Licensee shall operate, renovate, and maintain the restaurant at the Licensed Premises at a high standard of quality.

**(d)** In operating the restaurant, Licensee shall maintain adequate inventory to assure a constant supply of food and beverages.

**(e)** Any staff assigned by Licensee to sell food and beverages to the public at the Licensed Premises must possess all required Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Licensee may only operate the Licensed Premises if it has obtained the appropriate valid permits and authorizations required by DOHMH. At all times that any of the food service operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler's license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise.

**(f)** The selling and/or advertisement of cigarettes, cigars, any other tobacco products or electronic cigarettes or non-tobacco smoking products at the Licensed Premises is strictly prohibited. Licensee shall adhere to and enforce this policy.

**(g)** Licensee may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, and food service facility equipment at the Licensed Premises are subject to Parks' prior written approval. Licensee must ensure free and open public access to any outdoor seating areas, provided however that access to



any outdoor seating area where alcoholic beverages are served may be restricted to comply with Section 10.8 of this License Agreement and the requirements of the New York State Liquor Authority or other agency having jurisdiction.

(h) Licensee may sell merchandise at the Licensed Premises. All merchandise, supplies, and equipment to be sold at the Licensed Premises and the proposed prices of those items are subject to Parks' prior written approval. With respect to the sale of merchandise at the Licensed Premises, Licensee recognizes that the City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If Licensee wants to sell merchandise that uses the City's trademarks, Licensee must purchase that merchandise from authorized licensees of the City. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products or non-park-related events. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of this License Agreement and forfeiture of the Security Deposit.

**10.2** Licensee shall, at its sole cost and expense, print, frame and prominently display in a place and manner designated by Commissioner, the approved schedule of operating days and hours and rates, fees and prices. Annexed hereto as **Exhibit C** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder.

**10.3 (a)** Under no circumstances may the Licensee sell or cause to be sold on or about the Licensed Premises cigarettes, cigars, other tobacco products, electronic cigarettes or non –tobacco smoking products. No signs or any other kind of advertising for tobacco products, non – tobacco smoking products or electronic cigarettes shall be permitted at the Licensed Premises. In connection with the Licensed Premises, the Licensee shall not accept sponsorships of any kind on behalf of any kind of tobacco products, non – tobacco smoking products or electronic cigarettes.

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

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

(d) Licensee is prohibited from selling any beverages in glass bottles for consumption outside of the restaurant, such as the outdoor seating area. All beverages for consumption outside of such areas shall be in non-glass, shatterproof containers.

(e) Licensee shall adhere to and enforce the prohibitions contained in this Section 10.3.

**10.4** Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the renovation, operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law

and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations. However, if in such situation, Licensee nonetheless chooses not to conduct such operations in temporary structures, then such operations shall not take place unless and until Licensee has obtained the necessary Certificate(s) of Occupancy, if required, or "Letter(s) of No Objection." Nothing in this section shall limit Licensee's obligation to pay the fees due under this License Agreement. Licensee is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures.

**10.5** An officer or member of the Licensee shall personally operate this License or employ an operations manager at the Licensed Premises. A member of the Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify the Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour pager or cellular telephone number through which Parks may contact the manager or officer in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor, or sub-licensee whenever requested by Commissioner.

**10.6** Licensee shall provide equipment which will provide security for all monies received. Licensee shall provide for the transfer of all monies collected to Licensee's banking institution. Licensee shall bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

**10.7** Licensee, at its sole cost and expense, shall provide, hire, train, supervise and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

- (a) collecting and safeguarding all monies generated under this License;
- (b) maintaining the Licensed Premises; and
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

**10.8** Alcoholic beverages may be served by Licensee to complement the food service at the Licensed Premises, provided that Licensee obtains, at its sole expense, the appropriate permits(s) and license(s) applicable to the sale or service of alcoholic beverages from the State Liquor Authority and all other agencies having jurisdiction. Alcoholic beverages may only be served in

the immediate vicinity of the Licensed Premises and/or in a cordoned-off area if exterior seating is proposed and must be consumed on the Licensed Premises within designated areas. All efforts must be made by Licensee to keep alcohol consumption discreet.

**10.9** Pursuant to a plan approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises year round and shall provide a twenty-four (24) hour-a-day security system at the Licensed Premises. Licensee shall secure the Licensed Premises and any equipment every evening.

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

**10.11** Licensee shall promptly notify Commissioner of any unusual conditions that may develop in the course of the operation of this License such as, but not limited to, fire, flood, casualty, and substantial damage of any character.

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

**10.13 (a)** Licensee may establish an advertising and promotion program, subject to Parks prior written approval. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except advertising matter which contains tobacco, non-tobacco smoking product, electronic cigarette or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11.. Licensee may release news items to the media as it sees fit. If the Commissioner in his discretion, however, finds any advertising or other releases to be unacceptable, then Licensee shall cease or alter such advertisements or releases as directed by the Commissioner..

**(b)** Licensee shall require in event agreements with third parties that all advertising by third parties holding events at the Licensed Premises must be approved in advance in writing by Parks and shall be responsible for assuring such compliance. Any failure to submit such advertising to Parks for pre-approval at least fourteen (14) days in advance of such event may, in addition to other rights and remedies set forth in this agreement, result in cancellation of the event.

**10.14** The design, placement and content of all signage, including signage which includes Licensee's name, trade name(s) and/or logo(s), is subject to Parks' prior written approval. Signage shall also comply with ADA standards. Under no circumstances shall Licensee be permitted to

place advertisements on the exterior of the Licensed Premises. All advertising utilized at the Licensed Premises is subject to Parks' prior written approval. Licensee shall not advertise any product brands without Parks' prior written approval. Licensee is prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises without the prior written approval of Parks. The display or placement of advertising for tobacco products, non-tobacco smoking products, or electronic cigarette advertising shall not be permitted. The advertising of alcoholic beverages shall not be permitted but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

**10.15** Licensee shall, at its sole cost and expense, provide adequate directional signage to the Licensed Premises in order to direct patrons to the facilities and minimize motorized travel through residential neighborhoods in the vicinity of the Licensed Premises. The placement, design and content of all directional signage is subject to Parks' prior written approval, which shall not be unreasonably withheld, and should be in place by the date the facility opens to the public. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, Licensee shall be responsible for obtaining any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval.

**10.16** 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.

**10.17** Should Commissioner determine that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within the timeframe set forth in said notice, subject to unavoidable delays beyond the reasonable control of Licensee as determined by Commissioner, notwithstanding any other provisions herein, then Commissioner may terminate this License.

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

Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

**10.19** Licensee shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind or any substances or items prohibited in the standard policies of insurance companies in the State of New York.

**10.20** Licensee shall operate the Licensed Premises in accordance with all applicable Fire Department Codes.

**10.21** Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License. Based on their inspections, should the Licensee fail to provide the cleaning, maintenance, and operational services required by the License, Parks shall notify the Licensee in writing, and the Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Licensee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, require the Licensee to pay to Parks as liquidated damages Five Hundred (\$500.00) Dollars per day from the date of the notice, with respect to each violation of the License, until the shortcomings have been corrected. Liquidated damages, if not paid promptly, may be deducted from the Licensee's security deposit.

If an assessment is received for a violation, there is a process by which the assessment may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

1. Filing an Appeal

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

2. Adjudication of Appeal

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

appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks.

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

**10.22** Licensee recognizes that this License Agreement does not grant Licensee exclusive rights to sell in the park in which the Licensed Premises are located. Moreover, Parks may grant other licenses or permits to vendors to sell the same or similar items authorized under this License Agreement within the same park as that in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks, or disabled veteran vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages Licensee to report illegal vendors by calling 311.

**10.23** Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for operation of the concession granted hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks, which shall not be unreasonably withheld. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior written approval. Licensee shall store all outdoor equipment on a nightly basis and anytime its operations at the Licensed Premises are closed.

**10.24** Licensee shall be responsible for providing safe lighting throughout the Licensed Premises.

**10.25** There are a limited number of parking spaces available at the Licensed Premises for facility staff and patrons. The Licensee will be responsible for ensuring that the number, placement, and specifications of all accessible spaces complies with ADA guidelines as well as with all City, State, and Federal regulations, including striping and signage specifications.

**10.26** Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession granted hereby. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks. A copy of Licensee's staffing plan shall be provided by Licensee to Parks upon receipt of written notice to proceed.

**10.27** Licensee shall comply with all laws, rules, and regulations of appropriate agencies, including but not limited to DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcasting Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to Commissioner. Any musical programming or other types of entertainment are subject to Parks' prior written approval.

**10.28** Licensee shall provide reasonable means for measuring the satisfaction of its customers.

**10.29** 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**.

**10.30 (a)** *Deposits received during the Term for catering events to occur after the Termination Date.* Beginning in Year 5 of the Term, at the same time Licensee provides to Parks its monthly report of Gross Receipts as required by Section 4.5, or in the event of a proposed assignment of this License Agreement by Licensee at any time during the Term, then at the same time Licensee submits to Parks the proposed assignment documents in accordance with Article 14 of this License, Licensee shall provide to Parks a list of all events or reservations scheduled at the Licensed Premises for any date(s) after the Termination. Licensee shall provide Parks with the corresponding date of the event or reservation; the number of expected attendees; patron contact information; deposit amount; and the terms of any deposit. Licensee shall consult with all patrons seeking to schedule an event or reserve all or part of the Licensed Premises for any date(s) after the Termination Date.

(i) All patron monies or other security deposit accepted by Licensee, at any time during the Term, in return for Licensee scheduling events at or reserving all or part of the Licensed Premises for any date(s) after the Termination Date, shall be deposited in an account separate from Licensee's other revenues derived from operation of the Concession (the "Deposit Account").

(ii) If a patron who scheduled an event at or reserved all or part of the Licensed Premises for any date(s) after the Termination Date cancels the event or reservation and forfeits the monies or other security deposit, Licensee may retain such monies or other security deposits provided however, such monies or other security deposits must promptly be transferred from the Deposit Account into the account containing Licensee's other revenues derived from operation of the Concession.

(b) *Gift Cards.* Beginning in Year 5 of the Term, at the same time Licensee provides to Parks its monthly report of Gross Receipts as required by Section 4.5, or in the event of a proposed assignment of this License Agreement by Licensee at any time during the Term, then at the same time Licensee submits to Parks the proposed assignment documents in accordance with Article 14 of this License, Licensee shall provide to Parks a list of all unexpired, unused, or partially used gift cards, gift certificates, or other forms of credit usable for good or services sold or rendered by Licensee at the Licensed Premises that Licensee has issued during the Term. If so directed in writing by the Commissioner, Licensee shall provide to any successor concessionaire the list of outstanding credits, and (a) negotiate in good faith the transfer of such credits to the new concessionaire or (b) make best efforts to refund the owners of such credits.

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

**11.1 (a)** Licensee shall, at its sole cost and expense (or through arrangements with third parties), renovate, operate, and maintain the Licensed Premises in good and safe condition and in

accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. In addition, Licensee must keep all signs and structures on the Licensed Premises in good condition and free of graffiti.

**(b)** Licensee shall make all necessary repairs at the Licensed Premises at its sole cost and expense. This includes but is not limited to making the repairs necessary to protect the safety of all visitors to the Licensed Premises, including the clean-up and removal of all debris and abandoned equipment from the Licensed Premises.

**(c)** Licensee shall maintain or cause to be maintained the exterior public restrooms at the Licensed Premises; maintenance of public restrooms includes, but not limited to, performing regular and ongoing cleaning services, restocking supplies of paper goods as needed; removing blockages from toilets; and assign a designated employee with responsibility over public restroom maintenance. The designated employee must not handle food items or be involved with food preparation.

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

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

**11.4** Licensee shall be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish, and litter from the Licensed Premises and clean-up and removal of all waste, garbage, refuse, rubbish and litter generated by Licensee's operations within fifty (50) feet of the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles, approved by Parks, and have these receptacles emptied on a daily basis and removed by a private carter. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval. Licensee shall comply with all City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition throughout the Term.

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



jurisdiction over the Licensed Premises before any work is performed, and such work shall be of a quality which meets Parks' standards.

**11.6** At the expiration or sooner termination of this License, Licensee shall turn over the Licensed Premises and the Fixed and Additional Fixed Equipment to Parks in a well maintained state and in good repair, ordinary wear and tear excepted.

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

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

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

**11.10** Licensee shall make reasonable efforts to use "Green Seal" eco-friendly cleaning supplies and soaps and recycled paper products.

## **12. APPROVALS**

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

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

### **13. RESERVATION FOR SPECIAL EVENTS**

**13.1 (a)** For the purposes of this Article, the term “Parks’ Special Event(s)” shall mean any event at the Licensed Premises for which Parks has issued a Special Event Permit. Licensee shall cooperate with Parks in connection with Parks’ Special Events and unanticipated events and emergencies at the Licensed Premises. Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Article 13 shall in no way limit Parks’ right to sponsor or promote Parks’ Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks’ Special Event.

**(b)** Parks, acting on behalf of the City, reserves the right to host a number of annual events at the Licensed Premises, including benefits and other non-profit or public events. The dates of such events shall be mutually agreed upon by both parties and shall be reserved in writing not less than one (1) month in advance.

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

**14.1** Subject to the terms of this Article, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, ten percent (10%) or more of the shares of or interest in Licensee or consent, allow or permit any other person or party to use any part of the Licensed Premises, buildings, space or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named.

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment documents as provided herein. The Commissioner may request any additional information he deems necessary and Licensee shall promptly comply with such requests.

The term “assignment” shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten percent (10%) or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Article.

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

information as may be required by the City for such approval, including a statement prepared by a certified public accountant stating the financial net worth of the proposed assignee or sublicensee, a certification from the proposed assignee or sublicensee that its financial net worth is sufficient to comply with Licensee's obligations under this License Agreement, and a certification from the proposed assignee or sublicensee that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

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

**14.4** In addition to the foregoing requirements, Licensee shall immediately report to Parks any change of five percent (5%) or more of the shares of or interest in Licensee before such change takes place.

**14.5** In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the renovation, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance (applicable to the operations being sublicensed) required of Licensee under this License Agreement and indemnifying the City as set forth in Article 19 herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License Agreement.

## **15. PARKS CONSTRUCTION**

**15.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term, including but not limited to the Capital Projects described in Section 15.2 below. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least one (1) week notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises

for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises partially or entirely for the purposes provided for in this License because of such Parks' work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

**15.2** Licensee acknowledges that the City has planned multiple capital construction projects ("Capital Projects") in the vicinity of the Licensed Premises during the Term, including, but not limited to, the renovation of existing playground, known as the Battery Playscape, north of the Licensed Premises and the reconstruction of the entire length of the pedestrian promenade/wharf south and west of the Licensed Premises, which includes a portion of the Licensed Premises—known as The Battery Coastal Resilience, , which will impact the operation of the concession. Subject to Section 15.1 above, Licensee assumes the risk and sole cost and expense of conducting business at the Licensed Premises during any Capital Project.

## **16. COMPLIANCE WITH LAWS**

**16.1** Licensee shall comply and cause its employees and agents to comply with all laws, rules, regulations, and orders now or hereafter prescribed by Commissioner, and to comply with all laws, rules, regulations and orders of any City, State or Federal agency or governmental entity having jurisdiction over operations of the License and the Licensed Premises and/or Licensee's use and occupation thereof.

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

## **17. NON-DISCRIMINATION**

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

**17.2** All advertising for employment shall indicate that Licensee is an Equal Opportunity Employer.

## **18. NO WAIVER OF RIGHTS**

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

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

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

### **19.1 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 operations under this License.

C. 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.

D. The Licensee shall use the Premises in compliance with, and shall not cause or permit the 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 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 Premises. As used herein, "Hazardous Materials" means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

### **19.2 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. 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.

## **20. INSURANCE**

### **20.1 Licensee's Obligation to Insure**

A. From the date this License is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require higher liability limits, provided they are commercially reasonable if, in the opinion of the Commissioner, Licensee's operations warrant it.

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

### **20.2 Commercial General Liability Insurance**

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). Licensee shall maintain coverage for products/completed operations in the amount of One Million Dollars (\$1,000,000). 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 and CG 20 37, and the limits for the City shall be no lower than Licensee's. . "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 and CG 20 37.

### **20.3 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.

## **20.4 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.

## **20.5 Property Insurance**

A. The Licensee shall maintain comprehensive, broad-form property insurance (such as an “All Risk” policy) covering all buildings, structures, equipment and fixtures on the Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

B. This Section does not require coverage for damage caused by flooding.”

C. The limit of such property insurance shall be no less than the full Replacement Cost of all Concession Structures, including, without limitation, the costs of post-casualty debris removal and soft costs, to the extent that such costs can be covered by an “all risk” or “special perils form” insurance policy. If such insurance contains an aggregate limit, it shall apply separately to the Concession Structures.

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

## **20.6 Flood Insurance**

A. The Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building on the Licensed Premises. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the

NFIP for both the building and its contents. 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.

## **20.7 Hazardous Materials and Pollution Liability Insurance**

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

B. If required, the Contractors Pollution Liability Insurance shall each have a limit of at least One Million Dollars (\$1,000,000), and provide coverage for the Licensee as Named Insured or Additional Insured and the City, together with its officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Licensee's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

C. Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products, asbestos, lead, polychlorinated biphenyls (PCBs) or any other hazardous materials.

## **20.8 Liquor Law Liability Insurance**

In the event the Licensee or any sublicensee or contractor shall serve alcohol on the Premises, the Licensee shall carry or cause to be carried liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and name the City, together with its officials and employees, as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

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

A. Policies of insurance required under this Article shall be provided by companies that may lawfully issue such policy and have an A.M. Best rating of at least A- / "VII" or a Standard and Poor's rating of at least A, unless prior written approval is obtained from the Commissioner.

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



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

D. There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article 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 Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

F. All required policies, except for Workers’ Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that the issuing insurance company endeavor to provide the City with advance written notice in the event such policy is to expire or be cancelled or terminated for any reason, and to mail such notice to both the 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. Such notice is to be sent at least (30) days before the expiration, cancellation or termination date, except in cases of non-payment, where at least ten (10) days written notice would be provided.

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

## **20.10 Proof of Insurance**

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

B. For Workers’ Compensation, Employers 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 coverage.

C. For all insurance required under this Article other than Workers’ Compensation,

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

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

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

## **20.11 Miscellaneous**

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

B. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, and such insurance shall include 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. If the Commissioner authorizes a self-insured retention, the Licensee must allow the City to pay the self-insured retention upon the Licensee's failure to pay. If the City pays such self-insured retention, the City may deduct the self-insured retention from the Security Deposit.

D. Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, 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 or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured 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 Article, or to give the insurance carrier timely notice on behalf of the City, or to do anything else required by this Article shall constitute a material breach of this License. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

F. Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License, 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 Article, 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 Article (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 Article 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 Article.

## **21. WAIVER OF COMPENSATION**

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

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

## **22. INVESTIGATIONS**

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

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

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

**(A)** The Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or

license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

**(B)** If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to Section 22.1(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

**(d)** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22.1(d)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **24. WAIVER OF TRIAL BY JURY**

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

(b) 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.

## **25. CUMULATIVE REMEDIES - NO WAIVER**

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

## **26. EMPLOYEES**

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

## **27. INDEPENDENT STATUS OF LICENSEE**

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

## **28. CREDITOR-DEBTOR PROCEEDINGS**

**28.0** In the event any bankruptcy, insolvency, reorganization, or other creditor-debtor proceedings shall be instituted by or against the Licensee or its successors or assigns, or the guarantor, if any, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City for all periods prior to the institution of such proceedings and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

## **29. CONFLICT OF INTEREST**

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



### **30. PROCUREMENT OF AGREEMENT**

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

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

### **31. NO CLAIM AGAINST OFFICIALS, AGENTS OR EMPLOYEES**

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

### **32. ALL LEGAL PROVISIONS DEEMED INCLUDED**

**32.0** Each and every provision of law required to be inserted in this License shall be and is deemed inserted herein, whether or not actually inserted.

