

**LICENSE AGREEMENT**

BETWEEN

**APQ MINERAL SPRINGS NY, LLC DBA LE PAIN QUOTIDIEN**

AND

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

*for*

**FOR THE RENOVATION, OPERATION AND MAINTENANCE OF AN OUTDOOR  
CAFÉ AT MINERAL SPRINGS, CENTRAL PARK, MANHATTAN**

M10-33-SB

DATED: \_\_\_\_\_, 2022

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**LICENSE AGREEMENT** (“License Agreement” or “License”) made this \_\_\_ day of \_\_\_\_\_, 2022 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 APQ Mineral Springs NY, LLC dba Le Pain Quotidien (“Licensee”) a Delaware limited liability company qualified to do business in New York, whose address is 149 Fifth Avenue, 3<sup>rd</sup> Floor, New York, NY 10010 (AP@lepainquotidien.com).

**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 between 69th and 70th Streets and between Terrace Drive and Sheep Meadow in Central Park, Manhattan is property under the jurisdiction of Parks; and

WHEREAS, Parks desires to provide for the renovation, operation and maintenance of an outdoor café at Mineral Springs, Central Park, Manhattan 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”) for the selection of licensees, including the issuance of a Request for Proposals (“RFP”) for the renovation, operation, and maintenance of the Licensed Premises (as hereinafter defined); and

WHEREAS, the Licensee desires to renovate, operate and maintain an outdoor café 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 an outdoor café 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 renovate, operate and maintain an outdoor café at the Licensed Premises for the use and enjoyment of the general public (the “Concession”), in accordance with the provisions herein and to the satisfaction of the Commissioner. Licensee will be responsible for all costs associated with the renovation, operation, and maintenance of the Licensed Premises. All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks’ prior written approval.

**1.1.2 (a)** Licensee shall renovate, operate and maintain an outdoor café designated as such on Exhibit A hereto (the “Outdoor Cafe”) at a high standard of quality.

**(b)** Licensee must sell food and beverages from the Outdoor Cafe. All prices and menu items are subject to Parks’ prior written approval. Annexed hereto as Exhibit C is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder. Licensee may change or modify the menu with prior notice to and written approval from Parks.

**(c)** Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages. Any staff assigned by Licensee to sell food and beverages to the public at the Outdoor Cafe must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate New York City Department of Health and Mental Hygiene (“DOHMH”) permits. Licensee may only operate food service facilities at the Outdoor Cafe if it has obtained the appropriate, valid permits and authorizations required by DOHMH.

**(d)** At all times that the Outdoor Cafe is operating, a staff person with a valid DOHMH food handler’s license must be present. Licensee and any of its vendors operating without all necessary permits may be subject to fines and/or confiscation of merchandise.

**(e)** Licensee may place tables, chairs and umbrellas at the Outdoor Cafe. The design, color, placement, and number of all tables, chairs, umbrellas and Outdoor Cafe equipment 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. The exact size and location of outdoor seating areas are subject to Parks' prior written approval.

**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 for the renovation, operation, and maintenance of the Licensed Premises in accordance with the terms of this License and to perform the Capital Improvements (as defined in Section 2.1(b)) 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. Parks shall cooperate with Licensee in obtaining any required approvals, permits or other licenses.

**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 and Construction Period 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 the Commissioner’s 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 other part of the Licensed Premises shall be subject to the Commissioner's prior written approval provided, however, that the Commissioner hereby approves the use of the trade names "Le Pain Quotidien". Licensee represents and warrants that Licensee has all right, title and interest in the approved trade names above, or has acquired or properly licensed such right, title and interest, and that to the extent Licensee shall cease to possess such right, title, or interest, it shall immediately notify Parks and cease to use such trade names in connection with the operations under this License Agreement.

**(b)** All intellectual property rights in the Licensed Premises, "Central Park," "Mineral Springs," 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 names "Central Park" and "Mineral Springs," in connection with its operations under this License Agreement only to identify the location of the Licensed Premises, any other uses of "Central Park," "Mineral Springs," or any other City IP may be only use 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 pre-existing facility name. The City will not own any portion of any new name that consists of the name, portrait, or signature of a living or deceased individual or 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, and shall include architectural and design fees necessary to implement the Capital Improvements, but not include the Design Review Fee referenced in Section 6.2(b). 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) “Commissioner” shall mean the Commissioner of the New York City Department of Parks & Recreation or the Commissioner’s designee.
- (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 a capital improvement to the Licensed Premises has been completed to such an extent that the Commissioner certifies in writing that it has been finally completed and that no further work is required by Licensee pursuant to this License 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, whose 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. 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 One Thousand Dollar (\$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 unless otherwise approved in writing by Parks.