### **33. SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

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

### **34. JUDICIAL INTERPRETATION**

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

### **35. MODIFICATION OF AGREEMENT**

**35.0** This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

### **36. NOTICES**

**36.0** Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner.

### **37. LICENSEE ORGANIZATION, POWER AND AUTHORITY**

**37.0** Licensee and the individual executing this License Agreement on behalf of Licensee each represents and warrants that Licensee is a corporation duly organized, validly existing and in good standing under the laws of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

### **38. MISCELLANEOUS**

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

### **39. ENTIRE AGREEMENT**

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

### **40. COUNTERPARTS**

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

*(Remainder of Page Intentionally Left Blank)*

*[SIGNATURE PAGE TO FOLLOW]*

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

CITY OF NEW YORK DEPARTMENT OF  
PARKS & RECREATION

THE VIEW AT BATTERY PARK NYC,  
INC.

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

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

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

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

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

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

STATE OF NEW YORK     }  
  } ss:  
COUNTY OF NEW YORK }

On this \_\_ day of \_\_\_\_\_, 2020 before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

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Notary Public

STATE OF NEW YORK     }  
  } ss:  
COUNTY OF \_\_\_\_\_ }

On this \_\_ day of \_\_\_\_\_, 2020 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of The View at Battery Park NYC, Inc. and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

---

Notary Public

## **EXHIBIT A**

### **LICENSED PREMISES**

The exact Licensed Premises are subject to Parks' prior written approval.



**EXHIBIT B**

**MONTHLY REPORT OF GROSS RECEIPTS**

To be provided by Parks in the written Notice to Proceed

**EXHIBIT C**

**SCHEDULE OF APPROVED HOURS AND RATES, FEES AND PRICES**

**Hours of Operation**

May 1 – October 31,  
7 days a week from 11:30 AM – 9:00 PM

November 1 – April 30,  
Monday – Friday from 11:30 AM – 4:00 PM

**Hours of Operation for Exterior Public Restrooms**

Monday to Sunday, 9:00 AM to 8:00 PM or Sunset

## **MENU ITEMS & PRICES**

**Banquet/Catering Menu [See Attached]**

**Restaurant Menu [See Attached]**



# THE EXPERIENCE

## THE DAY

Wedding Party Suite Ready up to 3 Hours Prior to Guest Arrival

Invitation Prior to Ceremony [30 Minutes]

Ceremony [Length based on Officiant]

Cocktail Reception [1 Hour]

Dinner and Dancing [4 Hours]

Total Event Time without Ceremony | 5 Hours

Total Event with Ceremony | 6 Hours

## THE MENU

### Wedding Party Suite Menu:

Miniature Tea Sandwiches, Fresh Fruit & Clear Beverages

### Invitation Beverage Prior to Ceremony:

Still & Sparkling Water and Champagne

### Cocktail Hour:

8 Butler Passed Canapés & Hors D'oeuvres

Crudité & Cheese Display

Choice of a Pasta or Carving Station

1 Cocktail Station

### Dinner Menu:

Choice of Two Entrées & One Silent Vegan/Vegetarian Entrée

Wedding Cake by LuLu Cake Boutique

Butler Passed Desserts

Premium Open Bar Service with Dinner Wine Service

Toast

## PRICING

**Pricing is determined by your choice of month & day of the week**

Pricing Includes all Wedding Planning, Staffing, Setup, Breakdown, China, Glass, Silverware  
Tables, Linen, Chairs & Printed Menus

**Ceremony Fee** | \$500.00 to \$1500.00 depending of date & time of wedding

## COCKTAIL RECEPTION

### **PASSED CANAPÉS**

(Select 4)

#### **Pink Peppercorn-Seared Beef**

Onion Jam, Horseradish Cream

#### **Miniature New England Lobster Roll**

Old Bay Aioli

#### **Curried Chicken Salad**

Phyllo Cup, Micro Cilantro, Dried Cherries

#### **Grape Tomato & Mozzarella**

Balsamic Glaze, Basil Oil

#### **Shrimp Ceviche**

Peppers, Onions, Limes

#### **House-Made Potato Chips**

Herb & Cheese Dip

#### **Peppercorn-Seared Tuna**

Wonton Chip, Wasabi Aioli

#### **Watermelon Salad** [Vegan]

Black Sesame Seeds, Jalapeño Vinaigrette

#### **Smoked Salmon Deviled Egg**

Mustard, Dill, Capers

#### **Avocado Toast** [Vegan]

Tomato Confit, Seven Grain Crostini

#### **Petit BLT**

Applewood-Smoked Bacon, Tomato Jam

Lettuce, Chipotle Aioli

#### **Brie & Guava Panna Cotta**

Walnut Powder

#### **Fig & Prosciutto Flatbread**

Toasted Almonds, Honey, Blue Cheese

#### **Tomato Gazpacho** [Vegan]

Jalapeño, Cilantro, Lime Juice

### **PASSED HORS D'OEUVRES**

(Select 4)

#### **Duck Pie**

Five-Spiced Butter Crust, Truffle Jus

#### **Miniature Lumb Crab Cake**

Chipotle Mayo

#### **Petit Beef Wellington**

Black Truffle Sauce

#### **Kale & Vegetable Dumplings** [Vegan]

Sesame-Ginger Ponzu

#### **Mini Cuban Sandwich**

Roasted Pork, Ham, Swiss, Pickle, Dijonnaise

#### **Blackened Chicken & Andouille Skewer**

Honey-Mango Sauce

#### **Franks En Croute**

Spicy Brown Mustard

#### **Miniature Meatball Parmesan**

San Marzano Sauce, Fresh Mozzarella

#### **Lobster Fritter**

Banana Pepper Aioli

#### **Short Rib Grilled Cheese**

Caramelized Onions, Tomato Cream

#### **Butternut Squash Shooter**

Raspberry Coulis, Pumpkin Seeds

#### **Roasted Root Vegetable Kabob** [Vegan]

Sea Salt, Crushed Hazelnuts

#### **Parmesan & Spinach-Stuffed Mushroom**

#### **Crème Brûlée Pork Belly**

Smoked Fennel Puree, Pickled Applesauce

## **CRUDITÉ & CHEESE DISPLAY**

### **Hand-Picked Domestic & International Cheeses to Include:**

Vermont Sharp Cheddar | French Brie | Farm House Goat | Smoked Gouda | Gorgonzola | Gruyère | Fontinella  
Served with Fresh & Dried Fruits | Nuts | Berries

### **Fresh Crisp Display of Raw Garden Vegetables:**

Baby Carrots | Broccoli Florettes | Cucumbers | Grape Tomatoes | Cauliflower Florettes  
Pencil Asparagus | Tri-Color Peppers  
Served with Assorted Hand-Blended Hummus | Baba Ganoush | French Onion Dip  
Steakhouse Bleu Cheese Dip

## **CARVING STATION**

**(Select Two)**

**Roasted Tenderloin of Beef** | Caramelized Onions | Horseradish Sauce

**Pepper-Crusted New York Strip** | Bordelaise Sauce

**Chimichurri-Roasted Pork Shoulder** | Cilantro-Jalapeño Vinaigrette

**Whole Roasted Suckling Pig** | Salsa Verde

**Brined & Roasted Maple Glazed Breast of Turkey** | Sage Pan Gravy, Cranberry Relish

**Roasted Side of Atlantic Salmon** | Creamy Dill Sauce

**Roasted Leg of Lamb** | Chermoula Sauce

## **PASTA STATION**

**Red Pepper Flakes | Grated Pecorino | Focaccia & Sliced Baguettes**

**(Select Two)**

### **Orecchiette alla Norma**

Roasted Eggplant | Chiles | Tomatoes | Ricotta Salata

### **Spaghetti alla Gricia**

Pancetta | Peas | Pecorino | Chiffonade of Basil

### **Bucatini Cacio e Pepe**

Black Pepper | Parmeggiano Reggiano

Add Shaved Truffle | \$7.00 per person

### **Greek-Inspired Rotolo**

Fresh Pasta Sheets | Spinach | Feta | Olives | Béchamel

### **Gnocchi Bolognese**

Braised Short Rib | Tomatoes | Herb Ricotta

## **COCKTAIL STATIONS**

Please Select One Station to be Served at the Cocktail Reception

To add an Additional Station or Late Night Station | Pricing is \$18.00 per guest, per station

### **STREETS OF NEW YORK**

Chicken & Lemongrass Pot Stickers | Mandoo Glaze | Sesame Scallion Oil  
Coney Island All Beef Hot Dogs | Mustard | Sauerkraut  
Jamaican Beef Patties | Jerk Chicken Boneless Thighs  
Beef Souvlaki | Dill Garlic Aioli | Pita Bread  
New York Pretzel | Spicy Brown Mustard

### **WHEN HARRY MET SALLY**

Carved Pastrami and Roasted Turkey Breast  
Jewish Marble Rye | Spicy Brown Mustard | Cole Slaw  
Dill Pickles | Bite Sized Knishes | Mini Stuffed Cabbages

### **TIMELESS CURRY**

The History of Curry Dishes that have been a long tradition of India House  
This station is served with classical accompaniments of:  
Chopped Peanuts | Golden Raisins | Mango Chutney | Shredded Coconut | Basmati Rice

Please Select 2

Breast of Chicken with Madras Curry Sauce  
Malaysian Boneless Lamb with Red Curry Sauce  
Salmon Curry with Thai Green Curry Sauce

### **MEDITERRANEAN**

Marinated-Grilled Chicken, Beef, & Salmon Kabobs  
Served with Creamy Tzatziki Sauce & Pita

Falafel Salad

Green Leaf Lettuce | Radicchio | Cucumber | Cherry Tomatoes | Cilantro | Mint  
Served with a Spicy Yogurt Sauce

Platters of Marinated Olives | Feta Cheese | Stuffed Grape Leaves | Artichokes Hearts | Roasted Baby Carrots  
Roasted Tri-Color Peppers | Grilled Fennel | Marinated Mushrooms

### **SOUTH PACIFIC PIG ROAST**

Whole-Roasted Suckling Pig | Hawaiian Coleslaw | South Pacific Coconut Rice  
Grilled Sweet and Sour Shrimp | Grilled Pineapple Skewers | Tropical Fruit Salad

**Minimum 75 Guests**

### **NANTUCKET**

Miniature New England Lobster Roll | Lemon Aioli | Atlantic Cod Cakes | Tartar Sauce  
Steak Bomb Sliders | Mushrooms, Peppers, Onions, Provolone Fondue  
Shrimp Cocktail | House-Made Cocktail Sauce, Lemon Wedges  
Boston Baked Beans | Rosemary Garlic Potatoes

## **FAR EAST**

Chicken Lemongrass Potstickers | Mandoo Glaze  
Firecracker Shrimp | Sweet Chili Dip | Mongolian Beef Satay | Ponzu Sauce  
Coconut Curry Chicken Skewers | Peanut Sauce | Vegetable Dumplings | Sesame Scallion Soy Sauce

## **SOUTHERN BELL**

Buttermilk Fried Chicken Sliders | Ranch Sauce  
Pulled Pork Sliders | Southern Slaw | Andouille Mac & Cheese Balls  
Boneless Chicken BBQ Bites | Pickled Onion Aioli  
Skillet Corn Bread | Cheddar Chive Biscuits | Jalapeño Honey Butter

## **DUCK STATION**

Five-Spiced Duck | Spring Onions | Hoisin Sauce | Scallion Pancakes  
Pan-Seared Vegetable Dumplings | Sweet Chili Glaze | Chicken & Lemongrass Pot Stickers | Mandoo Glaze  
Vegetable Fried Rice | Soy Sauce | Wonton Shards

## **PREMIUM STATIONS**

**Pricing is per guest**

### **JUMBO POACHED SHRIMP COCKTAIL**

Served with Traditional Cocktail Sauce | Cajun Remoulade | Lemon Wedges  
**\$20.00**

### **NEW YORK FISHERY**

Little Neck Clams | Market Fresh Oysters | Jumbo Gulf Shrimp  
Traditional Cocktail Sauce | Cajun Remoulade | Mignonette  
**\$25.00 | \$32.00 to include Lobster Tails**

### **RHODE ISLAND FISHERY**

#### **CHILLED**

Little Neck Clams | Market Fresh Oysters | Jumbo Gulf Shrimp  
Traditional Cocktail Sauce | Cajun Remoulade | Mignonette

#### **HOT**

Prince Edward Island Mussels | White Wine, Tomato Concasse, Garlic, Shallots  
Grilled Garlic Butter Baguettes  
Clams Casino | Miniature New England Cod Cakes, House-Made Tartar Sauce  
Nantucket Seafood Chowder | Maine Lobster & Corn Fritters  
**\$30.00**

### **THE BIG EASY**

Seafood Gumbo  
Pickled Okra | Red Beans and Rice  
Mini Muffuletta Sandwich | Crawfish Beignets with Sweet Corn, Tri Color Peppers & Creole Remoulade  
Cajun Fried Oysters Po' Boy with Shredded Cabbage, Tomatoes, Smoked Paprika Aioli  
Blackened Chicken and Andouille Skewers with Honey Mango Aioli  
Louisiana Crawfish Boil with Corn on the Cobb, Baby New Potatoes & Pearl Onions  
**\$20.00**

# SEATED DINNER MENU

To add an additional course please inquire for upgrade pricing

## FIRST COURSE

(Select One)

### **Peppercorn-Crusted Beef Carpaccio**

Frisée | Shaved Parmesan | Truffle Vinaigrette

### **Arcadia Mix Salad**

Glazed Pecans | Port Wine-Poached Pears | Crumbled Blue Cheese | Mustard Vinaigrette

### **Crispy Pork Belly Salad**

Blood Orange Marmalade | Arugula | Shaved Fennel Salad

### **Panzanella Caprese Salad**

Heirloom Tomatoes | Fresh Mozzarella | Country Bread | Basil

### **Caesar Salad**

Romaine Heart | House-Made Caesar Dressing | Brioche Croutons | Parmesan Crisp

### **Mediterranean Vegetable Tart**

Feta Cheese | Roasted Pepper Coulis | Herb Salad

### **Tuna Tartar | Additional \$5.00**

Avocado | Sesame Seeds | Wonton Chips | Wasabi Aioli

### **Ancient Grain Salad**

Tabbouleh | Quinoa | Faro | Cucumbers | Tomatoes | Avocado | White Balsamic  
Add Burrata | \$3.00 per person

### **Truffled Wild Mushroom Risotto**

Shaved Parmesan Cheese | Green Peas | Black Truffle Oil

### **Pan-Seared Lobster Cake | Additional \$7.00**

Celery Root P | Lemon-Mustard Emulsion | Charred Corn | Vine-Ripened Tomatoes

### **Grilled Jumbo Prawns | Additional \$7.00**

Squid Ink Risotto | Roasted Baby Carrots | English Peas | Lemon Garlic Butter

### **Roasted Beet & Citrus Salad**

Crumbled Goat Cheese | Orange Supreme | Roasted Pistachio | Sherry Vinaigrette

### **Seared Scallop En Croute | Additional \$7.00**

Serrano Ham | Saffron Lobster Butter | Pickled Shallots | Charred Baby Corn | Chive

### **Butternut Squash Ravioli**

Sage Brown Butter | Pomegranate | Pumpkin Seeds

### **Seared Hudson Valley Foie Gras | Additional \$10.00**

Sunny Side Quail Egg | Cherries | Brioche Toast

## CHOICE OF ENTRÉE

(Select Two)

Additional Entrée can be added at \$15.00 per person

### **Duo of Duck**

Confit Duck Leg & Five-Spiced Duck Breast  
Cherry Jus

### **Roasted Squab Grand Mère**

Double-Smoked Bacon Lardons  
Sauce Chasseur  
\$10.00 Additional per person

### **Coq Au Vin**

Carrots | Bacon | Mushrooms | Onions  
Red Wine Demi

### **Parmesan-Crusted Chicken**

Rosemary-Roasted Garlic Jus

### **Short Rib of Beef**

Sauce Au Poivre

### **Short Rib of Beef**

Potato Nido | Carrot | Gruyère Cheese Timbal  
Bone Marrow Espuma  
\$8.00 Additional per person

### **Tenderloin of Beef**

Black Truffle Sauce

### **Roast New York Sirloin**

Cabernet Demi-Glace

### **Beef in a Wellington**

Filet Mignon | Foie Gras | Mushroom Duxelles  
Cabernet Demi-Glace  
\$10.00 Additional per person

### **Pan-Seared Veal Chop**

Vinegar Peppers | Caramelized Onions  
\$12.00 Additional per person

### **Braised Pork or Lamb Shank**

Natural Jus

### **Carolina-Rubbed Pork Chop**

Bacon-Mushroom Velouté

### **Pistachio-Crusted Rack of Lamb**

Rosemary-Garlic Mustard Sauce

### **Pan-Roasted Tilefish**

Tomato Saffron | Caper Sauce

### **Crispy Branzino Fillet**

Salmoriglio Sauce

### **Chilean Sea Bass**

Mustard Panko Crumbs | White Wine Butter Sauce  
\$15.00 Additional per person

### **Pan-Seared Sea Scallop**

Toasted Sesame Beurre Blanc  
\$10.00 Additional per person

### **Oven-Roasted Salmon**

Roasted Tomato-Chive Sauce

### **Herb-Seared Cod**

Tomato Fennel Broth

### **Grilled Swordfish**

Pineapple Salsa

### **Miso-Marinated Mahi Mahi**

Edamame Dumplings | Gochujang Broth

### **Chorizo-Crusted Halibut**

Champagne Broth

\$15.00 Additional per person

### **Butter-Poached Lobster, Crab & Shrimp**

Squid Ink Risotto | Basil Corn Beurre Blanc  
\$10.00 Additional per person

### **Seafood-Stuffed Flounder**

Lemon Caviar Butter | Fried Capers

### **Sesame-Seared Ahi Tuna**

Avocado | Scallion | Edamame

### **Blackened Catfish Fillet**

Jalapeño Cheddar Cheese Cornbread Crumbs  
Cilantro-Lime Butter

### **Jamaican Style Red Snapper**

Escovitch Sauce

## ENTRÉE ACCOMPANIMENTS

Chef's Selection of Seasonal Vegetables and Starch

## **VEGAN | VEGETARIAN ENTRÉES**

(Select One as a Silent Option)

### **Moroccan Spiced Chickpea Cakes**

Seasonal Vegetables | Red Pepper-Curry | Date-Apricot Chutney | Toasted Almonds

### **Braised Carrots**

Wild Mushrooms | Porcini Powder | Red Wine | San Marzano Sauce

### **Pan-Fried Polenta**

Wild Mushroom Ragout

### **Vegan Thai Green Vegetable Curry**

Chopped Peanuts | Golden Raisins | Mango Chutney | Shredded Coconut | Basmati Rice

### **Truffled Wild Mushroom Risotto**

Shaved Parmesan Cheese | Green Peas | Black Truffle Oil

### **Butternut Squash Ravioli**

Brown Butter | Pumpkin Seeds | Sage | Pomegranate

## **BUTLER PASSED DESSERTS**

(Select Three)

### **Miniature Churros & Mexican Hot Chocolate**

#### **Coconut Rice Pudding**

Toasted Coconuts | Passion Fruit Coulis

#### **Banana Boston Cream Tarts**

#### **Frozen “Hot” Chocolate**

Chocolate Shavings | Whipped Cream

#### **Miniature White Russian**

Red Velvet Cookie with White Chocolate Chips

### **Cheesecake Drops**

White Chocolate | Dark Chocolate

### **Strawberry Short Cake**

Strawberry Whipped Cream

### **Warm Chocolate Chip Cookie**

Iced Cold Milk

### **Chocolate Covered Strawberries**

### **S’mores Trifle**

Graham Crackers | Chocolate Ganache  
Marshmallow



## **THE WEDDING CAKE BY.....**



### **About Lulu**

We don't just bake cakes.

We create them. We pour our hearts into them. We whip them into sheer perfection. Using luxurious ingredients like Valrhona chocolate, farm-fresh butter and cream, perfectly ripe fruit from local farms, and fragrant spices, our artisans masterfully blend flavors to create tastes and textures that defy description.

And that's just the part you don't see.