**(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, walkways, parking spaces, curbs, trees and landscaping. Licensee shall only operate in the areas of the Licensed Premises specifically designated by Parks.

(k) “Licensee’s Special Events” shall mean any private function or programs serving a Parks appropriate purpose (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee or by third parties), at the Licensed Premises, excluding Parks’ “Special Events” as defined in Article 13 of this Agreement. Subject to prior written approval from Parks, Licensee may conduct Licensee’s Special Events at the Licensed Premises. Any ticketed events at the License Premises (including, but not limited to, payment of a fee at the door) also require prior written approval from Parks. Licensee shall submit to Parks for approval all plans for any Licensee’s Special Events at the Licensed Premises. 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 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, provided said approval shall not be unreasonably withheld, conditioned, or delayed.

(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.

(p) “Construction Period” means the period between the effective date of a construction license issued by Parks to Licensee, in accordance with Section 6.7 of this License, and completion of Capital Improvement work by Licensee. During the Construction Period, Licensee shall not operate the Concession. The Construction Period shall last no longer than twelve (12) weeks, unless otherwise approved by Parks in writing, or unless Licensee is delayed in achieving Substantial Completion due to causes beyond the reasonable control of Licensee, in which case the Construction Period shall be extended for such period as may be reasonably necessary in the Commissioner’s judgment for Licensee to achieve Substantial Completion, provided that Licensee has made diligent and good faith efforts to comply with all conditions of the applicable governmental agency necessary to achieve Substantial Completion. Notwithstanding the foregoing, if the delay in Licensee achieving Substantial Completion continues for a period of more than twelve (12) months Parks may terminate this License by giving Licensee thirty (30) days’ written notice and a thirty (30) day period to cure.

### **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”). Licensee shall not commence the operation of any part of the concession granted hereby, until it has received from Parks the Notice to Proceed. This license shall terminate fifteen (15) years from the Commencement Date (“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. For the avoidance of doubt, the Term shall not include the Construction Period, during which period the Concession shall be suspended.

**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 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' written 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 (unless such property is held by the Commissioner pursuant to Section 3.5) 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 4.5 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, Parks may, without notice, re-enter and repossess the Licensed Premises using such force for that purpose as may be necessary without being liable to indictment, prosecution or damages therefor and may dispossess Licensee by summary proceedings or otherwise, without court order or other judicial approval.

**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 4.5; 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, provided that Licensee shall not be responsible for any further Capital Improvements or Alterations nor responsible to complete any further work towards Capital Improvements or Alterations upon re-license or re-permitting of the Licensed Premises.

**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 an annual percentage of Gross Receipts derived from the operation of the Licensed Premises as set forth below:

<u>OPERATING YEAR</u>	<u>MINIMUM ANNUAL FEE</u>	<u>plus 20% OF ANNUAL GROSS RECEIPTS OVER \$3,400,000</u>
1	\$400,000	plus 20% of annual gross receipts over \$3,400,000
2	\$490,000	plus 20% of annual gross receipts over \$3,400,000
3	\$514,500	plus 20% of annual gross receipts over \$3,400,000
4	\$540,225	plus 20% of annual gross receipts over \$3,400,000
5	\$567,236	plus 20% of annual gross receipts over \$3,400,000
6	\$595,598	plus 20% of annual gross receipts over \$3,400,000
7	\$625,378	plus 20% of annual gross receipts over \$3,400,000
8	\$656,647	plus 20% of annual gross receipts over \$3,400,000
9	\$689,479	plus 20% of annual gross receipts over \$3,400,000
10	\$723,953	plus 20% of annual gross receipts over \$3,400,000
11	\$760,151	plus 20% of annual gross receipts over \$3,400,000
12	\$798,158	plus 20% of annual gross receipts over \$3,400,000

13	\$838,066	plus 20% of annual gross receipts over \$3,400,000
14	\$879,970	plus 20% of annual gross receipts over \$3,400,000
15	\$923,968	plus 20% of annual gross receipts over \$3,400,000

**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** During the Construction Period, Licensee shall not owe license fees, unless such fees are otherwise due in accordance with Article 4, it being understood that during the Construction Period, Licensee shall not operate the Concession.