We're equally obsessed with how our creations look. From plotting every polka dot and hand-painted flourish to coaxing each sugar petal into exquisite reality—every Lulu masterpiece is a tribute to more than a decade of our now-famous craftsmanship (not to mention obsession).

In fact, with as much care as we put into our cakes, it's a wonder we're able to hand them over when they're finished.

## **WEDDING CAKE OPTION**



**“A Piece of Perfection!” – Modern Bride Magazine**  
**Additional \$12.00 Per Person**

### **About Ron Ben-Israel Cakes:**

Ron Ben-Israel Cakes is one of the most established couture cake studios in the world, known for innovative and impeccable creations. The collections of trendsetting cakes, produced in a bakery/atelier in the famous Garment District of New York City, have been featured in countless publications, books, TV shows and films. In 2011 the bakery received additional acclaim when Ron became the host and judge of the hit show Sweet Genius, which after three seasons has been syndicated around the world. Ron also is the only Guest Master Pastry Chef at the renowned International Culinary Center in New York City and is a proud member of City Harvest's Food Council and Advisory Board

All couples will be offered a one-on-one appointment at the RBI Cakes Studio, which includes a design consultation and tasting. They strongly recommend meeting 3-4 months in advance of your wedding but all consultation appointments must be held at minimum one month in advance of your wedding so they can ensure all your expectations are met.

## **THE BAR**

### **PREMIUM OPEN BAR**

Ketel One, Russian Standard, Tito's, Bacardi, Captain Morgan, Tanqueray, Exocitco Tequila, Beefeaters  
Dewars, Bulleit Bourbon, Redemption Rye, Jack Daniels, Sweet & Dry Vermouth, Seagram's VO  
House Red & White Wine, Sparkling French Wine  
Assorted Imported and Domestic Beer, Soft Drinks and Juices  
**Included in Menu**

### **UPGRADED OPEN BAR**

Grey Goose, Ketel One, Russian Standard, Bacardi, Captain Morgan, Bombay Sapphire, Botanist Gin  
Tanqueray, Exocitco Tequila, Patron Silver, Don Julio Reposado Dewar's, JW Black, Bulleit Bourbon  
Makers Mark, Knob Creek Jack Daniels, Seagram's VO, Sweet and Dry Vermouth  
House Red & White Wine Sparkling French Wine  
Assorted Imported and Domestic Beer, Soft Drinks and Juices  
**\$20.00 Additional Per Person**

### **EXCLUSIVE OPEN BAR**

Grey Goose, Mamont Vodka, Belvedere Citrus, Breckenridge Spice Rum, Privateer Rum Silver Reserve  
Bombay Sapphire, Hendriks, Empress 1908 Gin Original Indigo, Don Julio 1942  
Deleon Silver, Casamigos Reposado, Bulleit Bourbon, Bulleit Rye, Johnny Walker Blue  
Isle Of Skye Scotch 8 Year

#### **Craft Whiskeys & Bourbons**

(Select Three)

Jack Daniel's Whiskey Single Barrel Select New Label, Blantons Bourbons Single Barrel, The Yamazaki  
Whisky Single Malt 12 Year Hudson Rye Whiskey Maple Cask, Monkey Shoulder Scotch Whisky  
Bulleit Rye, Woodford Reserve Rye Whiskey, Knob Creek Bourbon Small Batch

#### **Craft Beers**

Avery Belgian Style White Ale, Left Hand Nitro, Allagash Saison, Histocho Nest, Lagunitas IPA, Duval

#### **Wine & Champagne**

Hand-Picked Red & White Wine | Louis de Sacy Champagne Brut  
**\$45.00 Additional Per Person**



#### **MASTERPIECE CATERERS**

**1 Hanover Square | New York, NY | 10004**

**1-212-269-2323 Option 2 | [info@MasterpieceCaterers.com](mailto:info@MasterpieceCaterers.com) | [www.MasterpieceCaterers.com](http://www.MasterpieceCaterers.com)**

## S T A R T E R S

<b>Spicy Corn Soup</b>	8
Fried Jalapeño	
<b>Soup of the Day</b>	
<b>Hummus and Pita</b>	13
Artichokes   Olives   Smoked Paprika Oil	
<b>Bavarian Soft Pretzel Sticks</b>	9
Sriracha Honey Mustard	
Jalapeño Cream Cheese	
<b>Margherita Flatbread</b>	12
Fresh Mozzarella   San Marzano Sauce	
Torn Basil	
<b>Prosciutto Arugula Flatbread</b>	14
Roasted Garlic Cream	
<b>Tuna Tartare</b>	21
Avocado   Crispy Wonton	
Sesame Lime Vinaigrette   Wasabi Aioli	
<b>Shishito Peppers</b>	11
Sea Salt   Toasted Almonds	

<b>Spicy Lump Crab-cakes</b>	19
Shaved Fennel Salad   Chipotle Aioli	
<b>Shrimp Cocktail</b>	19
Angry Cocktail Sauce   Cajun Remoulade	
Lemon Honey Cream   Parsley Oil	

<b>BBQ Chicken Tacos</b>	17
Sweet Corn Relish   Avocado Mousse	
Pickled Onions   Sweet and Tangy Sauce	

<b>Kung Pao Chicken Potsticker</b>	12
Blood Orange Ponzu Sauce   Scallion	

<b>Beef Brisket Tacos</b>	18
Pickled Radish   Frizzled Shallots	
Avocado   Cilantro	

<b>Nonna's Meatballs</b>	11   17
Herbed Ricotta   San Marzano Sauce	

<b>Korean Nachos</b>	16
Bulgogi Beef   Pickled Red Cabbage	
Gochujang Cheese Sauce   Lime Crema	

## S A L A D S

<b>Cobb Salad</b>	16
Crispy Pancetta   Hard Boiled Egg	
Crumbled Blue Cheese   Tomatoes	
Avocado   Creamy Herb Dressing	

<b>Caesar Salad</b>	14
Baby Lola Rosa   Romaine	
Fried Anchovies   Brioche Croutons	

<b>Baby Arugula Salad</b>	15
Shaved Fennel   Crumbled Goat Cheese	
Cannellini Beans   Crushed Amaretti Cookies	
White Balsamic Vinaigrette	

<b>Avocado Edamame Salad</b>	14
Roasted Corn   Black Beans   Red Peppers	
Whole Grain Mustard Dressing	

<b>Seared Tuna Niçoise</b>	22
Fennel Seared Tuna   Hard Boiled Egg	
Haricot Verts   Olives   New Potatoes	
Tomatoes	

<b>Ancient Grain</b>	18
Tricolor Quinoa   Bulgur   Faro   Tomatoes	
Cucumbers   Avocado   Burrata	
Champagne Vinaigrette	

## Add to any Salad

<b>Chicken</b>	5
<b>Steak</b>	10
<b>Shrimp</b>	8
<b>Salmon</b>	10

Please let your server know if you have any dietary restrictions or special requests  
Inquire with your server and ask about our daily specials  
Executive Chef Michael Ucciferri

## HANDHELDS

Served with Choice of House-made Chips, Side Salad or Old Bay Potatoes

**Chicken Panini** 16  
Creamy Brie | Roasted Apples  
Dijonnaise | Toasted Oat Ciabatta

**Grilled Vegetable *Panini*** 13  
Seasonal Grilled Vegetables  
Goat Cheese | Basil Pesto  
Herbed Focaccia

**Porchetta Sandwich** 17  
Slow Roasted Pork | Garlicky Broccolini  
Provolone Fondue

**Sky 55 Burger** 18  
All Beef Patty | Braised Pork Belly  
White Cheddar | Avocado  
Crispy Shallots | Elevated Aioli  
Sesame Brioche

**Turkey Burger** 13  
Olive Tapenade | Creamy Feta Tzatziki  
Red Onions | English Muffin

**Turkey Club Sandwich** 12  
Applewood Smoked Bacon | Tomatoes  
Baby Greens | Cranberry Aioli

**Short Rib Grilled Cheese** 17  
Braised Short Rib | Cheddar and Swiss  
Caramelized Onions | Texas Toast

**Lobster Roll** 21  
Toasted Brioche | Fried Celery  
Roasted Garlic and Mustard Aioli

**Crab Cake Sandwich** 22  
Sliced Tomato | Lettuce | Chipotle Aioli  
Brioche Bun

## PASTA & ENTRÉE

**Bucatini** 13  
Cacio e Pepe

**Fettuccine** 18  
Sautéed Spinach | Roasted Butternut Squash  
Toasted Pine Nuts | Pecorino

**Pan Seared Salmon** 22  
Spring Pea Purée | Forbidden Risotto  
Carrots | Angry Dill Sauce

**Shrimp Scampi Pasta** 17  
White Wine | Lemon | Parsley  
Touch of Cream

**Grilled Flank Steak** 23  
Balsamic Glazed Onions | Roasted Herbed  
Potatoes | Spinach | House-made Steak Sauce

**Bone-in Chicken Parmesan** 21  
Fresh Mozzarella | Fried Basil  
San Marzano Sauce | Pasta | Fried Basil

Please let your server know if you have any dietary restrictions or special requests

Inquire with your server and ask about our daily specials

Executive Chef Michael Ucciferri

## Desserts

Cinnamon Sugar Churros 11  
Cranberry White Chocolate Sauce Passion Fruit Coulis

Chocolate Lava Cake  
Toasted Marshmallow | Graham Cracker  
Crumbs | Fresh Berry Purée

New York Cheesecake  
Honey Thyme Apples | Glazed Pecans | Caramel Sauce

Chefs Daily Selection of Ice Cream and Sorbet

## **EXHIBIT D**

### **SCHEDULE OF CAPITAL IMPROVEMENTS**

The total cost of Capital Improvements shall be a minimum of five hundred thousand dollars (\$500,000). All Capital Improvements are to be completed prior to the Expiration Date.

The list of required Capital Improvements is as follows:

- Improve the outdoor storage and trash area including new screening and landscaping
- Paint and repair fixtures and stalls of existing public restrooms throughout Term
- Provide seasonal landscaping within the Licensed Premises which compliments and is consistent with the surrounding park
- Repair and/or Replace Existing Refrigerated Garbage Shed, as needed
- Paint Exterior of buildings or structures within the Licensed Premises, as needed
- Replace Awnings and Signage, as needed
- Paint Interior of buildings or structures within the Licensed Premises, as needed
- Replace all light fixtures, as needed
- Upgrade all interior restrooms & exterior public restrooms, as needed
- Upgrade all necessary kitchen equipment, as needed
- Upgrade Atrium [Lounge/Dining Room], as needed
- Repair and Upgrade HVAC Units, as needed

Additionally, the Licensee will be responsible for supplying all Personal Equipment including, but not limited to, the furniture and equipment necessary for the successful operation of the concession.

## **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 PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

#### Enforcement and Penalties

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

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

#### More Generous Policies and Other Legal Requirements

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

## **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 \_\_\_\_\_

## **EXHIBIT G**

### **PAYMENT GUARANTEE**

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

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

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

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

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

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

(2) Materials, equipment, and supplies provided, whether incorporated into the Capital Improvement Project or not, when demands have been filed with the Licensee as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the Capital Improvement Project (hereinafter referred to as a "beneficiary") performed at the direction of the Licensee, the Contractor, or a Subcontractor of the Contractor; and

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

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

(B) Nothing in this Exhibit G shall prevent a beneficiary providing labor, services or material for the Capital Improvement Project from suing the person, firm or corporation for whom such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

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

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

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

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

subcontract; and copies of any correspondence between the beneficiary and the party liable for payment concerning such demand. If the party liable for payment is not the Licensee, the Licensee shall notify the party liable for payment that a demand has been made. The party liable for payment shall inform the Licensee of any defenses to the demand and shall forward to the Licensee any documents the Licensee requests concerning the demand.

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

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

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

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

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

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

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

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



# CONCESSION AGREEMENT RECOMMENDATION FOR AWARD MEMORANDUM COVER SHEET

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

<b>AGENCY:</b> <u>NYC Department of Transportation (DOT)</u> <b># VOTES required for proposed action =</b> <u>4</u> <input type="checkbox"/> <b>N/A</b>	<b>RECOMMENDED CONCESSIONAIRE</b> <b>Name:</b> <u>Friends of Bogardus Plaza, Inc. ("Concessionaire")</u> <b>Address:</b> <u>90 West Broadway #4, New York, NY 10007</u> Telephone # <u>917-751-7575</u> <input checked="" type="checkbox"/> EIN <input type="checkbox"/> SSN # <u>27-3300541</u>  <b>Not-for-Profit Organization</b> <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b> <b>Certified by DSBS as M/WBE</b> <input type="checkbox"/> <b>Yes</b> <input checked="" type="checkbox"/> <b>No</b>	<b>CONCESSION TITLE/ DESCRIPTION:</b> <u>Concession to provide for the operation and management of a pedestrian plaza located at Hudson Street between Chambers Street and Reade Street, in the borough of Manhattan; and maintenance and/or repair of certain amenities installed within the pedestrian plaza</u>  <b>CONCESSION I.D.#</b> <u>2016Con2</u>
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**LOCATION OF CONCESSION SITE(S\*) Address:** The pedestrian plaza is located at Hudson Street between Chambers Street and Reade Street, in the borough of Manhattan ("Licensed Plaza") ☐ **N/A**

\*Attach additional sheet

**Borough:** Manhattan **C.B.:** 1 **Block #** N/A **Lot #** N/A

## SELECTION PROCEDURE (\*CCPO approval of CRFA required)

- ☐ Competitive Sealed Bids  
☐ Competitive Sealed Proposals\* (☐ FCRC approved Agency request to deviate from final recommendation of the Selection Committee on \_\_/\_\_/\_\_)  
☒ Different Selection Procedure: \* (☒ Sole Source Agreement ☐ Other \_\_\_\_\_ )  
 > FCRC approved different selection procedure on 4/14/2010.  
☐ Negotiated Acquisition\*

## CONCESSION AGREEMENT TERM

**Initial Term: From** Notice to Proceed (NTP) **To** Five (5) years from NTP

**Renewal Option(s) Term:** Up to four (4) one-year renewal options, exercisable at the sole discretion of DOT

**Total Potential Term:** 9 years

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

## ANNUAL REVENUE

(Check all that apply)

☐ Additional sheet (☐s) attached

☐ Annual Fee(s) \$ \_\_\_\_\_

☐ % Gross Receipts \_\_\_\_\_%

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

☒ **Other:** Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

## NOTIFICATION REQUIREMENTS

**Subject concession was awarded by CSB or CSP.**

☐ YES ☒ NO

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

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

If **NO**, check the applicable box below:

- ☒ The Agency certifies that each affected CB/BP received written notice by 2/01/2010, which was at least 40 days in advance of the FCRC meeting on 4/14/2010 at which the agency sought and received approval to use a different selection procedure.
- ☐ The Agency certifies that each affected CB/BP received written notice on   /  /  , at the time that a notice of intent to enter into negotiations was published for the subject concession, and provided a copy of such notification to the members of the Committee within five days on   /  /  .
- ☐ The Agency certifies that based on exigent circumstances the FCRC unanimously approved waiver of advance written notice to each affected CB/BP on   /  /  .

**Law Department approved concession agreement on** \_\_\_\_\_.

**Award is a major concession.**

☐ YES ☒ NO

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

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

**AUTHORIZED AGENCY STAFF**

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

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

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

Name \_\_\_\_\_ Title \_\_\_\_\_

Signature \_\_\_\_\_ Date   /  /  

**CERTIFICATE OF PROCEDURAL REQUISITES**

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

Signature \_\_\_\_\_ Date   /  /  

**City Chief Procurement Officer**

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

**SUMMARY OF PROPOSED CONCESSION USE (Attach Proposed Agreement)**

The New York City Department of Transportation ("DOT") intends to seek FCRC approval to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York ("Concession Rules"), to enter into License Agreement ("License") with the Friends of Bogardus Plaza, Inc. ("Concessionaire").

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

**A. SELECTION PROCEDURE**

☐ Sole Source

☒ Other *Describe:*

Concessionaire was selected through DOT's Plaza Program, a competitive application process authorized in Section 19-157 of the New York City Administrative Code and regulated by Section 4-16 of Title 34 of the Rules of the City of New York. To be eligible, applicants must operate within the City of New York and must be incorporated in New York State and must have a mission that serves or relates to the geographical areas of the proposed pedestrian plaza. Applicants are required to submit the following: completed application form, list of names and titles of the applicants' employees who work in community development, list of names and titles of members of the applicant's Board of Directors or similar governing members, financial information based on the applicant's operating budget, at least eight letters of support from community stakeholders, and three photographs of the site proposed to be a pedestrian plaza.

DOT reviews and evaluates the applications based on the following criteria: open space, community initiative, site context, organizational and maintenance capacity, and income eligibility.

Concessionaire submitted an application and supporting documentation for this proposed pedestrian plaza. No other organizations submitted an application for this same pedestrian plaza. DOT reviewed Concessionaire's submission, including whether the proposed pedestrian plaza and Concessionaire met the program criteria and determined that this criteria was met and it selected Concessionaire for the operation and management of this proposed pedestrian plaza.

**B. NEGOTIATIONS**

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

The License would permit the Concessionaire to provide for the operation and management of the pedestrian plaza located at Hudson Street between Chambers Street and Reade Street, in the borough of Manhattan (the "Licensed Plaza"); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved events, sponsorships and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Concessionaire, and other similar merchandise within the Licensed Plaza. The License will provide for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed

for up to four (4) additional one year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

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

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

It is in the City's best interest to enter into the License with the Concessionaire because this not-for-profit organization's mission is to enhance the neighborhood in which the Licensed Plaza is located and Concessionaire must use revenue collected in connection with or resulting from the rights and privileges granted to Concessionaire under this License to expend for non-capital ordinary and necessary expenses directly attributable to the Concessionaire's operation of the Licensed Plaza. This organization directly represents the neighborhood that it will serve, and received a number of letters of support from local organizations and businesses which DOT reviewed as part of their application to the DOT Plaza Program. Concessionaire has a vested interest in the Licensed Plaza and was instrumental in the creation of the Licensed Plaza through their application to the DOT Plaza Program. The Concessionaire has ten years of relevant experience performing the activities necessary to operate, manage and maintain public spaces, including maintaining the streetscape and involving the community and other public stakeholders in managing public spaces.

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

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

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

☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_  
☐ \_\_\_\_\_, a NYC citywide newspaper on \_\_/\_\_/\_\_ and \_\_/\_\_/\_\_

**OR**

- ☐ Subject concession is **NOT a Citywide** concession and Agency hereby certifies that a notice containing a summary of the terms and conditions of the proposed concession and stating the time, date and location of the public hearing was published once in the City Record on 4/19/2019, which was not less than 15 days prior to the hearing date or a shorter period approved by the CCPO and was given to each affected CB-BP and the Committee Members on 04/15/2019 which was not less than 15 days prior to the hearing date. Agency additionally published a public hearing notice and summary of the terms and conditions of the proposed agreement twice in two newspapers indicated below. A copy of each such notice containing a summary of the terms and conditions of the proposed agreement was sent to each affected CB-BP by 04/15/2019.

☐ \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_\_\_\_ and \_\_\_\_\_.

☐ \_\_\_\_\_, a NYC local newspaper published in the affected borough(s) on \_\_\_\_\_ and \_\_\_\_\_.

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

☐ A Public Hearing was conducted on \_\_\_\_\_.

**OR**

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

**CITY OF NEW YORK**

**FRANCHISE AND CONCESSION REVIEW COMMITTEE**

(Calendar No.2 )

**BE IT RESOLVED** that the Franchise and Concession Review Committee authorizes the New York City Department of Transportation (“DOT”) to utilize a different procedure, pursuant to Section 1-16 of the Concession Rules of the City of New York to enter into a License Agreement (“License”) with the Friends of Bogardus Plaza, Inc. (“Concessionaire”) to provide for the operation and management of a pedestrian plaza located at Hudson Street between Chambers Street and Reade Street, in the borough of Manhattan (“Licensed Plaza”); and maintenance and/or repair of certain amenities installed within the Licensed Plaza, including through City-approved events, sponsorships, and subconcessions, including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or Concessionaire, and other similar merchandise within the Licensed Plaza. Subconcessions would be awarded based on solicitations issued by the Concessionaire in the basic form of a Request for Proposals or Request for Bids, subject to DOT’s prior written approval of both solicitation and award. The License provides for one (1) five-year term, commencing upon written Notice to Proceed, which may be renewed for up to four (4) additional one-year terms, exercisable at the sole discretion of DOT. The Concessionaire will be required to invest any revenue generated by this concession into the maintenance and/or repair of certain amenities installed within the Licensed Plaza; and reasonable administrative costs, as such costs relate to the Licensed Plaza.