**4.4** 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 One Thousand Dollars (\$1,000), 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 Twenty Dollars (\$20) 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.

**4.5 (a)** Upon affixing its signature to this License, Licensee shall deposit with the City the amount of Two Hundred Thirty Thousand and Nine Hundred Ninety-Two Dollars (\$230,992) 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 Construction Period and 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 (provided that such cure period may be extended at the Commissioner’s sole discretion upon Licensee demonstrating that Licensee has commenced cure and is diligently pursuing the same to completion), 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.

**4.6 (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 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 categories for which rates, fees or prices are specified on Exhibit C, the Schedule of Approved Hours and Rates, Fees and Prices, including, without limitation, the following categories:

<b><u>Restaurant</u></b>	
Beverages	Gross Receipts from beverages sold at the Licensed Premises.
Food	Gross Receipts from food sold at the Licensed

	Premises.
Merchandise	Gross Receipts from the sale of merchandise at the Licensed Premises.
Gift Cards	Gross Receipts from gift cards redeemable 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)** Should Licensee refund a payment, made to Licensee by a patron seeking to reserve all or a portion of the Licensed Premises, in a month subsequent to the month Licensee received said payment, Licensee shall deduct said refund from Gross Receipts reported for the month in which the payment is refunded. Licensee shall report Gross Receipts as provided in Section 4.5(a) above and shall separately set forth, in the same Gross Receipts report, refunds made by Licensee.

**(d)** In the event that after the expiration of this License Agreement but prior to Licensee's final payment of license fees to Parks, Licensee refunds a deposit to a patron, then Licensee may deduct an amount equal to the applicable percentage of Gross Receipts of said refund from any such final payment of license fees due to Parks if in fact said deposit was included in the calculation of Gross Receipts, and, provided that such deposit had not been transferred to a new Licensee.

**(e)** 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.

**4.7** 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.

**4.8 (a)** Licensee, during the Construction Period and 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, if not cured after ten (10) days written notice, 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 2027's Gross Receipts are missing and the highest April Gross Receipts occurred in April 2024, then April 2027's "revised" Gross Receipts shall be calculated using April 2024'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.

**4.9** 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) 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.

**4.10** 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 (a)** 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.

**(b)** At Parks request, Licensee shall engage in the use of an auditor from the list of prequalified auditors ("PQL"), maintained by the Comptroller ("PQL") pursuant to Procurement Policy Board ("PPB") Rule § 3-10(k), at Licensee's sole cost and expense.

**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 Construction Period and Term of this License a minimum of One Million and Six Hundred Seventy-Five Thousand Dollars (\$1,675,000) for Capital Improvements as defined in Section 2.1(b) herein. Notwithstanding anything to the contrary contained herein, in the event Licensee has reclaimed equipment and or materials from other projects or locations, Licensee shall be permitted to install such equipment or materials at the Licensed Premises and upon providing invoices for the equipment or materials (or otherwise justifying the values), such amounts will be applied toward the minimum required for Capital Improvements. 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. If, for reasons outside the control of Licensee, Licensee does not receive approval for any and all permits from Parks or any other agency of the City of New York (provided that in each case the party applying for any such permit or approval has submitted a complete application for, and has made diligent and good faith efforts to comply with all conditions of the governmental agency granting such, permits or approvals) or if Licensee does not receive approval from ConEdison, Licensee and Parks shall work together to revise the plan for Capital Improvements. 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 shall become the property of Parks upon installation, at Parks' option.

**(b)** Licensee must provide Americans with Disabilities Act ("ADA") accessibility as required by prevailing code throughout the Licensed Premises, including, but not limited to, installing ADA accessible service counters at the Outdoor Café, 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.

**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 Sixteen Thousand and Seven Hundred Fifty Dollars (\$16,750) 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 and materials to the contractor or his or her

subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding Two Hundred Fifty Thousand Dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 6.2(c); (i) Licensee guarantees payment in accordance with the provisions of **Exhibit G**, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all person 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. Parks reserves the right to determine whether certain repairs and material purchases can be accepted as capital improvements.

**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) 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 One Million and Six Hundred Seventy-Five Thousand Dollars (\$1,675,000) 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. Licensee is required to provide Parks with all plans and specifications upon completion of the construction documents. All necessary permits and approvals for capital work must be obtained from DOB and all other agencies with jurisdiction, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, or Completion, 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 or letter of no objection as required, 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 Small Business Services ("SBS"), 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 be new or like-new (provided that Licensee may use high-end recycled materials to the extent consistent with its trade dress and the brand design, including without limitation, use of reclaimed wood), 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 Licensee'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 or exercise other rights or remedies. 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. Licensee shall report dead and diseased trees to Parks and upon Parks' request, will remove them.

**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 within 30 days. 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. However, Licensee shall not under any circumstances be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows and ventilation fixtures.

**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. Licensee's costs of asbestos removal, if any, shall be credited toward Licensee's Capital Improvement Cost.

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

## **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 found on, placed in, installed in or affixed to the Licensed Premises.

**8.2** Subject to the terms of this License Agreement, 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 a condition reasonably satisfactory to Parks but Licensee shall not be required to restore to a condition better than at the commencement of the Term.

**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 electricity 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 Construction Period and 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 Construction Period and Term. Licensee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City.

## **10. OPERATIONS**

**10.1 (a)** Licensee, at its sole cost and expense, shall renovate, operate, and maintain the Outdoor Café at the Licensed Premises 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, merchandise, 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. 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. 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 renovation, operation, and maintenance of the Outdoor Cafe at the Licensed Premises.

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

(d) Licensee may sell 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, electronic cigarettes or other tobacco products and non-tobacco smoking products. No signs or any other kind of advertising for tobacco, 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 shall not sell any beverages in single-use plastic bottles or glass bottles. All beverages will be required to be in non-glass, shatter-proof 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 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 from DOB or Certificate of Completion from SBS. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses, permits, or approvals. 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 Article 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 including but not limited to the provision of qualified food service personnel and cashier(s); and

(d) securing 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, or as otherwise approved by Parks. All efforts must be made by Licensee to keep alcohol consumption discreet and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

**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 must immediately notify Parks of major accidents or unusual incidents, including but not limited to injury, death, fire, flood, casualty, property damage, or theft occurring at the Licensed Premises. Licensee shall promptly notify Parks, in writing, within twenty-four (24) hours 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, or substantial damage of any character at the Licensed Premises.

**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 in the sole discretion of the Commissioner is indecent, in obvious bad taste, which demonstrates a lack of respect for public morals or conduct, or which adversely affects the reputation of the Licensed Premises, Parks, or the City of New York. Licensee may release news items to the media as it sees fit. If the Commissioner in the Commissioner's 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. The Commissioner shall have prior approval as to design and distribution of all advertising and promotional materials.

**(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 result in the immediate termination of this License Agreement.

**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 tobacco or electronic cigarette or non-tobacco smoking product 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. Parks may issue directives regarding deficiencies the Licensee will be obligated to rectify in a timely fashion. Violations of the terms of the License Agreement may result in the assessment of liquidated damages which, if not paid promptly, may be deducted from the Licensee's Security Deposit. If the Licensee fails to provide the cleaning, maintenance, and operational services required by the license agreement, 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, assess liquidated damages and/or suspend or terminate the License Agreement. Parks may impose a Two Hundred and Fifty Dollar (\$250) administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

<u>PROVISION</u>	<u>LIQUIDATED DAMAGES PER OCCURRENCE</u>
<u>Unauthorized Menu Items or Merchandise</u>	<u>\$150</u>
<u>Missing or Unauthorized Price List</u>	<u>\$250</u>
<u>Overcharging</u>	<u>\$350</u>
<u>Expanding</u>	<u>\$350</u>

Blocked Exits	\$350
Improper Disposal (noxious liquids, debris, etc.)	\$350
Unauthorized tapping into utilities used, operated, or owned by the City	\$350
Equipment or Structure Obviously Damaged or in Poor Repair	\$250
Unauthorized Advertising	\$350
Roving or Vending at Unauthorized Location	\$250
Improper Storage	\$350
Graffiti, Dirty Equipment or Structure, or Restroom not maintained	\$350
Unauthorized Vehicular Activity	\$350
Operating without applicable permit(s) or license(s)	\$350
311 sign not displayed	\$250

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** This License may be suspended in full or in part for any reason with written notice from Parks. Such suspension shall be immediately effective upon the mailing, facsimile or hand delivery thereof. In the event of such notice, Licensee shall cease operations to the extent required by the notice. Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Parks, the City, and their officials, employees, and agents shall not be liable for damages to Licensee in the event that operations under this License are fully or partially suspended.