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

March 11, 2020

Date: \_\_\_\_\_

Signed: \_\_\_\_\_

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

**THIS LICENSE**, made as of \_\_\_\_\_, 20\_\_ between and among the City of New York (the "City"), a municipal corporation of the State of New York, acting by and through the New York City Department of Transportation ("DOT"), and the Friends of Bogardus Plaza, Inc. ("PLAZA PARTNER"), a New York not-for-profit corporation.

**WITNESSETH**

**WHEREAS**, DOT is charged with the responsibility for the construction, maintenance and repair of streets pursuant to Section 2903 of the New York City Charter; and

**WHEREAS**, PLAZA PARTNER was incorporated in 2010 to enhance Bogardus Garden in the borough of Manhattan, City and State of New York, including but not limited to the improvement and maintenance of public space therein; and

**WHEREAS**, PLAZA PARTNER applied to DOT's plaza program in 2012 and proposed a site for a pedestrian plaza. DOT selected the site, which was located on Hudson Street between Chambers Street and Reade Street, New York, NY ("Licensed Plaza") as illustrated in **Exhibit A**; and

**WHEREAS**, DOT has jurisdiction over the Licensed Plaza and designated the Licensed Plaza as a DOT Pedestrian Plaza pursuant to Section 19-157 of the New York City Administrative Code; and

**WHEREAS**, the City designed and constructed the Licensed Plaza, which includes the installation of certain amenities within the Licensed Plaza, as more particularly described in **Exhibit B**; and

**WHEREAS**, the City desires to encourage the participation of interested organizations in providing supplemental services, including maintenance and public programming, for the benefit of the public; and

**WHEREAS**, PLAZA PARTNER has operated and managed the Licensed Plaza, and assisted DOT to maintain and/or repair certain amenities within the Licensed Plaza since 2010; and

**WHEREAS**, PLAZA PARTNER desires to continue to operate and manage the Licensed Plaza, and assist DOT to maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza for the benefit of the public as specifically set forth in this License; and

**WHEREAS**, PLAZA PARTNER has strong relationships with local businesses, community boards and other local organizations, providing meaningful input on the programs and operation of Bogardus Plaza; and

**WHEREAS**, DOT recognizes the PLAZA PARTNER will be able to significantly assist DOT's plaza program; and

**WHEREAS**, the Franchise and Concession Review Committee (“FCRC”) authorized DOT to enter into a License Agreement with PLAZA PARTNER, to provide for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, including through City-approved events, sponsorships and subconcession(s), including but not limited to providing for the sale of any of the following: prepared food, flowers, locally grown produce or locally manufactured products, merchandise (such as souvenirs or T-shirts) that promotes the neighborhood or PLAZA PARTNER, and other similar merchandise “Subconcession(s)” as described in Section 7 herein) within the Licensed Plaza.

**NOW THEREFORE**, in consideration of the mutual covenants herein, the parties agree as follows:

## **1. SCOPE OF LICENSE**

A. DOT hereby grants to PLAZA PARTNER and PLAZA PARTNER hereby accepts from DOT this non-exclusive License to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License (any reference to the Licensed Plaza herein shall include the Subconcession(s), unless otherwise stated). Notwithstanding the foregoing sentence, DOT will not grant a concession License to any other party to operate and manage the Licensed Plaza; and maintain and/or repair the amenities listed in Exhibit B that are installed within the Licensed Plaza while this License is in effect. PLAZA PARTNER shall provide, or cause to be provided, services for the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza (which may be amended from time to time upon mutual consent of the parties) as specifically set forth in this License (collectively the “Services”) and as more specifically described in Section 3 below. Services shall not include any capital improvements or Alterations as described in Section 14 below.

B. As more particularly set forth in this License, PLAZA PARTNER shall be permitted to:

- (1) manage and operate a Subconcession(s) pursuant to Section 7 herein;
- (2) hold Plaza Events at the Licensed Plaza pursuant to Section 8 herein; and
- (3) accept gifts and sponsorships pursuant to Section 9 herein.

C. As more fully provided in Section 5 below, any Revenue (as defined below) received from the management and operation of the Licensed Plaza shall be used by PLAZA PARTNER for Services at the Licensed Plaza.

D. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to obtain any and all approvals, permits, and other licenses required by federal, state and City laws, rules, regulations and orders which are or may become necessary for the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in Exhibit B that are



installed within the Licensed Plaza, in accordance with the terms of this License. Whenever any act, consent, approval or permission is required of the City, DOT or the DOT Commissioner under this License, the same shall be valid only if it is, in each instance, in writing and signed by the DOT Commissioner or his/her duly authorized representative, and such approval or permission shall not be unreasonably delayed. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City, DOT, the DOT Commissioner or their agents, unless the same is, in each instance, in writing and duly signed by the DOT Commissioner or his/her duly authorized representative.

E. It is expressly understood that no land, building, space, improvement, or equipment is leased to PLAZA PARTNER, but that during the term of this License, as defined herein, PLAZA PARTNER and its subconcessionaire(s) shall have the non-exclusive use of the Licensed Plaza for the purpose herein provided. Except as herein provided, PLAZA PARTNER and its subconcessionaire(s) have the right to occupy and operate the Licensed Plaza only so long as each and every term and condition in this License is properly complied with and so long as this License is not terminated by DOT in accordance with this License.

## **2. TERM**

A. The term of this License (“Term”) shall be five (5) years, commencing upon written Notice to Proceed (“Commencement Date”). This License may be renewed for up to four (4) additional one-year terms, to be exercised at the sole discretion of DOT subject to termination and revocation as hereinafter provided. DOT shall provide PLAZA PARTNER with sixty (60) days’ advance written notice of its intent to renew.

B. Notwithstanding any other termination provision of this License, this License is terminable at will any time by DOT upon twenty-five (25) days written notice to PLAZA PARTNER.

## **3. SERVICES**

A. PLAZA PARTNER shall provide, or cause to be provided the Services at the Licensed Plaza for the benefit of the public. PLAZA PARTNER shall only be required to provide the maintenance and/or repair as expressly set forth in this License for the amenities described below and in **Exhibit B**, which may be amended from time to time upon mutual consent of the parties. PLAZA PARTNER shall not be required to repair any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary. For the avoidance of doubt, PLAZA PARTNER shall not be required to maintain and/or repair any amenity within the Licensed Plaza not listed in **Exhibit B**.

(1) For the purposes of this License, the term “maintain” shall mean cleaning, sweeping, trash removal, snow and ice removal, landscaping, and graffiti removal, which shall be performed during the PLAZA PARTNER’s hours of operation.

(2) For the purposes of this License, the term “repair” shall mean fixing an amenity with the purpose of returning it to a good condition, which shall be performed during the PLAZA PARTNER’s hours of operation. This shall not include any capital improvements, which

are permanent improvements that add value to the Licensed Plaza, prolong the useful life of the Licensed Plaza, or adapt the Licensed Plaza to new uses.

(3) For the purposes of this License, the term “good condition” shall mean an amenity that is fully functioning, safe, clean, and attractive.

B. PLAZA PARTNER shall provide or cause to be provided the maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically required by this Section to the reasonable satisfaction of DOT.

(1) Maintenance:

(a) Dirt, litter and obstructions shall be removed, and trash and leaves collected and removed so as to maintain the Licensed Plaza as reasonably necessary.

(b) All walkways, sidewalks and all other amenities and facilities in the Licensed Plaza shall be routinely maintained as reasonably necessary.

(c) Graffiti shall be regularly painted over or removed, within a reasonable and timely manner after its appearance on any surface.

(d) Surface drains and surface gratings shall be maintained regularly to prevent clogging.

(e) Planters and planting beds shall be free of litter and debris.

(f) Any umbrellas, moveable tables and chairs (“Moveable Street Furniture”) shall be maintained as reasonably necessary.

(g) All amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, shall be maintained as reasonably necessary.

(h) Perimeter planters used to delineate traffic shall not be moved without DOT’s prior written approval. Such approval or denial shall not be unreasonably delayed. If a perimeter planter is moved by a third party, PLAZA PARTNER shall return the perimeter planter(s) to its original position as soon as practicable and thereafter shall immediately notify DOT.

(i) Snow and ice shall be removed from all walkways within a reasonable period of time in accordance with the snow map illustrated in **Exhibit C**. If necessary, Moveable Street Furniture shall be removed from the Licensed Plaza due to such snow and/or ice conditions.

(j) Sand or snow melting agent shall be spread as needed to minimize slippery conditions which may arise from the thawing and refreezing of snow and/or ice.

(k) Signs shall be posted throughout the Licensed Plaza cautioning users

of any dangerous conditions due to snow and/or ice. If necessary, the Licensed Plaza may be closed due to such snow and/or ice conditions.

(l) Water all trees, shrubs, plantings and grass-covered areas as necessary to maintain such vegetation in a healthy condition.

(m) Remove or destroy any weeds from paving blocks, pavement, and concrete areas.

(n) Seasonal or annual pruning of shrubs and plantings.

(o) To the extent that PLAZA PARTNER applies pesticides to the Licensed Plaza, PLAZA PARTNER or any subcontractor, shall comply with Title 17 of Chapter 12 of the New York City Administrative Code.

(2) Repair:

(a) Benches or other seating: Replace broken or missing bench slats and paint benches, as needed. Repair damaged benches or other seating listed in **Exhibit B** as needed within a reasonable time.

(b) Moveable Street Furniture: All Moveable Street Furniture listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(c) Facilities/Structures: All facilities, structures, equipment, subconcession structures, and subconcession areas listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(d) Painting: All amenities listed in **Exhibit B** with painted surfaces shall be painted as needed. Surfaces shall be scraped free of rust or other extraneous matter and painted to match the existing color.

(e) Planters: All planters listed in **Exhibit B** shall be repaired as needed within a reasonable time.

(f) Plantings: Re-seed and/or re-sod grass-covered areas as needed. Seasonal or annual planting of varied plant life (excluding trees), including some flowering plants, such that at no time are planters or planting beds empty of plant life.

(g) Other Amenities: All other amenities listed in **Exhibit B**, as may be amended from time to time upon mutual consent of the parties, except any amenity listed in **Exhibit B** as "DOT Standard" shall be repaired as needed within a reasonable time.

(h) In the event that any of the amenities listed in **Exhibit B** are subject to construction warranties, DOT shall use good faith efforts to provide PLAZA

PARTNER with copies of such applicable construction warranties and facilitate discussions between the appropriate parties.

(i) PLAZA PARTNER shall not be required to repair and/or replace any amenity that is listed in **Exhibit B** as “DOT Standard”. However, amenities identified as “DOT Standard” in **Exhibit B** must be maintained as reasonably necessary.

(j) For the avoidance of doubt, the City shall retain responsibility for the repair and replacement of any amenity that is listed in **Exhibit B** as “DOT Standard” and for any City infrastructure. Nothing contained herein shall be construed as shifting such responsibility to the PLAZA PARTNER.

(k) For the avoidance of doubt and notwithstanding anything to the contrary, the parties further acknowledge that PLAZA PARTNER shall not be responsible, or bear any repair or other obligations or liabilities, for any damage in or to the Licensed Plaza to the extent caused by the City, another governmental entity or public authority, a utility company or other permitted third-party (such as providers of sewer, water, gas, heat, electricity, cable, broadband, and telephone), except when such permitted third party is acting at the direction of the PLAZA PARTNER or its contractors, subcontractors, agents or subconcessionaire(s) or subconcessionaire(s)’ contractors, subcontractors or agents.

C. The public shall have free and open access to the seating areas within the Licensed Plaza unless otherwise precluded by a DOT-approved Plaza Event as set forth in Section 8 of this License, other City-approved events, or a DOT-approved subconcession agreement.

D. PLAZA PARTNER shall not allow its employees, agents, contractors and subconcessionaire(s) to emit loud noise, smoke, vapor or offensive odor from the Licensed Plaza.

E. Advertising on the Licensed Plaza (other than in a form identifying PLAZA PARTNER and its subconcessionaire(s) with approval from DOT) is strictly prohibited. Sponsor recognition may be permitted subject to DOT approval. Such approval or denial shall not be unreasonably delayed.

F. DOT makes no representations regarding the adequacy of utilities currently in place at the Licensed Plaza. DOT makes no representation regarding the availability of electricity, water or other utilities at the Licensed Plaza or that any entity can or will make such services available. PLAZA PARTNER, at its sole cost and expense, shall provide for all lighting, electrical and water connections and other utility services at the Licensed Plaza to conduct its operations. PLAZA PARTNER shall pay all charges for sewer, water, gas, heat, electricity, cable, broadband, and telephone used by its employees, agents, contractors and subconcessionaire(s) at the Licensed Plaza and shall procure at PLAZA PARTNER’s own cost and expense all meters, permits, approvals and licenses necessary to effectuate the requirements of this Section. The PLAZA PARTNER shall not accept any money, commission, premium, bonus or other consideration from any person for the use or sale of utility services. PLAZA PARTNER shall not tap into DOT’s electricity without prior DOT written approval. If generators are used, PLAZA PARTNER shall provide whatever is necessary under Federal, State, and City laws, rules, regulations, and orders

for the lawful operation of its generators. In the event of a drought, Permittee shall comply with all City directives and restrictions.

G. PLAZA PARTNER shall prepare and provide to DOT reports of any accidents or other incidents, if known, occurring at the Licensed Plaza, including the Subconcession(s), on a regular basis and in a format reasonably acceptable to DOT.

(1) PLAZA PARTNER and its subconcessionaire(s) shall as promptly as reasonably practicable notify DOT, in writing, of any claim for injury, death, property damage or theft which may be asserted against PLAZA PARTNER or its subconcessionaire(s) with respect to the Licensed Plaza and the Subconcession(s).

(2) PLAZA PARTNER and its subconcessionaire(s) shall as promptly as reasonably practicable notify DOT, in writing, of any unusual conditions that may develop in the course of the operation of the Subconcession(s) such as, but not limited to, fire, flood, casualty and substantial damage of any kind and PLAZA PARTNER shall also notify DOT to the extent it is aware of any such unusual conditions.

(3) PLAZA PARTNER shall, with respect to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall require its subconcessionaire(s), with respect to the operation and management of the Subconcession(s), to designate a person to handle all claims for loss or damage including all insured claims for loss or damages. PLAZA PARTNER shall provide DOT with the name, telephone number and address of each such person, within thirty (30) days of the date of this License and any subconcession agreement(s).

H. PLAZA PARTNER shall periodically inspect the Licensed Plaza for hazardous conditions and shall, without delay upon learning of the condition, report and cause to be repaired any portion or feature of the Licensed Plaza for which PLAZA PARTNER has repair responsibility under this License that exhibits defects or hazardous conditions, and shall as promptly as practicable institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers. With respect to any portion or feature of the Licensed Plaza for which PLAZA PARTNER does not have repair responsibility under this License, PLAZA PARTNER shall, without delay upon learning of the condition, report the need for repairs to DOT and immediately institute appropriate measures to protect the public from harm, including but not limited to the posting of warning signs and temporary barriers.

#### **4. BUDGET**

A. On or before April 1<sup>st</sup> of each year the License is in effect, PLAZA PARTNER shall submit to DOT for review and approval its annual budget relating to the operation and management of the Licensed Plaza; and maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License. For

accounting purposes, the fiscal year shall run from July 1<sup>st</sup> to June 30<sup>th</sup>. Notwithstanding the above, the Licensed Plaza budget for fiscal year 2020 shall be submitted within thirty (30) days of the Commencement Date.

B. The PLAZA PARTNER Licensed Plaza budget shall set forth in reasonable detail the amounts proposed to be allocated for the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License; and reasonable administrative costs, including but not limited to insurance costs, a list of all personnel salaries or a portion thereof, if any, reflecting their work performed as it relates to the Licensed Plaza.

C. The PLAZA PARTNER Licensed Plaza budget shall not be final until DOT provides written approval. Such approval or denial shall occur within thirty (30) days from the date the budget is submitted. However, DOT will endeavor to respond within ten (10) business days from the date the budget is submitted.

D. Upon DOT's request, PLAZA PARTNER shall furnish DOT with bills, invoices, labor time books and such other supporting documents or other data as DOT deems necessary.

## **5. REVENUE**

A.

PLAZA PARTNER shall open and/or continue to maintain an account or sub-account, accounted for separately and apart from all other funds, in a bank located within the City of New York, insured by the Federal Deposit Insurance Corporation ("Special Account"). There shall be deposited in the Special Account all revenues collected in connection with or resulting from the rights and privileges granted to PLAZA PARTNER under this License, including:

- (1) any funds collected for Services under Section 3;
  - (2) any funds collected under a Subconcession described in Sections 6 and 7;
  - (3) any funds collected for Plaza Events under Section 8; and
  - (4) any funds collected for sponsorships under Section 9
- (collectively referred to herein as "Revenue").

In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter PLAZA PARTNER may receive.

(1) In the event that the non-monetary consideration received is from a sponsor of a sponsored event and is solely for such event, the value of such non-monetary consideration shall not be considered Revenue provided it is not useable in the performance of any of the Services. For example, if such non-monetary consideration is a tent for an event, it shall not count as Revenue; if such non-monetary consideration is landscape maintenance, it shall count as Revenue. Notwithstanding the foregoing, the value of such non-monetary consideration shall be accounted for in all financial reports, audits, statements, records and accounts as required under the provisions of this License.

(2) In the event that any other non-monetary considerations are received, PLAZA PARTNER may submit a request to DOT for the exclusion of such other non-monetary consideration from the Revenue. Such case by case approval or denial shall be at DOT's sole discretion and shall not be unreasonably delayed. Any other PLAZA PARTNER funds not directly generated as a result of the operation and management of the Licensed Plaza, including but not limited to general sponsorships, but used for the benefit of the City and Licensed Plaza shall be considered Revenue.

(3) PLAZA PARTNER shall not divert or recharacterize revenue that would otherwise have been considered Revenue for the purposes of this License.

B. PLAZA PARTNER may withdraw and use Revenue from the Special Account to expend for non-capital ordinary and necessary expenses directly attributable to PLAZA PARTNER'S operation of the Licensed Plaza, including reasonable administrative costs and operating expenses for programming, operating, managing, maintaining and repairing the Licensed Plaza and as described in Sections 1 and 3.

C. No withdrawals shall be made from the Special Account other than as provided in this License.

D. The administration of the Special Account is subject to the inspection and audit record keeping provisions set out in Section 10.

E. Revenue does not include funds collected or received by PLAZA PARTNER (such as grants, donations, bequests and contributions) other than in the course of PLAZA PARTNER'S use or operation of the Licensed Plaza. Applicable law governs PLAZA PARTNER'S use of such other revenues.

F. Subject to paragraph (G) below, in no event shall the total annual Revenue from managing and operating the Licensed Plaza during the Term of the License exceed the cost of providing the Services and reasonable administrative costs.

G. At the end of each fiscal year in which the License is in effect, provided that there are no outstanding accounts payables for the fiscal year, any unexpended Revenue will be deposited into a segregated interest bearing accrual fund ("Accrual Fund"). PLAZA PARTNER may use funds in the Accrual Fund for any shortfall in Revenue needed to provide the Services set forth herein in the year(s) subsequent to its accrual. If at any time during the Term of this License, the Accrual Fund contains an amount that is more than three times the DOT-approved Licensed Plaza budget for the current year, the excess amount of the funds in the Accrual Fund shall be used to provide any Services in the Licensed Plaza. At the end of the Term of this License or if this License is terminated, the balance, including all accrued interest, if any, of funds in the Accrual Fund shall be used to provide any Services.