**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, and must end no later than 10 pm, unless otherwise approved in advance by Parks. Concerts are strictly prohibited at the Licensed Premises.

**10.28** Licensee shall provide reasonable means for measuring the satisfaction of its customers. Evaluation of customer satisfaction mechanism, includes, but not limited to, providing feedback cards to guest in check presenters; feedback forms online/website; e-mail and online surveys; mystery shoppers; social media; and direct guest feedback.

**10.29** Licensee shall comply with the Earned Sick Time Act, also known as the Paid Sick Leave Law, as a licensee 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** Licensee will be required to acknowledge that use of vehicles is restricted within Central Park. Licensee may only access Park roadways to pick-up or deliver items essential to the operation of their concession. Personal vehicles are not allowed on any Park Drive without Parks' prior approval. Available entrances and exits to Central Park may be impacted. The maximum speed limit on Central Park drives is 15 miles per hour (MPH) but may be subject to change. Motorists should reduce speed and exercise extreme caution when park drives are congested, and vehicles must travel only in the marked vehicle lane. Drivers must always yield to pedestrians and cyclists and turn on hazard lights when operating in the park. During the term of the License, traffic regulations may be subject to change.

**10.31** Licensee must observe applicable vehicle and traffic regulations, and adhere to instructions from Central Park Conservancy, NYPD, DOT, and Parks. Licensee is not permitted to operate vehicles on pedestrian pathways without Parks' prior approval.

## **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. The erecting of any ancillary structures at the Licensed Premises shall be subject to Parks' prior written approval.

**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 4.5(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 Construction Period and Term.

**11.4** Pursuant to a plan approved by Parks, 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 Construction Period and Term.

**11.5** 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 Construction Period and Term hereof.

**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 and comply with any additional Parks regulations on pesticides 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 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:

- (a) provide only non-plastic straws, take-out utensils and cups that are biodegradable and made from cornstarch, and take-out packaging that is 100% recyclable;
- (b) use only recycled paper products, such as paper towels and napkins, and “Green Seal” eco-friendly cleaning supplies and soaps;
- (c) end the use of plastic bags in its retail operations from June 1, 2022, at the latest;
- (d) end the sale of plastic bottles, both take-out and dine-in, from January 1, 2023, at the latest;
- (e) implement a comprehensive recycling program to minimize the amount of recyclable waste headed to landfills;
- (f) use LED lighting at the Licensed Premises; and
- (g) sponsor a tree a year in Central Park for each year of the Term.

**11.11** Licensee is responsible for operation, maintenance, repair, and cleaning of the interior Concession space.

**11.12** Licensee is responsible for the operation, maintenance, repair and cleaning of the men’s and women’s public restrooms at the Licensed Premises, which will be open to the public on a schedule approved by Parks. In addition, the Licensee must designate an individual with responsibility over restroom maintenance. This individual is prohibited from handling or preparing food items.

**11.13** Licensee is responsible for the maintenance and repair of the entire structure’s roof, both flat and pitched areas of the full Licensed Premises (Concession and non-Concession spaces). The pitched roof covers the Concession space, and the flat roof covers the public restrooms and non-concession space.

## **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 Commissioner’s 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 Commissioner’s 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 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** 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 the Commissioner deems necessary, and Licensee shall promptly comply with such requests.

The term “assignment” shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in 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 indicating that the proposed assignee or sub-licensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. 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 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 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 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.

**14.5** Licensee and proposed assignee/transferee shall comply with all applicable PASSPort procedures in connection with any such assignment/transfer.

## **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 Construction Period and Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by 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 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, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or willful misconduct of Licensee.

## **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 Construction Period or 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, handicap, 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 Central Park Conservancy, the City and their respective officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys’ fees and disbursements) arising out of or related to any of the operations under this License (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 Central Park Conservancy, the City and their respective officials and employees from being completely indemnified by the Licensee, the Central Park Conservancy, the City and their respective 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 Central Park Conservancy, the City and their respective 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 Central Park Conservancy, the City or their respective 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 other types of insurance and/or higher liability limits and other terms if, in the opinion of 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). 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 Central Park Conservancy and the City, together with their respective officials and employees, as Additional Insureds for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and the City's limits will be no lower than the Licensee's. "Blanket" or other forms are also acceptable if they provide the Central Park Conservancy and the City, together with their respective officials and employees, with coverage at least as broad as ISO Form CG 20 26.

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

(c) In the event of any loss to any of the Concession Structures, 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.

## **20.7 Liquor Law Liability Insurance**

(a) 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 Central Park Conservancy, the City and their respective officials and employees as Additional Insureds. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such operations.

(b) In the event the Licensee shall permit sublicensees or others to serve alcohol on the Licensed Premises, the Licensee shall carry or cause each such person to carry liquor law liability insurance in an amount not less than Two Million Dollars (\$2,000,000) per occurrence and name the Central Park Conservancy, the City and their respective officials and employees as Additional Insureds. Such insurance shall be effective prior to the commencement of any service of alcohol by such person on the Licensed Premises and continue throughout such operations.

## **20.8 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.

## **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, 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 as otherwise required by the Commissioner, or certified copies of all policies referenced in such Certificate of Insurance.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this 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 be obligated to provide the City with a copy of any policy of insurance required under this Article upon request by the Commissioner or the New York City Law Department.

## **20.11 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 Central Park Conservancy and the City, including their respective officials and employees, as Additional Insureds with coverage at least as broad as ISO Forms CG 20 26 and CG 20 37. In the event 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 Central Park Conservancy and the City, including their respective officials and employees, as Additional Insureds (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 26).

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

(d) Where notice of loss, damage, occurrence, accident, claim, or suit is required under a policy maintained in accordance with this 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. 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 Central Park Conservancy and the City, including their respective officials and employees, for any damages or losses that are covered under any insurance required under this Article (whether or not such insurance is actually procured or claims are paid thereunder) or any other insurance applicable to the operations of 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(d) below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

due for goods delivered, work done, rentals, or fees accrued prior to the cancellation or termination shall be paid by the City.

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

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

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

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

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

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

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

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

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

**(f)** In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this 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 Parks and/or 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, 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 Article 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. Notices shall also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License Agreement.

### **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 articles 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.

**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

APQ MINERAL SPRINGS NY, LLC  
DBA LE PAIN QUOTIDIEN

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

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

Chief of Concessions

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 \_\_\_\_\_, 2022 before me personally came Alexander Han to me known, and known to be the Chief of Concessions 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 he executed the same in her/his official capacity and for the purpose mentioned therein.

---

Notary Public

STATE OF NEW YORK

ss:

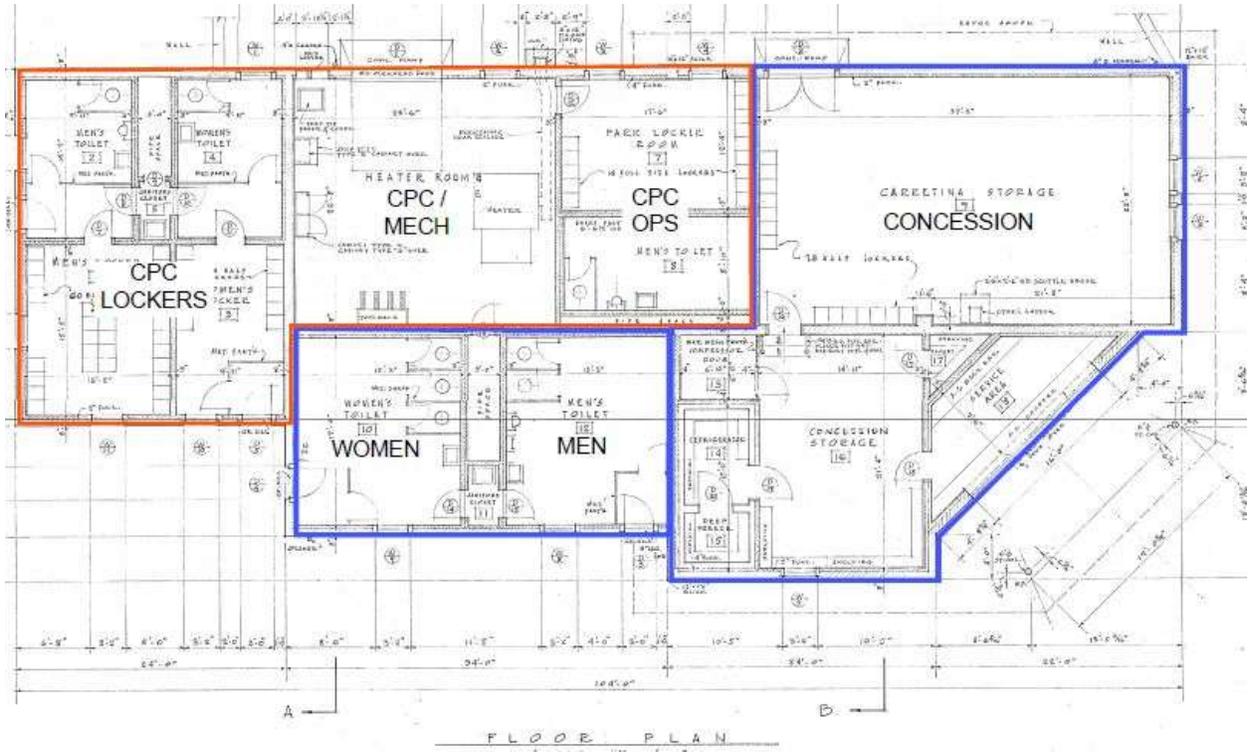
COUNTY OF

On this \_\_\_ day of \_\_\_\_\_, 2022 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of APQ Mineral Springs NY, LLC dba Le Pain Quotidien 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**



**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**

Peak Season

May - September

Sunday to Thursday 7am-9pm

Friday & Saturday 7am-10pm

Mid Season

March - May

Sunday to Thursday 7am-7pm

Friday & Saturday 7am-8pm

Low Season

October to February

Sunday to Thursday 7am-5pm

Friday & Saturday 7am-7pm

## Tartines

Signature open-faced sandwiches,  
made on our sourdough wheat

<b>AVOCADO TOAST (V)</b>	13
avocado mash, citrus-cumin salt, chia seeds, side of marinated kale 590 cal	
• with an organic egg* 80 cal	+3
• with smoked salmon* 50 cal	+5
<b>CHICKEN &amp; MOZZARELLA MELT</b>	14.75
fresh mozzarella, chicken, tomato-pepper jam, basil oil 730 cal	
<b>SMOKED SALMON*</b>	16
organic butter, scallion, dill, served with a side of herb aioli 540 cal	



## Sandwiches

Served with a small green salad (90 cal)

<b>TOMATO &amp; MOZZARELLA</b>	11.5
with basil oil, tomato, arugula, balsamic vinegar on olive ciabatta 410 cal	
<b>HAM &amp; GRUYÈRE</b>	13.5
with mustard and cornichons on a French roll 430 cal	

## Salads & Quiches

<b>GRILLED CHICKEN COBB</b>	17.5
chicken, avocado, bacon, Fourme d'Ambert, cucumber, hard-boiled egg, mixed greens, smoked tea vinaigrette, served with our artisanal bread 610 cal	
<b>BLACK LENTIL BOWL (V) (N)</b>	14.5
balsamic beets, hummus, lentils, grape tomatoes, mixed greens, vinaigrette, spicy tahini, served with our artisanal bread 480 cal	
• with smoked salmon* 50 cal	+5
<b>QUICHE LORRAINE</b>	14
buttery crust filled with savory custard, ham, Gruyère, leeks, served with a small green salad 540 cal	
<b>MUSHROOM &amp; GRUYÈRE QUICHE</b>	14
buttery crust filled with savory custard, roasted cremini and shiitake mushrooms, served with a small green salad 590 cal	

## Soup

Served with our artisanal bread (200 cal)

<b>CHICKEN SOUP</b>	7 / 9
with vegetables, farro, spicy harissa 170-280 cal	
<b>ORGANIC LENTIL SOUP (V)</b>	6 / 8
230-460 cal	

\*Consuming raw or undercooked ingredients may increase your risk of foodborne illness. 2,000 calories a day is used for general nutrition, but calorie needs vary. Additional nutritional information upon request.