## **6. SUBCONCESSION(S)**

A. PLAZA PARTNER may, subject to DOT's prior written approval, enter into a subconcession agreement(s) for the management and operation of the Subconcession(s), which shall be located in the area described in **Exhibit A**. Such subconcessionaire(s) shall not be related to or affiliated with PLAZA PARTNER.

B. The subconcession agreement(s) shall be subject to the terms and conditions of this License, and PLAZA PARTNER shall require said subconcessionaire(s) to acknowledge in writing that it received a copy of this License and that it is bound by same.

C. PLAZA PARTNER must issue a public solicitation in the basic form of a Request for Proposals ("RFP") or a Request for Bids ("RFB") approved by DOT to select the entity/entities to operate and manage the Subconcession(s). A minimum of three RFP or RFB submissions must be received to select a subconcessionaire(s), unless DOT agrees to less. This RFP or RFB shall be advertised in the City Record and other appropriate publication(s) approved by DOT. DOT, at its sole option, may be on the RFP evaluation committee.

D. The selection of the entity/entities to operate and manage the Subconcession(s) will be subject to DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subconcessionaire(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subconcessionaire, including this one, during the immediately preceding twelve-month period equals or exceeds \$100,000 ("Threshold"). Each subconcession agreement(s) shall contain provisions specified in Section 13(B)(5) herein, provided however that such provisions shall pertain to subconcessionaire(s) instead of subcontractor(s).

E. The terms and conditions of the subconcession agreement(s) shall be subject to DOT's approval. Two (2) copies of the proposed subconcession agreement shall be submitted to DOT with PLAZA PARTNER's written request for approval.

F. (1) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents that perform operations involving the Licensed Plaza to obtain insurance coverage in accordance with the terms and conditions set forth in Section 11 herein.

(2) PLAZA PARTNER shall require its subconcessionaire(s) and any of subconcessionaire(s)'s contractors, subcontractors and agents, and PLAZA PARTNER's contractors, subcontractors and agents to defend, indemnify and hold the City, and its officials and employees harmless as set forth herein. Any subconcession agreement(s) and/or other agreements entered into on or after the Commencement Date of this License that involve operations in the Licensed Plaza shall include the following, provided that the terms "SUBLICENSEE" and "PLAZA PARTNER" shall be replaced with the name of or the defined term for the applicable indemnifying entity and PLAZA PARTNER, respectively:



(a) SUBLICENSEE shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, contractors, and subcontractors while they are involved in the operations under this Agreement. SUBLICENSEE shall take all reasonable precautions to protect the persons and property of the PLAZA PARTNER, City or others from damage, loss, injury resulting from any and all operations under this Agreement.

(b) To the fullest extent permitted by law, SUBLICENSEE shall, indemnify, defend and hold the PLAZA PARTNER, the City and their respective employees and agents (the "Indemnitees"), 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) relating to or arising out of, or alleged (by a person other than the Indemnitees) to relate to or arise out of the SUBLICENSEE's, its employees', agents', servants', invitees', contractors' and subcontractors' operations under this Agreement to the extent resulting from its or their: (i) negligence or failure to comply with any of the provisions of this Agreement or of any applicable federal, state, or local laws, rules or regulations; or (ii) infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(c) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnitees from being completely indemnified by SUBLICENSEE, the Indemnitees shall be partially indemnified by SUBLICENSEE to the fullest extent permitted by law.

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

G. The subconcession agreement(s) may not be assigned without the prior written approval of DOT. Such approval or denial shall not be unreasonably delayed. Any subsequent subconcession agreements will be subject to the terms and conditions set forth in this License.

## **7. OPERATION OF THE SUBCONCESSION(S)**

A. PLAZA PARTNER shall provide for the operation and management of the Subconcession(s) through a subconcession agreement(s) and require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to operate the Subconcession(s) in such manner as DOT shall reasonably prescribe and as permitted by the laws, rules, regulations and orders of government agencies having jurisdiction thereof. PLAZA PARTNER and its subconcessionaire(s) shall accept the Licensed Plaza in its "as-is" condition. PLAZA PARTNER shall require that its subconcessionaire(s) provide the necessary number of personnel having the requisite skills together with the necessary personal equipment and consumable supplies and shall perform the following services at the Licensed Plaza:

- (1) Operate the Subconcession(s) as provided herein; and

(2) Continuously perform such ongoing and preventive maintenance activities necessary to maintain the Subconcession(s), consistent with Section 3 of this License, and with prevailing professional and industry or trade standards.

B. PLAZA PARTNER shall require its subconcessionaire(s) to submit its proposed hours of operation, a menu (if applicable) and price list, for PLAZA PARTNER's approval. The information submitted to and approved by PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter. However, DOT reserves the right to review and approve such hours of operation, menu (if applicable), and price list at its discretion.

C. PLAZA PARTNER shall or shall require its subconcessionaire(s), at the subconcessionaire(s)'s sole cost and expense, to obtain all licenses and permits that may be required to operate the Subconcession(s) in accordance with applicable rules, laws and regulations.

D. PLAZA PARTNER shall require its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, to print, frame, and prominently display the current approved schedule of operating days, hours and prices.

E. On or before the thirtieth (30<sup>th</sup>) day following the end of each fiscal year, PLAZA PARTNER shall require that its subconcessionaire(s) submit to DOT a statement of Revenue, signed and verified by an officer of subconcessionaire(s), reporting any Revenue generated from the Subconcession(s) during the preceding twelve (12) month period. Notwithstanding the foregoing, PLAZA PARTNER shall require its subconcessionaire(s) to submit to PLAZA PARTNER such statement of Revenue on a monthly basis.

(1) PLAZA PARTNER shall also require that its subconcessionaire(s) submit a report of Revenue for the period since the prior 12-month report on or before the thirtieth (30<sup>th</sup>) day following the termination of this License or the subconcession agreement(s), or June 30<sup>th</sup>, whichever is sooner. The obligation to submit a final report of Revenue shall survive the termination of this License or the subconcession agreement(s). These reports submitted to PLAZA PARTNER by its subconcessionaire(s) shall be provided to DOT within a reasonable time thereafter.

(2) PLAZA PARTNER shall require that its subconcessionaire(s) indicate on its statement of Revenue whether or not these amounts are inclusive of sales tax collected.

(3) PLAZA PARTNER shall require in the subconcession agreement(s) that Revenue shall include without limitation all funds received by subconcessionaire(s), without deduction or set-off of any kind, from the sale of food and beverages, wares, merchandise or services of any kind from the Subconcession(s), provided that Revenue 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 subconcessionaire(s) as against its sales. All sales made or services rendered by subconcessionaire(s) from the Subconcession(s) shall be construed as made and completed therein even though payment therefore may be made at some other place. In addition to any Revenue generated in the form of monetary receipts, Revenue shall be deemed to include

the fair market value of any non-monetary consideration in the form of materials, services or other benefits, tangible or intangible, or in the nature of barter the subconcessionaire(s) may receive.

(4) Revenue shall include sales made for cash or credit (credit sales shall be included in Revenue as of the date of the sale) regardless of whether the sales are paid or uncollected, it being the intention and agreement of the parties that all sums due to be received by subconcessionaire(s) from all sources from the operation of the Subconcession(s) shall be included in Revenue.

F. PLAZA PARTNER shall require its subconcessionaire(s) to operate its Subconcession(s) in such a manner as to maintain the highest New York City Department of Health and Mental Hygiene ("DOHMH") inspection rating as required by, and in accordance with, applicable law.

(1) PLAZA PARTNER shall require its subconcessionaire(s), if it is selling food to the public, to obtain any and all approvals and other permits required by Federal, State and City laws, rules, regulations and orders to sell food to the public. In furtherance of the foregoing, any staff assigned by the subconcessionaire to sell food and beverages to the public must possess all Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Any person selling food to the public without all necessary permits may be subject to fines and/or confiscation of goods.

(2) PLAZA PARTNER shall require its subconsessionaire(s) to not use in its operations any polystyrene packing or food containers pursuant to Local Law 142 of 2013.

G. PLAZA PARTNER shall require that its subconcessionaire(s) employ an operations manager ("Manager") with appropriate qualifications to manage operations at the Subconcession(s) in a manner that is reasonably satisfactory to DOT. The Manager must be available by telephone during all hours of operation, and PLAZA PARTNER shall continuously notify DOT of a 24-hour cellular telephone number through which DOT may contact the Manager in the event of an emergency. PLAZA PARTNER shall require that its subconcessionaire(s) replace any Manager, employee, subcontractor whenever reasonably demanded by DOT.

H. PLAZA PARTNER shall require its subconcessionaire(s) to provide equipment, which will provide security for all monies received. PLAZA PARTNER shall require that its subconcessionaire(s) provide for the transfer of all monies collected to the subconcessionaire(s)' banking institution. PLAZA PARTNER shall require that its subconcessionaire(s) bear the loss of any lost, stolen, misappropriated or counterfeit monies derived from operations under this License.

I. PLAZA PARTNER shall require that its subconcessionaire(s), at its sole cost and expense, provide, hire, train, supervise, and be responsible for the acts of all personnel necessary for the proper operation of this License, including but not limited to:

(1) Collect and safeguard all monies generated under this License;

- (2) Maintain the Subconcession(s) in accordance with this License;
- (3) Conduct and supervise the provision of qualified Subconcession(s) personnel and cashier(s); and
- (4) Secure the Subconcession(s).

J. PLAZA PARTNER shall require that its subconcessionaire(s), at the subconcessionaire(s)' sole cost and expense, obtain sound permits and provide any lighting, which it determines may be necessary to operate the Subconcession(s).

K. PLAZA PARTNER shall require that its subconcessionaire(s), in operating the Subconcession(s), maintain the sound level of all events and activities at an appropriate level to prevent an unreasonable nuisance to neighbors living and working near the Subconcession(s).

L. Installation of additional fixed lighting or fixed sound equipment by either PLAZA PARTNER or its subconcessionaire(s) on the Subconcession(s) shall require the prior written approval of DOT. Such approval or denial will not be unreasonably delayed.

M. PLAZA PARTNER shall require that its subconcessionaire(s) provide access to the Subconcession(s) to people with disabilities as required by law. This accessibility shall be clearly indicated by signs.

N. PLAZA PARTNER shall require its subconcessionaire(s), at its sole cost and expense, to provide a twenty-four (24) hour per day security system at the Subconcession(s), if appropriate, which shall be either an electronic security system, or a twenty-four hour unarmed guard, or both. PLAZA PARTNER shall require that its subconcessionaire(s) be responsible for securing the Subconcession(s) and any other equipment used immediately upon closing each day in a manner reasonably approved by DOT.

O. DOT shall have the right to reasonably approve the days and times on which deliveries to PLAZA PARTNER's subconcessionaire(s) may be made. Such approval or denial will not be unreasonably delayed.

P. It is expressly understood that if PLAZA PARTNER or its subconcessionaire(s) contemplates placing any signs off-site that advertise the Subconcession(s), such as on nearby highways or streets, it shall be PLAZA PARTNER's or its subconcessionaire(s)'s responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs are subject to DOT's prior written approval. Such approval or denial will not be unreasonably delayed.

Q. The siting of the Subconcession(s) shall be arranged so that pedestrian traffic and the site lines of motorists are not unreasonably inhibited.

R. The sale of cigarettes, cigars, or any tobacco product is strictly prohibited. Additionally, the sale of electronic cigarettes and non-tobacco smoking products are strictly prohibited.

S. PLAZA PARTNER may permit its subconcessionaire(s) to sell wine and beer only with the appropriate license from the State Liquor Authority (“SLA”). Such wine and beer shall be served in recyclable cups and be consumed only within the boundaries of the Licensed Plaza, as permitted by the SLA.

T. No trucks or storage containers may be stationed or parked at the Subconcession(s) or Licensed Plaza, unless otherwise approved in writing by DOT. Additionally, PLAZA PARTNER shall not use or permit the storage of any illuminating oils, oil lamps, turpentine, benzene, naphtha, or similar substances or explosives of any kind (excluding fuel for generators). DOT shall cooperate with PLAZA PARTNER so that any unauthorized trucks, including food trucks, or unauthorized storage containers that are stationed or parked at the Subconcession(s) or Licensed Plaza by any third-party are removed.

U. PLAZA PARTNER shall require its subconcessionaire(s) to maintain trash receptacles and separate receptacles for recyclable materials and comply with all recycling regulations at its sole cost and expense, and arrange for the removal, by a duly licensed private carter, of all refuse relating to the Subconcession(s), including but not limited to trash, boxes and trade waste.

V. (1) PLAZA PARTNER, may, or may cause its subconcessionaire(s) at its or the subconcessionaire(s) sole cost and expense, to design, fabricate, construct and install the Subconcession(s) and/or any subconcession structure subject to DOT’s prior written approval. PLAZA PARTNER shall not apply any Revenue to any such design, fabrication, construction, and installation of any Subconcession(s) and/or subconcession structure.

(2) Upon installation, title to any improvements, equipment, and fixtures made to the Subconcession(s) and/or any subconcession structure shall vest in and thereafter belong to the City at the City’s option, which may be exercised at any time after the substantial completion of the installation, affixing, or placement of such improvements, equipment, and fixtures. Such title may only vest in the City upon payment for the fair market value of the improvements, equipment, and fixtures made to the Subconcession(s) and/or subconcession structure by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the improvements, equipment and fixtures made to the Subconcession(s) and/or any subconcession structure, PLAZA PARTNER shall, or shall require its subconcessionaire(s) to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(3) PLAZA PARTNER shall use its best efforts to minimize the extent to which the public use of the Licensed Plaza is disrupted in connection with its construction, installation, operation, management, maintenance and/or repair activities at the Licensed Plaza.

(4) PLAZA PARTNER shall or shall require its subconcessionaire(s) to pay all applicable fees and shall submit to DOT and all other governmental agencies having jurisdiction, for prior approval, all plans, specifications, schematics, working and mechanical drawings which shall be signed and sealed by a New York State Registered Architect or Licensed Professional Engineer. All plans, specifications, schematics, and working and mechanical drawings shall be in such detail as DOT shall require. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by DOT.

(5) PLAZA PARTNER shall or shall require its subconcessionaire(s) to apply for and obtain all applicable licenses and permits prior to the commencement of any work. Further, all designs will require prior approval from DOT and any other agencies having jurisdiction, including but not limited to the Public Design Commission of the City of New York.

(6) During the term of this License, PLAZA PARTNER shall or shall require its subconcessionaire(s) to be responsible for the protection of the Subconcession(s) and any subconcession structure, whether or not construction is complete, against any damage, loss or injury. In the event of such damage, loss or injury, PLAZA PARTNER shall, or shall require its subconcessionaire(s) to promptly repair the Subconcession(s) and/or any subconcession structure at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s).

(7) PLAZA PARTNER shall or shall require its subconcessionaire(s) to construct the Subconcession(s) in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed shall be new, free of defects, of the best grade quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to obtain all manufacturers' warranties and guarantees for all such equipment and materials, as applicable.

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

(9) PLAZA PARTNER shall provide written notice to DOT when the Subconcession(s) and any subconcession structure is substantially completed, and DOT shall inspect the Subconcession(s) and/or any subconcession structure within a reasonable time after receipt of such notice from PLAZA PARTNER. After such inspection, DOT and PLAZA PARTNER shall jointly develop a single final "punch list" incorporating all findings from such inspection concerning all work not completed to the satisfaction of DOT. PLAZA PARTNER

shall proceed with diligence to complete all “punch list” items within a reasonable time as determined by DOT.

(10) In the event that PLAZA PARTNER fails to comply with any phase of the construction of the Subconcession(s) and/or any subconcession structure for a period of thirty (30) days following written notice to cure, DOT may terminate this License by giving ten (10) days written notice of termination.

(11) PLAZA PARTNER shall provide DOT with discharges for any and all liens which may be levied against the Subconcession(s) and/or any subconcession structure during construction of such improvements. PLAZA PARTNER shall, or shall require its subconcessionaire(s) to use its best efforts to discharge such liens within thirty (30) business days of receipt of lien by PLAZA PARTNER.

(12) PLAZA PARTNER shall promptly repair as DOT reasonably may determine, defects of materials, workmanship or design which may appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the final completion of the Subconcession(s) and/or any subconcession structure.

(13) PLAZA PARTNER shall keep DOT reasonably informed of PLAZA PARTNER’s progress in the construction of the Subconcession(s) and/or any subconcession structure.

(14) All risks of construction of the Subconcession(s) and/or any subconcession structure are hereby expressly assumed by PLAZA PARTNER except as may be specifically provided otherwise herein. The Subconcession(s) and any subconcession structure will be designed, constructed, maintained, secured and insured entirely at PLAZA PARTNER’s expense without reimbursement by DOT or credit or offset of any kind for cost overruns or otherwise, and PLAZA PARTNER shall pay all municipal fees and impositions in connection therewith.

W. Upon DOT’s prior written approval, PLAZA PARTNER or its subconcessionaire(s) may use DOT’s Standard Plaza Kiosk (as approved by the New York City Public Design Commission and as more particularly described in **Exhibit D**) to operate the Subconcession(s). Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, shall, or shall require its subconcessionaire(s) to furnish all interior fixtures and equipment for the operation of the Subconcession(s) at the sole cost and expense of PLAZA PARTNER or its subconcessionaire(s), as applicable. PLAZA PARTNER shall not apply any Revenue to any such interior fixtures and equipment. Ownership title of the Standard Plaza Kiosk belongs to and shall remain with the City throughout the Term.

X. The City shall own any copyrights, trademarks, logos and brands developed in association with the management and operation of the Subconcession(s) by PLAZA PARTNER and its subconcessionaire(s), that include the name of the Licensed Plaza or is directly associated with the Licensed Plaza. However, the City shall not own:

(1) any portion of a name that consists of the name, portrait or signature of a living or deceased individual; or

(2) a restaurant identifier or trade name that is not otherwise associated with the Licensed Plaza.

Y. Smoking of cigarettes or any other tobacco product is strictly prohibited at the Licensed Plaza in accordance with Local Law 11 of 2011. Using electronic cigarettes is also prohibited at the Licensed Plaza in accordance with Local Law 152 of 2013. Using non-tobacco smoking products is also prohibited at the Licensed Plaza in accordance with Local Law 187 of 2017.

## **8. PLAZA EVENTS**

A. The Licensed Plaza may be used for Plaza Events (as defined in section 1-01 of Title 50 of the Rules of the City of New York), subject to the terms and conditions set forth herein.

B. PLAZA PARTNER shall submit an application to the Street Activity Permit Office (“SAPO”) within the City’s Office of Citywide Event Coordination and Management (“CECM”) for any proposed Plaza Events to be held at the Licensed Plaza by the PLAZA PARTNER pursuant to SAPO’s applicable rules.

C. PLAZA PARTNER may hold Plaza Events at the Licensed Plaza subject to:

(1) an acknowledgment by DOT to SAPO that PLAZA PARTNER is the Plaza Partner as defined in section 1-01 of Title 50 of the Rules of the City of New York;

(2) the City’s right to use the Licensed Plaza for its own Plaza Events or programming or authorize others to use the Licensed Plaza;

(3) PLAZA PARTNER obtaining any necessary City authorization, approvals, permits, and compliance with other processes that may be necessary;

(4) If applicable, PLAZA PARTNER shall be responsible for the payment of all SAPO permit fees in connection with its own Plaza Events at the Licensed Plaza;

(5) all Plaza Events shall be open to the public and at no cost; and

(6) PLAZA PARTNER understands that the Licensed Plaza is public property and that activities at the Licensed Plaza are subject to the First Amendment of the U.S. Constitution and Article I of the New York State Constitution. Therefore: (a) PLAZA PARTNER acknowledges that First Amendment activities may be permitted by SAPO for the Licensed Plaza; and (b) PLAZA PARTNER shall refer to SAPO applications made to PLAZA PARTNER for any activity on the Licensed Plaza that may be protected by the First Amendment.

D. The City may use the Licensed Plaza for special events, including, but not limited to exhibits, art programs, and other free cultural events open to the public. If DOT or any other agency of the City intends to utilize the Licensed Plaza for any event, it shall coordinate such



use with PLAZA PARTNER and shall use reasonable efforts to provide PLAZA PARTNER with thirty (30) days prior written notice of such event.

E. PLAZA PARTNER shall pay for, or cause to be paid any and all fees or royalties to ASCAP, BMI or such entities as may be required for any music or music programming during its Plaza Events, and DOT shall pay for any such fees or royalties relating to DOT's events.

F. Any sign posted by PLAZA PARTNER or its subconcessionaire(s) at the Licensed Plaza in connection with a Plaza Event, shall be appropriately located, and shall state that the Licensed Plaza is a New York City municipal concession operated by PLAZA PARTNER.

G. In addition to the SAPO permit fee collected by CECM, PLAZA PARTNER may collect a concession fee from the event sponsor or holder for any Commercial/Promotional events (as defined in section 1-01 of Title 50 of the Rules of the City of New York) held at the Licensed Plaza. These fees shall be included as part of PLAZA PARTNER's Revenue pursuant to Section 5 of this License. Such fees shall be set forth in attached **Schedule A**, which may be amended from time to time upon mutual consent of the parties, and shall be posted on SAPO's website.

## **9. SPONSORSHIPS AND GIFTS**

### **A. Sponsorships**

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept sponsorships solely for the benefit of the City and the Licensed Plaza. However, under no circumstances are tobacco, e-cigarette, non-tobacco smoking products, or alcohol sponsorships permitted. As set forth in Section 5, such sponsorships shall be considered Revenue. Sponsorships generated for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval and shall not be considered Revenue. However, if portions of such general sponsorships are for the benefit of the City and Licensed Plaza, those portions thereof shall be included in the Revenue and shall be subject to the provisions of this subsection. Any such sponsorships shall be restricted in size, quantity and location as deemed appropriate by DOT.

(2) All sponsorships benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any sponsorship agreements (if any) where the sponsorship benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed sponsorships.

### **B. Gifts**

(1) DOT may, in its discretion, permit PLAZA PARTNER to accept gifts solely for the benefit of the City and the Licensed Plaza. For purposes of this agreement, such gifts shall not be considered Revenue. Gifts obtained for the general benefit of the PLAZA PARTNER shall not be subject to DOT approval. However, if portions of such general gifts are for the benefit of the City and Licensed Plaza, those portions thereof shall be subject to the provisions of this subsection.

(2) All gifts benefiting the City and the Licensed Plaza must be approved by DOT prior to their acceptance by PLAZA PARTNER. Additionally, PLAZA PARTNER must obtain DOT's prior written approval before entering into any gift agreements (if any) where the gift benefits the City and the Licensed Plaza. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER shall provide DOT with no less than thirty (30) days (or such lesser period as shall be acceptable to DOT) prior written notice of any such proposed gift.

(3) PLAZA PARTNER shall prepare and provide to DOT quarterly reports detailing any such gifts benefiting the City and the Licensed Plaza, in a format reasonably acceptable to DOT.

C. The parties hereto agree that no writing, posters, plaques or banners shall be placed at the Licensed Plaza at any time, without DOT's prior written approval. Such approval or denial shall not be unreasonably delayed. It is expressly agreed that commemorative plaques and banners shall be erected in conformance with all applicable rules.

D. PLAZA PARTNER shall not place or allow the placement of any notice or sign in or on the Licensed Plaza without DOT's written approval. Such approval or denial shall not be unreasonably delayed. PLAZA PARTNER, upon twenty-four (24) hours' notice, shall remove any and all unauthorized notice or signage placed in or on the Licensed Plaza. In the case of PLAZA PARTNER's failure to remove any such notice or signage, DOT may remove such notice or signage at PLAZA PARTNER's cost for such removal.

E. For the avoidance of doubt, sponsorships and gifts as contemplated in this Section 9 are not considered Plaza Events and are not subject to SAPO's rules.

## **10. INSPECTION AND AUDIT OF RECORDS**

A. PLAZA PARTNER agrees that it shall comply with all of the provisions set forth in this Section, and with respect to the operations of the Subconcession(s), it shall incorporate such provisions, appropriately modified to apply to the subconcessionaire(s), into any subconcession agreement(s).

B. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all Revenue and direct and indirect costs of any nature resulting from PLAZA PARTNER's operations pursuant to this License, and set forth, in a manner satisfactory to DOT, its expenditures in any way connected to the Services under this License. Such records and accounts shall conform to generally accepted accounting principles.

C. PLAZA PARTNER shall establish and maintain accurate records and accounts, in a manner satisfactory to DOT, which sufficiently and properly reflect all activities concerning the Accrual Fund subject to section 5(G) above.

D. PLAZA PARTNER will provide notice to DOT of all meetings, hearings, and proceedings of PLAZA PARTNER's Board of Directors related to the operation and management of the Licensed Plaza; maintenance and/or repair of the amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License, and will make available for consultation any of its officers and employees whose work relates to the performance of this License. PLAZA PARTNER also will make available, upon reasonable notice during normal business hours, at its principal place of business, for audit, inspection, or removal of copies by DOT, the Comptroller of the City of New York ("Comptroller"), and/or by a DOT-authorized independent auditor, PLAZA PARTNER's books and records relating to the performance of this License, including, but not limited to:

- (1) all fiscal records, including books, accounts, and canceled checks;
- (2) internal and external audits completed within the last three fiscal years;
- (3) minutes of meetings of the Board of Directors;
- (4) reports of accidents and other incidents;
- (5) programs, research, and other reports and publications in connection with PLAZA PARTNER's responsibilities in the Licensed Plaza pursuant to this License; and
- (6) records of PLAZA PARTNER sponsored programs, and any other matters relating to the performance of and compliance with this License, or with any laws or regulations governing the conduct of PLAZA PARTNER under this License.

E. PLAZA PARTNER shall furnish to DOT a detailed audited and certified financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such statements shall be prepared by an independent certified public accountant retained at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year. Copies of sale tax reports, if any, shall be submitted whenever requested by DOT. In addition, PLAZA PARTNER shall provide DOT within thirty (30) days of execution, any required tax filings with the Internal Revenue Service (such as the Form 990 and any successor form) and any required financial reports with the New York State Department of Law (such as annual report to be filed with the Charities Bureau or any successor report). Finally, PLAZA PARTNER shall prepare and provide to DOT any other reports as requested by DOT and/or pursuant to this License.

(1) Notwithstanding the above, for each fiscal year in which PLAZA PARTNER generates less than \$150,000 in Revenue, PLAZA PARTNER, may, in lieu of the audited and certified financial statement related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof, furnish to DOT a reviewed financial statement of PLAZA PARTNER related to the operation and management of the Licensed Plaza; and the maintenance and/or repair of amenities listed in Exhibit B that are installed within the Licensed Plaza as specifically set forth in this License for each fiscal year during the Term of this License and any renewals thereof. Such statements shall include in reasonable detail the amounts allocated for the operation and management of the Licensed Plaza; and the maintenance and/or repair of the amenities listed in **Exhibit B** that are installed within the Licensed Plaza as specifically set forth in this License, including but not limited to the Services described herein and reasonable administrative costs, including but not limited to insurance costs, and a list of all personnel salaries or a portion thereof, reflecting their work performed as it relates to the Licensed Plaza. Such review shall be conducted by an independent certified public accountant at the sole cost and expense of PLAZA PARTNER. Such annual statement shall be submitted to DOT no later than 180 days after the close of each fiscal year.

F. PLAZA PARTNER shall maintain adequate systems of internal control and shall keep complete and accurate records, books of account and data, which may be electronic records, including electronic daily sales and receipts records, which shall show in detail the total business transacted by PLAZA PARTNER, including Revenue and Accrual Fund (if applicable). Such books and records maintained pursuant to this License shall be conveniently segregated from other business matters of PLAZA PARTNER and shall include, but not be limited to:

- (1) all federal, state and local tax returns and schedules of PLAZA PARTNER;
- (2) records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Plaza, whether maintained in hard copy or in electronic form;
- (3) sales slips, daily dated cash register receipts, sales books; and
- (4) duplicate bank deposit slips and bank statements, whether maintained in hard copy or in electronic form.

G. PLAZA PARTNER shall submit to DOT reports, including but not limited to the monthly Revenue, the Accrual Fund (if applicable), monthly reconciliation reports demonstrating the difference between the Revenue and the DOT-approved budgeted expenses, and operational status reports in a form acceptable to DOT, within thirty (30) days of the end of each quarter during the Term of the License. Notwithstanding the above, however, DOT reserves the right to reasonably request PLAZA PARTNER to submit to DOT any other reports and/or information.

H. PLAZA PARTNER shall use such accounting and internal control methods and procedures and keep such additional books and records as may be reasonably prescribed by DOT or the Comptroller, and DOT and/or the Comptroller shall have the right to examine the recordkeeping procedures of PLAZA PARTNER prior to the commencement of the term of this

License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by PLAZA PARTNER.

I. The failure or refusal of PLAZA PARTNER to furnish any of the statements required to be furnished under this Section within thirty (30) days after its due date, the failure or refusal of PLAZA PARTNER to maintain adequate internal controls or to keep any of the records as required by this Section after prior written notice from DOT or the Comptroller or the existence of any unexplained discrepancy in the amount of fees required to be expended hereunder, as disclosed by audit conducted by DOT or the Comptroller, the results of which are provided by written notice to PLAZA PARTNER in each instance, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent in one month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder, which shall entitle DOT, at its option, to terminate this License.

J. PLAZA PARTNER shall and shall require its subconcessionaire(s) to retain all books, records, documents and other evidence relevant to this License for six (6) fiscal years after the expiration or termination of this License. City, State and federal auditors shall have full access to and the right to examine any of said materials during this period. In addition, if any litigation, claim, or audit concerning this License has commenced before the expiration of such six-year period, the books, records, documents, and other evidence must be retained until the completion of such litigation, claim or audit. Any books, records, documents or other evidence that are created in an electronic format in the regular course of business may be retained in an electronic format. Any books, records, documents, or other evidence that are created in the regular course of business as paper copy may be retained in an electronic format provided that they satisfy the requirements of N.Y. Civil Practice law and Rules (“CPLR”) 4539(b), including the requirement that the reproduction is created in a manner “which does not permit additions, deletions, or changes without leaving a record of such additions, deletions, or changes.” Furthermore, PLAZA PARTNER agrees to waive any objection to the admissibility of any such books, records, documents, or other evidence on the grounds that such documents do not satisfy CPLR 4539(b).

K. Notwithstanding anything else to the contrary contained in this License, the parties acknowledge and agree that the powers, duties and obligations of the Comptroller, pursuant to the provisions of the New York City Charter, shall not be diminished, compromised or abridged in any way.

L. This Section 10 shall survive the expiration or earlier termination of this License.

## **11. INSURANCE**

### **A. PLAZA PARTNER’s Obligation to Insure**

(1) Upon written Notice to Proceed through the date of expiration or termination of this License, PLAZA PARTNER shall ensure that the types of insurance indicated in this Section, with the exception of Liquor Law Liability Insurance, are obtained and remain in force, and that such insurance adheres to all requirements herein. PLAZA PARTNER shall

ensure that Liquor Law Liability Insurance adheres to all requirements herein and is in effect prior to the commencement of any service of alcohol and continue throughout such service of alcohol.

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

B. Commercial General Liability Insurance

(1) PLAZA PARTNER shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage, One Million Dollars (\$1,000,000) for personal and advertising injury, and Two Million Dollars (\$2,000,000) products completed operations. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Plaza and such per-location aggregate shall be at least Two Million Dollars (\$2,000,000). However, with the permission of DOT, the requirement that the aggregate limit apply on a per-location basis may be omitted, provided that the aggregate limit shall be at least Five Million Dollars (\$5,000,000). All self-insured retentions for such coverage must be disclosed to the City and DOT must approve any self-insured retention exceeding \$10,000 or self-insurance for such coverage. PLAZA PARTNER 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. 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 approved by the DOT Commissioner, and shall be "occurrence" based rather than "claims-made."

(2) Such Commercial General Liability insurance shall list the City, together with its officials and employees, as an Additional Insured ("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 Forms CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37.

(3) The Commercial General Liability policy must not limit (whether by exception, exclusion, endorsement, script or other modification) any of the following coverage attributes:

- (a) Contractual liability coverage insuring the contractual obligations of the insureds;
- (b) Employers' liability coverage for liability assumed by the Licensee under an "insured contract";
- (c) Coverage for claims arising under New York Labor Law; and
- (d) The applicability of Commercial General Liability coverage to the Additional Insured in respect of liability arising out of any of the following claims: (i) claims

against the Additional Insured by employees of a PLAZA PARTNER or employees of the entity required to maintain the insurance hereunder; or (ii) claims against the Additional Insured, by any general contractor, construction manager, contractor, architect or engineer or by the employees of any of the foregoing; or (iii) claims against the Additional Insured arising out of any work performed by a general contractor, construction manager, contractor, architect or engineer.

#### C. Workers' Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits Insurance

(1) PLAZA PARTNER shall and shall require its subconcessionaire(s) or others to maintain Workers' Compensation insurance, Employers' Liability insurance, and Disability and Paid Family Leave Benefits insurance in accordance with the law, on behalf of, or with regard to, all employees involved in the PLAZA PARTNER's operations under this License, and such insurance shall comply with the laws of the State of New York.

#### D. Commercial Automobile Liability Insurance

(1) With regard to all operations under this License, PLAZA PARTNER 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 (if any), non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01.

(2) 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.

#### E. Liquor Law Liability Insurance

(1) In the event PLAZA PARTNER shall serve alcohol, or shall permit a subconcessionaire or others to serve alcohol on the Licensed Plaza, PLAZA PARTNER shall carry or cause the subconcessionaire or others to carry liquor law liability insurance in an amount not less than Five Million Dollars (\$5,000,000) per occurrence, and name PLAZA PARTNER and the City as additional insured. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service of alcohol.

#### F. General Requirements for Insurance Coverage and Policies

(1) Policies of insurance required under this Section shall be provided by companies that may lawfully issue such policies and have an A.M. Best rating of at least A-7 or a Standard and Poor's rating of at least A, a Moody's Investor's Service rating of at least A3, a Fitch Rating rating of at least A-, or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department.

(2) With the exception of coverage required by the Workers' Compensation Law, policies of insurance required under this Section shall be primary and non-contributing to any insurance or self-insurance maintained by the City.

(3) Whenever 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 alternative form or endorsement contained in PLAZA PARTNER's policy provides coverage at least as broad as the specified form.

(4) There shall be no self-insurance program (including a self-insured retention in excess of \$10,000) with regard to any insurance required under this Section unless approved in writing by the DOT 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, PLAZA PARTNER 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 the defense and indemnification obligations that insurers are required to undertake in liability policies. If the Commissioner authorizes a self-insured retention, the PLAZA PARTNER must allow the City to pay all or part of the self-insured retention upon the PLAZA PARTNER's failure to pay. If the City pays any portion of such self-insured retention, the City may at its option withhold any monies so paid from any monies owing to PLAZA PARTNER, whether under this License or otherwise, and/or may require PLAZA PARTNER to pay such monies upon 30 days' notice.

(5) The City reserves the right to increase the required limits of Commercial Property Insurance at the time it exercises its renewal rights under Section 2(A) above if the Commissioner determines that the existing limits do not adequately protect the City from financial risk due to potential claims for injury or property damage.

(6) In the event PLAZA PARTNER 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, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9th Floor, New York, NY 10041, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

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

#### G. Proof of Insurance

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



(2) Within ten (10) days of award of this License or as otherwise specified by the DOT, and as required by N.Y. Workers' Compensation Law §§ 57 and 220(8), PLAZA PARTNER shall submit proof of PLAZA PARTNER's workers' compensation insurance and disability and paid family leave benefits insurance (or proof of a legal exemption) to DOT in a form acceptable to the New York State Workers' Compensation Board and the Certificate Holder shall be City of New York, c/o Department of Transportation General Counsel, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10041. ACORD forms are not acceptable proof of such insurance. The following forms are acceptable:

- (a) Form C-105.2, *Certificate of Workers' Compensation Insurance*;
- (b) Form U-26.3, *State Insurance Fund Certificate of Workers' Compensation Insurance*;
- (c) Form SI-12, *Certificate of Workers' Compensation Self-Insurance*;
- (d) Form GSI-105.2, *Certificate of Participation in Worker's Compensation Group Self-Insurance*;
- (e) Form DB-120.1, *Certificate of Disability and Paid Family Leave Benefits Insurance*;
- (f) Form DB-155, *Certificate of Disability and Paid Family Leave Benefits Self-Insurance*;
- (g) Form CE-200 – *Affidavit of Exemption*;
- (h) Other forms approved by the New York State Workers' Compensation Board; or
- (i) Other proof of insurance in a form acceptable to the City.

(3) For all insurance required under this Section other than Workers Compensation, Employers' Liability, and Disability and Paid Family Leave Benefits, PLAZA PARTNER shall submit one or more Certificates of Insurance. All such Certificates of Insurance shall: (i) certify the issuance and effectiveness of such policies of insurance, each with the specified minimum limits; and (ii) be accompanied by the provision(s) or endorsement(s) in PLAZA PARTNER'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 DOT Commissioner or certified copies of all policies referenced in such Certificate of Insurance.

(4) Certificates of Insurance confirming renewals of insurance shall be submitted to the DOT Commissioner prior to the expiration date of coverage of all policies required under this Concession. Such Certificates of Insurance shall comply with paragraphs (2) and (3) directly above.

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

(6) PLAZA PARTNER shall be obligated to provide the City with a copy of any policy of insurance required under this Section upon request by the DOT Commissioner or

the New York City Law Department.

H. Miscellaneous

(1) PLAZA PARTNER 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.

(2) PLAZA PARTNER 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.

(3) Whenever notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Section, PLAZA PARTNER shall provide the insurer with timely notice thereof on behalf of the City. Such notice shall be given even where PLAZA PARTNER may not be covered under such policy if this License requires that the City be an additional insured (for example, where one of PLAZA PARTNER's employees was injured). Such notice shall expressly specify that "this notice is being given on behalf of the City of New York, including its officials and employees, as additional insured" (such notice shall also include the name of any other entity listed as an additional insured) and contain the following information to the extent known: the number of the insurance policy; the name of the named insured; the date and location of the damage, occurrence, or accident; the identity of the persons or things injured, damaged, or lost; and the title of the claim or suit, if applicable. PLAZA PARTNER 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. If PLAZA PARTNER fails to comply with the requirements of this paragraph, PLAZA PARTNER shall indemnify the City, together with its officials and employees, and any other entity listed as an additional insured for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City together with its officials and employees, and any other entity listed as an additional insured.

(4) PLAZA PARTNER'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.

(5) Insurance coverage in the minimum amounts provided for in this Section shall not relieve PLAZA PARTNER 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.

(6) 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, PLAZA PARTNER shall at all times fully cooperate with the City with regard to such potential or actual claim.

(7) Apart from damages or losses covered by Workers' Compensation Insurance, Employers' Liability Insurance, Disability and Paid Family Leave Benefits Insurance, or Commercial Automobile Insurance, PLAZA PARTNER 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 PLAZA PARTNER and/or its employees, agents, or servants of its contractors or subcontractors, except for those damages or losses for which the City has an obligation to indemnify, defend and hold the PLAZA PARTNER harmless under Section 12(C).

(8) PLAZA PARTNER shall require its construction contractors that perform construction on the Licensed Plaza to maintain Commercial General Liability Insurance in accordance with this Section 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 PLAZA PARTNER 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 PLAZA PARTNER as an additional insured under such insurance, PLAZA PARTNER shall ensure that such entity also names 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). Such coverage as an additional insured shall not require privity of contract between the City, including its officials and employees, and the named insured.

(9) In the event PLAZA PARTNER 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, PLAZA PARTNER shall immediately forward a copy of such notice to both the DOT Commissioner, 55 Water Street, 9<sup>th</sup> Floor, New York, NY 10041, 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, PLAZA PARTNER shall ensure that there is no interruption in any of the insurance coverage required under this Section.