## Desserts

CHOCOLATE CHIP COOKIE 710 cal	5	MINI BANANA CHOCOLATE CAKE (N) 160 cal	3
DOUBLE CHOCOLATE CHIP COOKIE 450 cal	3.5	COCONUT MACARON (N) 230 cal	3
BELGIAN CHOCOLATE BROWNIE 580 cal	5	MOUSSE CAKE (N) 470 cal	6.5
MINI BROWNIE 170 cal	3	LEMON TART 460 cal	6.5
MINI APRICOT CAKE (N) 140 cal	3	MIXED BERRY TART (N) 430 cal	8
MINI CARROT CAKE (V) 150 cal	3		

## Hot Beverages

Includes whole & non-fat dairy milk.  
 • with oat milk or almond milk +0.9  
 • add vanilla syrup 30 cal +0.75

### CLASSICS

COFFEE 0 cal	4.25
CAPPUCCINO 60-130 cal	4.75 / 5.25
LATTE 60-140 cal	4.75 / 5.25
CAPÉ AU LAIT 40-110 cal	4.25 / 4.75
ESPRESSO 0 cal	3 / 3.5
AMERICANO 0 cal	4 / 4.5
MACCHIATO 20-160 cal	3.5 / 4
TEA 0 cal	3.75

Ask your server about our tea selection

### SPECIALTY

BELGIAN MOCHA 170-300 cal	5 / 5.5
BELGIAN HOT CHOCOLATE 180-320 cal	4.75 / 5.25
MATCHA LATTE 60-140 cal	5 / 5.5
HONEY LEMON GINGER 90-200 cal	4.75 / 5.25
TURMERIC LATTE 90-290 cal	5 / 5.5
CHAI LATTE 60-380 cal	5 / 5.5

## Cold Beverages

COLD BREW COFFEE 0 cal	5
ICED LATTE 30-110 cal	5
ICED MATCHA LATTE 60-140 cal	5
ICED TEA 0 cal	4
ICED GREEN TEA 0 cal	4
ORANGE JUICE 120 cal	5
APPLE JUICE 150 cal	5
STILL OR SPARKLING WATER 0 cal	3

## Homemade Lemonades

LEMONADE 60 cal	4
LEMONADE ICED TEA 40 cal	4
MINT LEMONADE 60 cal	4.25

0406-NYMS

## EXHIBIT D

### SCHEDULE OF CAPITAL IMPROVEMENTS

The total cost of Capital Improvements shall be a minimum of **One Million and Six Hundred Seventy-Five Thousand Dollars (\$1,675,000)** and shall be completed as follows:

**Phase 1 shall be completed withing 18 months from the Notice to Proceed:**

Tile Roof Replacement - new roof to replace legacy slate tile roof over the main pavilion

Flat Roof Replacement - new flat roof over the side buildings

New fully remodeled public bathrooms

Exterior masonry and pavement refurbished as needed

Seasonal greenhouse at rear patio with bar fixture, flooring, seating, and lighting.

Repair/replace floors, wall grout, gutters, sidings wherever needed

Full interior remodels with new millwork, bakery counter, tiles and finishes

Expanded back of house area and kitchen

ADA compliant employee restrooms

Interior LED lighting to properly support the display of products and signage

Exterior LED lighting

Signage

Landscaping Improvements

Electrical Service Upgrade

**The following improvements shall be completed over the course of the Term:**

Upgrade or replace fixed kitchen equipment as needed

Landscaping as needed

Paving as needed

Wall, roof, plumbing upgrades as needed

Restroom upgrades as needed

HVAC upgrades as needed

Ongoing maintenance will be made into the property on an as needed basis over the 15-year period of the agreement. The approximate value of this maintenance will be Three Hundred Thousand Dollars (\$300,000).

Additionally, the Licensee will be responsible for providing all additional Personal Equipment necessary to successfully operate the concession, including but not limited to non-fixed kitchen equipment, grab-and-go units, coffee machines, beverage tap systems, soft serve ice cream machine, outdoor patio furniture, POS system, and IT/security system. The approximate value of the personal investment is: Four Hundred Seventy Thousand Dollars (\$470,000).

## 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> Licensees 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 Licensee agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. The Licensee 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 Licensee 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 Licensee 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 Licensee. The Licensee 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 Licensee can get more information about how to comply with the PSLL. The Licensee acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### Applicability, Accrual, and Use

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

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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.

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 PSL, 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 PSL 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 PSL civil penalties not to exceed Five Hundred Dollars (\$500) for a first violation, Seven Hundred Fifty Dollars (\$750) for a second violation within two years of the first violation, and One Thousand Dollars (\$1,000) for each succeeding violation within two years of the previous violation.

### More Generous Policies and Other Legal Requirements

Nothing in the PSL 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 PSL 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 PSL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

**EXHIBIT F**

**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 BOND/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.