## **12. RESPONSIBILITY FOR SAFETY, INJURIES OR DAMAGE, AND INDEMNIFICATION**

### **A. PLAZA PARTNER Responsibilities**

(1) PLAZA PARTNER shall take all reasonable precautions to protect the safety of its employees, agents, servants, invitees, subconcessionaire(s), contractors, and subcontractors while they are involved in the operations under this License.

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

(3) PLAZA PARTNER shall use the Licensed Plaza in compliance with, and shall not cause or permit the Licensed Plaza 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 PLAZA PARTNER or the Licensed Plaza (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, PLAZA PARTNER shall not cause or permit, or allow any of the PLAZA PARTNER’s personnel to cause or permit, any Hazardous Materials to be brought upon, store, used generated, treated or disposed of on the Licensed Plaza. 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.

#### B. PLAZA PARTNER Indemnification

(1) Notwithstanding any other provisions of this License, the maximum amount for which the PLAZA PARTNER is liable per policy year for third party bodily injury (including death) and property damage caused by the PLAZA PARTNER’s operations under this License shall not exceed the Commercial General Liability limits required in Section 11(B)(1) (“Limitation of Liability”). The Limitation of Liability shall not apply to PLAZA PARTNER’s contractors, subcontractors or agents or subconcessionaire(s) or any of subconcessionaire(s)’s contractors, subcontractors or agents.

(2) Subject to the Limitation of Liability but notwithstanding any other provisions of this License, PLAZA PARTNER shall indemnify, defend and hold the City and its officials and employees (“Indemnified Parties”) 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) (hereinafter called “Liabilities”), relating to or arising out of, or alleged (by a person other than the City) to relate to or arise out of this License. Such Liabilities shall include, claims alleged to result from the following:

(a) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ negligence or failure to comply with any of the requirements of this License, including PLAZA PARTNER’s maintenance and/or repair obligations set forth in Section 3 herein;

(b) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ failure to comply with any applicable federal, state, or local laws, rules or regulations; and

(c) PLAZA PARTNER’s or any subconcessionaire(s)’s or any of their respective employees’, servants’, contractors’, subcontractors’ or agents’ infringement, violation, or unauthorized use of any copyright, trade secret, trademark or patent or any other property or personal right of any third party.

(3) Insofar as the facts or law relating to any of the foregoing would preclude the Indemnified Parties from being completely indemnified by PLAZA PARTNER, the Indemnified Parties shall be partially indemnified by PLAZA PARTNER to the fullest extent permitted by law.

(4) Upon receipt by any Indemnified Party of actual notice of a claim to which such Indemnified Party is entitled to indemnification in accordance with this Section, DOT shall give prompt written notice of such claim to PLAZA PARTNER. PLAZA PARTNER shall assume and prosecute the defense of such claim at the sole cost and expense of PLAZA PARTNER. PLAZA PARTNER may settle any such claim in its discretion without consent of DOT and the Corporation Counsel only if (i) the sole relief under the settlement is monetary damages, (ii) the PLAZA PARTNER indemnifies the Indemnified Parties for the full amount of the settlement, (iii) the settlement involves no admission by the Indemnified Parties or finding of guilt and (iv) such settlement includes an unconditional release of the Indemnified Party. Any other settlement of a claim shall require consent from DOT and the Corporation Counsel. .

(5) PLAZA PARTNER's obligation to defend, indemnify and hold the Indemnified Parties harmless shall not be (i) limited in any way by PLAZA PARTNER's obligations to obtain and maintain insurance under this License except as expressly provided in Section 12(B)(1), nor (ii) be adversely affected by any failure on the part of an Indemnified Party to avail themselves of the benefits of such insurance.

#### C. City of New York Indemnification

(1) To the fullest extent permitted by law, the City shall, or shall require its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of the negligent repair of the DOT Standard amenities listed in Exhibit B.

(2) To the fullest extent permitted by law, the City shall, or shall require its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any Plaza Events not sponsored by the PLAZA PARTNER.

(3) To the fullest extent permitted by law, the City shall, or shall require its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of: (i) the design and construction of the Licensed Plaza; (ii) any subsurface structural conditions at the Licensed Plaza; (iii) the negligence of the Indemnified Parties except for any negligence imputed to the Indemnified Parties arising from the negligence of PLAZA PARTNER; and (iv) any other cause outside the scope of PLAZA PARTNER's responsibilities under this License, including any Force Majeure Events as defined in Section 19(F).

(4) To the fullest extent permitted by law, the City shall, or shall require its contractors, licensees, or permittees to indemnify, defend and hold the PLAZA PARTNER harmless against any and all Liabilities to third parties for injury, including death, or property damage to the extent arising out of any City infrastructure, amenity, item or equipment not identified in Exhibit B that is located in or around the Licensed Plaza.

(5) Upon receipt by PLAZA PARTNER of actual notice of any Liabilities to which PLAZA PARTNER is entitled to indemnification in accordance with this Section, PLAZA PARTNER shall give prompt written notice of such Liabilities to the City. Such notice shall be presented to the New York City Law Department, 100 Church Street, NY, NY 10007 attention: Tort Division. The City shall assume and prosecute the defense of such Liabilities at its sole cost and expense. The City may settle any such Liabilities in its discretion without PLAZA PARTNER's consent only if (i) the sole relief under the settlement is monetary damages, (ii) the City indemnifies PLAZA PARTNER for the full amount of the settlement (iii) the settlement involves no admission by PLAZA PARTNER or finding of guilt and (iv) such settlement includes an unconditional release of PLAZA PARTNER. Any other settlement of Liabilities shall require consent from PLAZA PARTNER.

### **13. ASSIGNMENT**

A. No assignment, sale, mortgage or transfer of any interest of this License by PLAZA PARTNER, in whole or in part, will be effective unless it is agreed to, in writing, by DOT and signed by the DOT Commissioner, or his/her designee, nor shall this License be transferred by operation of law, it being the purpose and spirit of this License to grant this privilege solely to PLAZA PARTNER.

B. Except for the subcontracts for supplemental services let pursuant to the processes set forth in PLAZA PARTNER's contract with the New York City Department of Small Business Services that are for district-wide services, PLAZA PARTNER shall not enter into any subcontracts where the aggregate value per annum is \$20,000 or above for the performance of its obligations, in whole or in part, under this License as referenced in Section 3 herein without DOT's prior written approval, including a favorable responsibility determination. Such approval or denial shall not be unreasonably delayed. Two (2) copies of each such proposed subcontract shall be submitted to DOT with PLAZA PARTNER's written request for approval. Such approval or denial shall not be unreasonably delayed. The PLAZA PARTNER shall ensure that the subcontractor(s) complete and submit an online Procurement and Sourcing Solutions Portal (PASSPort) Vendor and Principle Questionnaires (formerly known as Vendor Information Exchange System (VENDEX) forms) to the Mayor's Office of Contract Services if the aggregate value of City contracts, franchises and concessions awarded that subcontractor, including this one, during the immediately preceding twelve-month period equals or exceeds the Threshold. All subcontracts shall contain provisions specifying:

(1) that work performed by the subcontractor must be in accordance with the terms of the License between DOT and PLAZA PARTNER;

(2) that nothing contained in such agreement shall impair the rights of DOT;

(3) that nothing contained herein, or under the License between DOT and PLAZA PARTNER, shall create any contractual relation between the subcontractor and DOT;

(4) that PLAZA PARTNER is fully responsible to DOT for the acts and omissions of the subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it; and

(5) (a) that the subcontractor is not in default or in breach, beyond any applicable grace period, of its obligations under any written agreement with the City, unless such default or breach has been waived in writing by the City;

(b) that the subcontractor has not been convicted of a misdemeanor related to truthfulness and/or business conduct in the past five (5) fiscal years;

(c) that the subcontractor has not been convicted of a felony in the past ten (10) fiscal years;

(d) that the subcontractor has not received formal written notice from a federal, state or local governmental agency or body that such person is currently under investigation for a felony criminal offense; and/or

(e) that the subcontractor has not received notice of default in the payment to the City of any taxes, sewer rents or water charges, which have not been paid, unless such default is currently being contested with due diligence in proceedings in court or other appropriate forum.

C. Failure of PLAZA PARTNER to obtain any required consent to any assignment shall be grounds for termination for cause, at DOT's option. If so terminated, the City shall thereupon be relieved and discharged from any further liability and obligation to PLAZA PARTNER, its assignees or transferees. In such case, all monies that may become due under the License shall be forfeited to the City.

D. This License may be assigned by the City to any corporation, agency or instrumentality having authority to accept such assignment.

#### **14. CAPITAL IMPROVEMENTS AND ALTERATIONS**

A. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make capital improvements to the Licensed Plaza by installing other amenities in addition to those already installed and listed in **Exhibit B** upon DOT's prior written approval. PLAZA PARTNER shall not apply any Revenue to any such capital improvements, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such capital improvements. If the PLAZA PARTNER plans to capitally improve the Licensed Plaza, PLAZA PARTNER shall submit to DOT such plans for its prior written approval. Such approval or denial shall not be unreasonably delayed. The capital improvement plans shall include a detailed description of the proposed improvements, a cost breakdown, drawings/schematics of the proposed improvements and any other documentation that DOT requests relevant to the proposed improvements.

B. PLAZA PARTNER may, at its sole cost and expense, make or permit the subconcessionaire(s) to make alterations to the Licensed Plaza as described below. PLAZA PARTNER shall not apply any Revenue to any such alterations, however, PLAZA PARTNER may apply gifts as contemplated in Section 9(B) to any such alterations.

C. PLAZA PARTNER shall not make, or permit the subconcessionaire(s) to make, any alterations to the Licensed Plaza without the prior written approval of DOT. "Alteration" shall have the following meaning:

(1) any restoration, rehabilitation, modification, renovation or major improvement to the Licensed Plaza;

(2) any work or construction which would or might affect in any manner, or have substantial impact upon the exterior structure, character, appearance, horticulture or design of any portion of the Licensed Plaza, including adjacent areas and Subconcession(s);

(3) any work, excluding maintenance and repair, affecting the Licensed Plaza's plumbing, heating, electrical, mechanical, ventilating, or other systems;

(4) removal of perimeter planters on the Licensed Plaza;

(5) affixing or installing any equipment to the walls or any other area of the Licensed Plaza.

D. Upon installation of any such capital improvements and Alteration(s), title to all improvements and Alteration(s) shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the substantial completion of the capital improvements and Alteration(s). Such title may only vest in the City upon payment of the fair market value of the capital improvements and Alteration(s) by the City to PLAZA PARTNER. To the extent the City chooses not to exercise its option with respect to any of the capital improvements and Alteration(s), it shall be the responsibility of PLAZA PARTNER to remove such items after the expiration or termination of this License and restore the Licensed Plaza to its original state, normal wear and tear excepted and to the reasonable satisfaction of DOT at the sole cost and expense of PLAZA PARTNER.

E. DOT may, in its sole judgment, make additions, alterations, repairs, decorations or improvements to the Licensed Plaza at DOT's and the City's expense, but nothing contained herein shall be deemed to obligate or require DOT to make any additions, alterations, repairs, decorations, or improvements, nor shall this provision in any way affect or impair PLAZA PARTNER's obligations in any respect. DOT will coordinate with PLAZA PARTNER and provide reasonable notice to PLAZA PARTNER of any such additions, alterations, repairs, decorations or improvements. DOT will use reasonable efforts to schedule any such alteration, additions, decorations, repairs, or improvements to be made by DOT at such times as will cause the least interference with PLAZA PARTNER's operations.

## **15. INSPECTION AT SITE**



DOT shall have the right at all times to have representatives of the City and/or the State or federal government present at the Licensed Plaza for any purpose.

## **16. PERSONNEL**

A. The parties agree that PLAZA PARTNER is an independent contractor and not an employee, subsidiary, affiliate, division, department, agency, office, or unit of the City. Accordingly, PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, assert the existence of any relationship or status on the part of PLAZA PARTNER, with respect to the City, that differs from or is inconsistent with that of an independent contractor.

B. All persons who are employed by PLAZA PARTNER and all PLAZA PARTNER's subconcessionaire(s) and subcontractor(s) (including without limitation, consultants and independent contractors) that are retained to perform services under or in connection with this License are neither employees of the City nor under contract with the City. PLAZA PARTNER, and not the City, is responsible for their work, direction, compensation, and personal conduct while PLAZA PARTNER is engaged under this License. Nothing in this License, and no entity or person's performance pursuant to or in connection with this License, shall create any relationship between the City and PLAZA PARTNER's employees, agents, subconcessionaire(s), or subconcessionaire(s) employees or agents subcontractors, or subcontractor's employees or agents (including without limitation, a contractual relationship, employer-employee relationship, or quasi-employer/quasi-employee relationship) or impose any liability or duty on the City (i) for or on account of the acts, omissions, liabilities, rights or obligations of PLAZA PARTNER, its employees or agents, its subcontractors, or its subcontractor's employees or agents (including without limitation, obligations set forth in any collective bargaining agreement), its subconcessionaire(s), or its subconcessionaire(s) employees or agents; or (ii) for taxes of any nature; or (iii) for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity (including without limitation, Workers' Compensation coverage, Employers' Liability coverage, Disability Benefits coverage, Unemployment Insurance benefits, Social Security coverage, employee health and welfare benefits or employee retirement benefits, membership or credit). PLAZA PARTNER and its employees, officers, and agents shall not, by reason of this License or any performance pursuant to or in connection with this License, (i) hold themselves out as, or claim to be, officials or employees of the City, including any department, agency, office, or unit of the City, or (ii) make or support in any way on behalf of or for the benefit of PLAZA PARTNER, its employees, officers, or agents any demand, application, or claim upon or against the City for any right or benefit applicable to an official or employee of the City or to any officer, agent, or employee of PLAZA PARTNER or any other entity. Except as specifically stated in this License, nothing in the License and no performance pursuant to or in connection with the License shall impose any liability or duty on the City to any person or entity whatsoever.

C. To the extent required by law, PLAZA PARTNER shall not unlawfully discriminate against any employee or applicant for employment because of actual or perceived age, religion, religious practice, creed, sex, gender, gender identity or gender expression, sexual

orientation, status as a victim of domestic violence, stalking, and sex offenses, familial status, partnership status, marital status, caregiver status, pregnancy, childbirth or related medical condition, disability, presence of a service animal, predisposing genetic characteristics, race, color, national origin (including ancestry), alienage, citizenship status, political activities or recreational activities as defined in N.Y. Labor Law 201-d, arrest or conviction record, credit history, military status, uniformed service, unemployment status, salary history, or any other protected class of individuals as defined by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities, due to pregnancy, childbirth, or a related medical condition, due to status as a victim of domestic violence, stalking, or sex offenses, or due to religion.

## **17. INVESTIGATIONS CLAUSE**

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

B. (1) If any person who has been advised that his or her statement, and any information from such statement, will not be used against him or her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, contract, or license entered into with the City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York or New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the laws of the State of New York; or

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

C. (1) DOT or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

(2) If any non-governmental party to the hearing requests an adjournment, the

Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to subparagraph E below without the City incurring any penalty or damages for delay or otherwise.

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

(1) The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

(2) The cancellation or termination of all such existing City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, with the City incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

E. The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in subparagraphs (1) and (2) below. He or she may also consider, if relevant and appropriate, the criteria established in Paragraphs (3) and (4) below in addition to any other information which may be relevant and appropriate:

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

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

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

(4) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under subparagraph D above, provided that the party or entity has given actual notice to the Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in subparagraph C (1) above gives notice and proves that such interest previously was acquired. Under either circumstance, the party or entity must present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.

#### F. Definition of Terms

(1) The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

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

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

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

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

#### 18. NOTICE

All notices, except those related to Sections 11(J)(3) and 12(C)(5) above, from PLAZA PARTNER to DOT shall be in writing and delivered to the attention of the Director of Public Space, New York City Department of Transportation, 55 Water Street, 6<sup>th</sup> Floor, New York, NY 10041, or such other address as DOT may designate, with copies sent to DOT's General Counsel at same address. All notices from DOT to PLAZA PARTNER shall be dispatched in the same manner, and delivered to PLAZA PARTNER at 90 West Broadway #4, New York, NY 10007, or such other address as may be notified from time to time.

#### 19. TERMINATION

A. PLAZA PARTNER shall have the right to terminate this License in whole or in part and it shall provide DOT with no less than six month written notice.

B. DOT shall have the right to terminate this License in whole or in part:

(1) Under any right to terminate as specified in any Section of this License.

(2) If DOT determines that PLAZA PARTNER or subconcessionaire(s) failed to comply with any of the terms and conditions of this License, including PLAZA PARTNER's

or subconcessionaire(s)' failure to perform services at the required standards set forth in Sections 1, 3, 6, 7, 8, and 14 of this License.

(3) Upon PLAZA PARTNER becoming insolvent.

(4) Upon the commencement of any proceeding under the Bankruptcy Act, by or against PLAZA PARTNER, either voluntary or involuntary.

(5) Upon DOT's determination that this License should be terminated without cause.

C. DOT shall give PLAZA PARTNER written notice of any termination of the License specifying therein the applicable provisions of subsection B of this Section and the effective date thereof, which shall not be less than twenty-five (25) days from the date of receipt of written notice by PLAZA PARTNER.

D. With regard to paragraph B(2) of this Section 19, DOT shall first give written notice to PLAZA PARTNER outlining in reasonable detail, the alleged deficiencies. If the deficiencies are not cured by PLAZA PARTNER within a reasonable time (if no time is specified), or in the time specified in DOT's notice, either of which shall in no event be less than ten (10) days except in cases of emergency (as determined by DOT), the failure to cure the deficiencies shall result in immediate termination of this License.

E. With regard to paragraph B(5) of this Section 19, DOT shall provide written notice of such termination to PLAZA PARTNER, and this License shall terminate effective twenty-five (25) days from the date such notice is received by PLAZA PARTNER.

F. Force Majeure Event

(1) Subject to the remaining paragraphs of this Section 19(F), if PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event (as defined below), PLAZA PARTNER shall not be in breach of this License or otherwise liable for any such failure or delay in the performance of the Services. The time for performance of such Services shall be extended commensurate with the nature of the Force Majeure Event.

(2) "Force Majeure Event" means any circumstance beyond PLAZA PARTNER's reasonable control and without PLAZA PARTNER's fault or negligence affecting the Licensed Plaza or a substantial portion thereof including:

- (a) acts of God, hurricane, tornado, flood, drought, earthquake or other natural disaster;
- (b) epidemic or pandemic;
- (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations;
- (d) nuclear, chemical or biological contamination or sonic boom; and
- (e) collapse of buildings, fire, explosion, or citywide blackout.

(3) If PLAZA PARTNER is prevented, hindered or delayed in or from performing any of its obligations under this License by a Force Majeure Event, PLAZA PARTNER shall:

(a) as soon as reasonably practicable after the start of the Force Majeure Event, notify DOT of the Force Majeure Event, the date on which it started, its likely or potential duration, and the effect of the Force Majeure Event on its ability to perform any of its obligations under this License;

(b) use all reasonable endeavors to mitigate the effects of the Force Majeure Event on the performance of the Services under this License; and

(c) resume performance of the Services as soon as reasonably practicable after the removal of the Force Majeure Event.

(4) If the Force Majeure Event prevents, hinders or delays PLAZA PARTNER's performance of the Services for a continuous period of more than thirty-five (35) days, DOT may terminate this License by giving PLAZA PARTNER twenty-five (25) days' written notice.

G. Upon expiration or sooner termination of this License by DOT, all rights of PLAZA PARTNER herein shall be forfeited without claim for loss, damages, refund of investment or any other payment whatsoever against the City, except as provided herein.

H. Upon such termination PLAZA PARTNER shall quit the Licensed Plaza and surrender all City property therein in good, clean, and orderly condition, ordinary wear and tear excepted.

I. PLAZA PARTNER agrees that upon expiration, or sooner termination of this License, it shall immediately cease all operations and require any subconcessionaire(s) to cease all operations pursuant to this License and shall vacate and require any subconcessionaire(s) to vacate the Licensed Plaza without any further notice by the City and without resort to any judicial proceeding by the City. Upon the expiration, or sooner termination of this License, City reserves the right to take immediate possession of the Licensed Plaza.

J. PLAZA PARTNER shall, or shall require its subconcessionaire(s), on or prior to the expiration or sooner termination of this License, remove all personal possessions from the Licensed Plaza. PLAZA PARTNER acknowledges that any personal property remaining on the Licensed Plaza after the expiration, or sooner termination of this License, is intended by PLAZA PARTNER to be abandoned. PLAZA PARTNER shall remain liable to the City for any damages, including the cost of removal or disposal of property, should PLAZA PARTNER and/or its subconcessionaire(s) fail to remove all possessions from the Licensed Plaza on or before the expiration or termination date. PLAZA PARTNER shall pay any damages promptly upon the City's demand.

K. Upon termination of this License, PLAZA PARTNER shall comply with DOT close-out procedures, including but not limited to:

(1) Furnishing within thirty (30) days an inventory to DOT of all equipment, appurtenances and property purchased through or provided under this License, and carrying out any reasonable DOT directive concerning the disposition thereof.

(2) Not incurring or paying any further obligation pursuant to this License beyond the termination date. Any obligation necessarily incurred by PLAZA PARTNER on account of this License prior to receipt of notice of termination and falling due after such date shall be paid by DOT, if such obligation was required by DOT in accordance with the terms of this License. PLAZA PARTNER shall be solely responsible for any obligations that are not specifically incurred on account of this License. In no event shall the term “obligation”, as used herein, be construed as including any lease agreement, oral or written, entered into between PLAZA PARTNER and its landlord.

(3) Turn over to DOT or its designees all books, records, documents and materials specifically relating to this License.

(4) Submit, within ninety (90) days, a final statement and report relating to the License. The report shall be made by a certified public accountant or a licensed public accountant.

L. PLAZA PARTNER expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is terminated by DOT sooner than the fixed term because the Licensed Plaza is required for any public purpose, or because the License was terminated or revoked for any reason as provided herein.

M. This License may be suspended for any reason with written notice from DOT. Such suspension shall be immediately effective upon the mailing, e-mail or hand delivery thereof. In the event of such notice of suspension, PLAZA PARTNER shall not operate. In the event that PLAZA PARTNER’s operation is disrupted due to construction in the immediate area where the Licensed Plaza is located, this License may be suspended, at DOT’s option.

N. Notwithstanding any other provisions of this License, PLAZA PARTNER shall not be relieved of liability to the City for damages sustained by the City by virtue of PLAZA PARTNER’s breach of the License.

O. The rights and remedies of the City provided in this Section shall not be exclusive and are in addition to all other rights and remedies provided by law or under this License. In addition, nothing contained in this Section shall be deemed or imply or be construed to represent an exclusive enumeration of circumstances under which DOT may terminate this License.

P. In the event PLAZA PARTNER continues to operate and manage the Licensed Plaza; and/or maintain and/or repair the amenities listed in **Exhibit B** that are installed within the Licensed Plaza under this License, after the expiration or termination of this License, the PLAZA PARTNER shall continue to comply with all provisions of this License as if the License was still in force and effect, throughout the period of such continued operation, provided that any such continued operation and compliance with this License shall in no way be construed as a renewal

or other extension of this License, nor as a limitation on the remedies available to the City as a result of such continued operation after the term of this License, including but not limited to, damages and restitution and injunctive relief.

## **20. COMPLIANCE WITH APPLICABLE STATUTES AND REGULATIONS**

A. PLAZA PARTNER shall faithfully perform and carry out the provisions of this License and require its subconcessionaire(s), agents, employees, and invitees to perform and carry out the provisions of this License. PLAZA PARTNER shall comply with and shall require its subconcessionaire(s) to comply with all federal, state, and local laws, rules, regulations, and DOT specifications, standards, and policies applicable to the Licensed Plaza and PLAZA PARTNER's use and occupation thereof, including but not limited to the provisions of the New York State Labor Law regarding gratuities.

B. PLAZA PARTNER shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a concessionaire of the City of New York as set forth in the Paid Sick Leave Law Concession Rider set forth in **Exhibit E**.

C. With respect to services provided under this License, PLAZA PARTNER shall not unlawfully discriminate against any person because of actual or perceived age, religion, creed, sex, gender, gender identity or gender expression, sexual orientation, partnership status, marital status, disability, presence of a service animal, race, color, national origin, alienage, citizenship status, or military status, or any other class of individuals protected from discrimination in public accommodations by City, State or Federal laws, rules or regulations. PLAZA PARTNER shall comply with all statutory and regulatory obligations to provide reasonable accommodations to individuals with disabilities.

D. This License is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. §§ 12131 *et seq.* ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. PLAZA PARTNER shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs, or activities pursuant to this License. This includes providing safe and accessible opportunities for everyone. To the extent possible, PLAZA PARTNER is encouraged to exceed all applicable accessibility requirements for people with disabilities.

## **21. REPRESENTATIONS, WARRANTIES AND COVENANTS**

A. PLAZA PARTNER makes the following representations and warranties:

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

(2) This License has been duly authorized by all necessary corporate action on the part of PLAZA PARTNER has been duly executed and delivered by PLAZA PARTNER, and



assuming due execution and delivery by DOT, constitutes a legal, valid, binding and enforceable obligation of PLAZA PARTNER.

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

(4) The PLAZA PARTNER has neither been asked to pay, offered to pay, nor paid any illegal consideration, whether monetary or otherwise, in connection with obtaining this License.

(5) The PLAZA PARTNER represents and warrants that, with respect to securing or soliciting this License, PLAZA PARTNER is in compliance with the requirements of the New York State Lobbying Law (Legislative Law §§ 1-a *et seq.*). PLAZA PARTNER makes such representation and warranty to induce the City to enter into this License and the City relies upon such representation and warranty in the execution of this License. For any breach or violation of the representation and warranty set forth in this paragraph, the Commissioner shall have the right to annul this License without liability; and PLAZA PARTNER shall not make claim for, or be entitled to recover, any sum or sums due under this License. The rights and remedies of the City provided in this Section are not exclusive and are in addition to all other rights and remedies allowed by Law or under this License.

B. PLAZA PARTNER covenants and agrees that for so long as this License is in effect it shall maintain its corporate existence under the laws of the State of New York as a not-for-profit corporation, and shall maintain its tax-exempt status pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

C. City hereby represents and warrants that this License has been duly authorized by all necessary action on the part of the City, has been duly executed and delivered by the City and assuming due execution and delivery by PLAZA PARTNER, and registration with the Comptroller, constitutes a legal, valid, binding and enforceable obligation of the City.

## **22. CONFLICT OF INTEREST**

PLAZA PARTNER represents and warrants that neither it nor any of its officers, trustees, employees, or volunteers has any interest, nor shall they acquire any interest directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. PLAZA PARTNER further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City, nor any person whose salary is payable, in whole or in part, from the City Treasury, shall participate in any decision relating to this License which affects his or her personal interest or the interest of any corporation, partnership

or association in which he is, directly or indirectly, interested; nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

### **23. NO LEASE**

It is expressly understood that the City has title to the Licensed Plaza and that no land, building, space, or equipment is leased to PLAZA PARTNER, but that during the term of this License, PLAZA PARTNER shall be allowed the use of the Licensed Plaza only as herein provided.

### **24. FEDERAL EMPLOYER IDENTIFICATION NUMBER**

PLAZA PARTNER represents that it is not in arrears to the City upon any debt, contract or taxes and is not a defaulter as surety or otherwise, upon any obligation to the City, and has not been declared not responsible, or disqualified, by any agency of the City, nor is there any proceeding pending relating to the responsibility or qualification of PLAZA PARTNER to receive a license or public contracts. The Federal Employer Identification Number of PLAZA PARTNER is 27-3300541.

### **25. RESERVATION OF RIGHTS AND INTERESTS**

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

B. Any press release made to the public relating to the subject of this License must be approved in advance by DOT. PLAZA PARTNER will conspicuously acknowledge the involvement of DOT in any statement or release. If DOT finds that any release, advertisement, or statement made to the public relating to the programs and activities offered in the Licensed Plaza is incorrect or unacceptable, PLAZA PARTNER and DOT agree in good faith to make such release, advertisement or statement accurate and acceptable to both parties.

C. If PLAZA PARTNER publishes a work discussing any aspect of performance of any service covered by this License, PLAZA PARTNER will acknowledge therein the involvement, if any, of the City, when appropriate, and the City will have a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and authorize others to use such publication.

### **26. WAIVER OF JURY TRIAL**

PLAZA PARTNER hereby expressly waives all rights to trial by jury in any lawsuit or summary proceeding hereafter instituted by the City against PLAZA PARTNER or any counterclaim or cause of action directly or indirectly arising out of the terms, covenants or conditions of this License with regard to any matter whatsoever in any way connected with this License including, but not limited to, the relationship between the City and PLAZA PARTNER.

This provision relating to the waiver of jury trial rights shall survive the expiration or termination of this License or any terms hereof.

## **27. CHOICE OF LAW/CONSENT TO JURISDICTION AND VENUE**

A. This License shall be deemed to be executed in the City of New York, State of New York, regardless of the domicile of PLAZA PARTNER and shall be governed by and construed in accordance with the internal laws of the State of New York. Any and all claims asserted by or against the City arising under this License or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located within New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York. To effect this License and intent, it is understood that:

(1) If the City initiates any action arising out of this License against PLAZA PARTNER in Federal Court or in New York State Court, service of process may be made on PLAZA PARTNER either by personal service upon an officer or authorized agent of PLAZA PARTNER, wherever PLAZA PARTNER may be found, or by registered mail addressed to PLAZA PARTNER at the address set forth in this License, or to such other address as PLAZA PARTNER may provide to DOT or the City in writing; and

(2) With respect to any action arising out of this License between the City and PLAZA PARTNER in New York State Courts, PLAZA PARTNER expressly waives and relinquishes any rights it might otherwise have to move to dismiss on the ground of forum non conveniens, to remove the action to Federal Court; and to move for change of venue to a New York State Court located outside of New York County.

(3) With respect to any action arising out of this License between the City and PLAZA PARTNER in Federal Court located in New York City, PLAZA PARTNER expressly waives and relinquishes any right it might otherwise have to move for a transfer of the action to a Federal Court outside of New York City.

(4) If PLAZA PARTNER commences any action arising out of this License against the City in a court located other than in the County, City and State of New York, upon request of the City, PLAZA PARTNER shall consent to a transfer of the action to a court of competent jurisdiction located in the County, City and State of New York, or if the court where the action is commenced cannot or will not transfer the action, PLAZA PARTNER shall consent to the dismissal of such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction within New York City.

B. All disputes arising out of this License shall be interpreted and decided in accordance with the laws of the State of New York.

## **28. CLAIMS AND ACTIONS THEREON**

A. No action at law or proceeding in equity against the City shall lie or be maintained upon any claim based upon this License or arising out of this License or in any way connected

with this License unless PLAZA PARTNER 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.

B. No action shall lie or be maintained against the City by PLAZA PARTNER upon any claims based upon this License unless such action shall be commenced within six months after the date of filing with the Comptroller of the certificate for the final payment hereunder, or within six months of the termination or conclusion of this License, or within six months after the accrual of the cause of action, whichever first occurs.

C. In the event any claim is made or any action brought in any way relating to the License herein, PLAZA PARTNER shall diligently render to the City without additional compensation any and all assistance which the City may require of PLAZA PARTNER.

## **29. CLAIM AGAINST OFFICERS OR EMPLOYEES**

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

## **30. PARTICIPATION IN AN INTERNATIONAL BOYCOTT**

A. PLAZA PARTNER agrees that neither PLAZA PARTNER nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

B. Upon the final determination by the Commerce Department or any other agency of the United States as to conviction of PLAZA PARTNER or a substantially-owned affiliated company thereof, or participation in an international boycott in violation of the provisions of the Export Administration Act of 1969, as amended, or the regulations promulgated thereunder, the Comptroller may, at his option, render, forfeit and void this License.

C. PLAZA PARTNER shall comply in all respects, with the provisions of §6-114 of the Administrative Code of the City of New York and the rules and regulations issued by the Comptroller thereunder.

## **31. TRADEMARK**

The City is the trademark owner of various marks and has licensed the use of those trademarks for use on certain designated merchandise. If PLAZA PARTNER or its subconcessionaire(s) sells merchandise that uses the City's trademarks, they shall purchase such merchandise from authorized licensees of the City of New York. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Plaza will result in the immediate termination of this License.

### **32. INFRINGEMENTS**

PLAZA PARTNER shall be liable to the City and hereby agrees to indemnify and hold the City harmless for any damage or loss or expense sustained by the City from any infringement by PLAZA PARTNER of any copyright, trademark, or patent rights of design, systems, drawings, graphs, charts, specifications or printed matter furnished or used by PLAZA PARTNER in the performance of this License.

### **33. ANTI-TRUST**

PLAZA PARTNER hereby assigns, sells, and transfers to the City all right title and interest in and to any claims and causes of action arising under the anti-trust laws of the State of New York or of the United States relating to the particular services purchased or procured by the City under this License.

### **34. EMINENT DOMAIN AND PUBLIC USE**

In the event that the Licensed Plaza or any part thereof is required for a public use or condemned for a public use, whether by DOT or any other agency of government, PLAZA PARTNER waives any and all claims to an award for its License or other damage by reason of such requirement or condemnation, including but not limited to awards for fixtures and moving expenses. Notwithstanding the foregoing, DOT may, in its sole discretion and upon PLAZA PARTNER's request, use reasonable efforts to provide PLAZA PARTNER with a new location if relocation is feasible, or, alternatively, the License term may be tolled for the period of time during which the public work being performed causes an interruption to PLAZA PARTNER's business. In such case, the License term shall begin to run again as soon as the public work is completed and PLAZA PARTNER is able to resume its business.

### **35. DEVELOPMENT PURPOSES**

In the event that the Licensed Plaza or any part thereof is required by DOT or any other agency of government for development purposes, construction, repairs or other work, PLAZA PARTNER waives any and all claims to an award under this License or other damages by reason of such requirement or work, including but not limited to awards for fixtures. PLAZA PARTNER also agrees that this License shall terminate with regard to the affected area(s) and PLAZA PARTNER shall vacate the affected area(s) upon twenty-five (25) days' written notice from DOT.

### **36. SEVERABILITY**

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

### **37. ALL LEGAL PROVISIONS DEEMED INCLUDED**

It is the intent and understanding of the parties to this License that each and every provision of law required to be inserted in the License shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this License shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the law and without prejudice to the rights of either party hereunder.

**38. MODIFICATION**

No waiver or modification of any provision of this License will be effective unless it is in writing and signed by duly authorized representatives of DOT and PLAZA PARTNER.

**39. ENTIRE AGREEMENT**

This License contains all the terms and conditions agreed upon by the parties hereto and no other agreement, oral or otherwise, regarding the subject matter of this License shall be deemed to exist or to bind any of the parties hereto or to vary any of the terms contained herein.

**40. COUNTERPARTS**

This License may be executed in one or more counterparts which, when taken together, shall constitute one and the same.

**NO FURTHER TEXT ON THIS PAGE**

Agreed to this \_\_\_\_ day of \_\_\_\_\_, 20\_\_:

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

Michelle Craven  
Assistant Commissioner, Office of Cityscape and Franchises  
New York City Department of Transportation

Dated:

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

Victoria Weil  
President  
Friends of Bogardus Plaza, Inc.

Dated:

Approved as to Form and Certified as to Legal Authority:

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

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

On this            day of            , 20\_\_ before me personally came Michelle Craven to me known, and known to be the Assistant Commissioner, Office of Cityscape and Franchises for the New York City Department of Transportation, and the said person described in and who executed the forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

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Notary Public

STATE OF NEW YORK     )

ss:

COUNTY OF NEW YORK   )

On this            day of            , 20\_\_ before me personally came Victoria Weil, who, being duly sworn by me did depose and say that she is the President of the Friends of Bogardus Plaza, Inc., the corporation described in and who executed the foregoing instrument and she acknowledged that she executed the same in his/her official capacity and for the purposes mentioned therein.

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Notary Public



[Map of Licensed Plaza, which includes total square footage]

# Bogardus Plaza, MN



## Exhibit B

### Bogardus Plaza List of Amenities (all quantities listed below are approximations)

#### **Paving**

- DOT Standard granite block pavement (3,195 SF)
- DOT Standard concrete (8,533 SF)
- DOT Standard 6" Granite Curb (432 LF)
- 18" wide granite steps (65 LF)
- Diamond plate stair, North and South (186 SF)

#### **Landscaping**

- Raised Planters (5)
- Granite planter curb (443 LF)
- Planting soil (142 CY)
- Planting (2,754 SF)
- Trees (4)
- Steel fence, rail, and handrail (513 LF)

#### **Furnishings**

- DOT Standard CityBench (1)
- Backless recycled plastic lumber bench (48 LF)
- Movable tables (22)
- Movable chairs (80)
- Concrete seating eggs (13)
- Free standing clock, in conjunction with New York City Department of Citywide Administrative Services (1)
- DOT Standard wayfinding totem (1)
- DOT Standard (DSNY Standard) Trash and Recycle Bins (11 total)
  - 32 Gallon: Litter (3), Paper (1), Plastic (1)
  - 44 Gallon: Litter: (2), Paper (2), Plastic (2)

#### **Infrastructure**

- Reduced Pressure Zone Device RPZ (1)
- Hose bib (3)
- Electrical cabinet (1)
- Electrical outlets on street lights (6)
- DOT Standard Type B pedestrian light pole (6)

# Bogardus Plaza, MN



## Exhibit D

### [PDC Approval of DOT Standard Plaza Kiosk]



December 11, 2017

CERTIFICATE

26412

RESOLVED That the Design Commission, having considered designs for the design of a prototypical kiosk for installation in plazas, citywide, submitted by the Department of Transportation, represented by exhibits 6816-GS, GT & GU of record in this matter, hereby gives to the same unanimous preliminary approval with the understanding that DOT will (1) consider solar tubes or photovoltaic panels to draw in additional light if the perforated screens are found to be insufficient for daylighting; (2) incorporate a standard location and size for information that will be on all kiosks, such as DOT's logo; (3) develop the signage guidelines to provide as much control as possible; and (4) return as soon as possible with an update on the Astor Place kiosks. The Commission urges DOT to (1) require maintenance partners to utilize this design in all plazas, except in unique site contexts, and (2) establish aesthetic guidelines for temporary kiosks. The Commission also notes that any kiosk or other structure remaining in-situ (with or without permanent footings) for longer than 365 days is subject to PDC review per the New York City Charter, Chapter 37, Section 854(g).

Preliminary approval is conditioned upon submission of this project for final review and approval before December 11, 2019.

A true copy of resolution adopted by  
the Design Commission at its meeting  
on December 11, 2017.



Justin Garrett Moore  
Executive Director

**Philip Aarons, Laurie Hawkinson, Susan Morgenthau, Signe Nielsen, Ethel Sheffer, Hank Willis Thomas, Mary Valverde, Commissioners**

## Exhibit E

### [Paid Sick Leave Law Concession 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 PLAZA PARTNER agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this License. The PLAZA PARTNER further acknowledges that such compliance is a material term of this License and that failure to comply with the PSLL in performance of this License may result in its termination.

The PLAZA PARTNER must notify DOT’s General Counsel in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this License. Additionally, the PLAZA PARTNER 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 PLAZA PARTNER. The PLAZA PARTNER 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 PLAZA PARTNER can get more information about how to comply with the PSLL. The PLAZA PARTNER acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### Applicability, Accrual, and Use

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

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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.

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 PSLI 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 PSLI. 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 PSLI must be treated by the employer as confidential.

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

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

### Exemptions and Exceptions

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

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

### Retaliation Prohibited

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

### Notice of Rights

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

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

## Records

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

## Enforcement and Penalties

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

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

## More Generous Policies and Other Legal Requirements

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



## SCHEDULE A

[Plaza Concession Fees for Commercial/Promotional Events]

Event Size	Small	Medium	Large
Fee per Event Day	\$1,250	\$5,000	\$10,000