

**LICENSE AGREEMENT**

**BETWEEN**

**SSC&R LLC**

**AND**

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

*for*

THE RENOVATION, OPERATION, AND MAINTENANCE OF A FOOD SERVICE  
FACILITY AND SPECIAL EVENT CONCESSION AT THE SOUTH SHORE GOLF  
COURSE, STATEN ISLAND

STATEN ISLAND, NEW YORK

**RFP R104-R-2023**

DATED: \_\_\_\_\_, 2024

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**LICENSE AGREEMENT** (“License Agreement” or “License”) made this \_\_\_\_ day of \_\_\_\_\_, 2024 between the City of New York (the “City”) acting by and through the New York City Department of Parks & Recreation (“Parks” or “Licensor”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065, and SSC&R LLC (“Licensee” or “Concessionaire”), a New York Limited Liability Company, with its principal place of business at 3980 Amboy Road, Staten Island, NY 10308 (phone number: 718-948-6075).

**WITNESSETH:**

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

**WHEREAS**, the South Shore Golf Course in Staten Island is under the jurisdiction and control of Parks; and

**WHEREAS**, The Commissioner of Parks (the “Commissioner”) desires to provide for the renovation, operation, and maintenance of a food service facility and special event concession at the South Shore Golf Course, Staten Island for the accommodation of and use by the public; and

**WHEREAS**, Licensee desires to renovate, operate, and maintain a food service facility and special event concession at the South Shore Golf Course, Staten Island for the public’s benefit in accordance with the terms set forth herein; and

**WHEREAS**, Parks has complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) for the selection of concessionaires, including the issuance of a Request for Proposals (“RFP”) for the renovation, operation, and maintenance of a food service facility and special event concession at the South Shore Golf Course, Staten Island; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the renovation, operation, and maintenance of a food service facility and special event concession at the South Shore Golf Course, Staten Island.

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

**ARTICLE 1: GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to renovate, operate, and maintain a food service facility, catering facility and special event concession at the Licensed Premises (as hereinafter defined) for the use and enjoyment of the general public, all in accordance with the provisions herein and to the reasonable satisfaction of the Commissioner. All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks’ prior written approval, which shall not be unreasonably withheld. Licensee is responsible for all costs associated with the renovation, operation, and

maintenance of the Licensed Premises.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State, and City laws, rules, regulations, and orders which are or may become necessary 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(c)) required by this License Agreement. In order to be in compliance with the License Agreement, Licensee must fulfill all of the obligations contained herein. Failure to fulfill any of Licensee's obligations set forth herein for any reason may be deemed as a default by the Commissioner and subject to a notice and cure period in accordance with Section 3.3. 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, improvement, or equipment is leased or otherwise conveyed to Licensee, but that during the Term (defined hereafter) of this License, Licensee shall have the use of the Licensed Premises for the purpose herein provided. Except as 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 the Commissioner does not terminate this License as provided herein.

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or 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 of 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 which shall not be unreasonably delayed or denied provided, however, that the Commissioner hereby approves the use of the trade name "The Grand Oaks Country Club." Licensee represents and warrants that Licensee has all rights, 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 promptly 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, South Shore Golf Course, 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, including Parks' signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations, and identifications are the property of the City ("City IP"). Licensee may use the name "South Shore Golf Course" in connection with its operations under this License Agreement only to identify the location of the Licensed Premises, and any other uses of South Shore Golf Course or any other City IP may be only pursuant to a separate written agreement between the City and Licensee. Parks may require

that the City own the portion of any name selected by Licensee for use at the Licensed Premises that indicates Parks' property or a preexisting facility name or otherwise contains any City IP. The City will not own any portion of a new name that consists of the name, portrait, or signature of a living or deceased individual or identifier that is not otherwise associated with Parks' property.

## **ARTICLE 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) "Back-of-the-House" shall mean the area located behind the first floor of the two-story restaurant and catering facility at the Licensed Premises.

(c) "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 shall not include the Design Review Fee referenced in Section 6.2 herein. Capital Improvements also include all Alterations and "Fixed and Additional Fixed Equipment," as that term is defined in Section 2.1(l) 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 also include, but not be limited to, those activities described in Article 6 herein and the Schedule of Capital Improvements attached hereto as Exhibit D.

(d) "Catered Events" shall mean catered or private functions that take place entirely within the catering facilities of the Licensed Premises, as those facilities are denoted on Exhibit A, or in other areas of the Licensed Premises that Licensee has closed to the public seasonally, in accordance with a prior written approval from Parks. All Catered Events must be primarily related to food and beverage activities.

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

(f) "Commissioner" shall mean Commissioner of the New York City Department of Parks & Recreation or the Commissioner's designee.

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

**(h)** “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.

**(i)** Intentionally Omitted.

**(j)** “Expendable Equipment” shall mean all furniture, fixtures and equipment, other than Fixed Equipment and Additional Fixed Equipment, provided by Licensee.

**(k)** “Final Completion” or “Finally Complete” shall mean that the construction of an improvement to the Licensed Premises has been completed to such an extent that 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.

**(l)** “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 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.

**(m)** **(i)** “Gross Receipts” shall include, without limitation, all funds or receipts of any kind received by Licensee, without deduction or set off of any kind, from or in connection with its operations at the Licensed Premises, from the provision of services, merchandise, food, and beverages at the Licensed Premises, from the licensing of the Licensed Premises for private functions, and from any related services of any kind, provided that Gross Receipts shall exclude: (1) 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 to the appropriate taxing authority as against its sales; (2) so-called “pass-throughs” (e.g., bands, security, valet, and florists hired by a Licensee on behalf of, or Concession patron directly, in either case so that no money or financial benefit is obtained by Licensee); and (3) amounts deducted by Licensee from employee payroll for meal allowances pursuant to 12 NYCRR §137-1.9. 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. All receipts of Licensee for orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future shall be included in Gross Receipts at the time of payment. 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 but may be deducted to the extent subsequently refunded. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefore 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 all funds or 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 under a properly authorized sublicense or subcontract agreement, as provided in Section 14 herein, and provided further that Gross Receipts shall include Licensee's income from rental and sublicense or subcontracting fees and commissions received by Licensee in connection with all services provided by Licensee's subcontractors or sublicensees, if any. Notwithstanding the foregoing, in the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts.

**(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 transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts, and further provided that if an amount included in Gross Receipts is later credited or refunded such credit or refund amount shall be deducted from Gross Receipts in such later period. 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; (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, maître d', 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 twenty percent (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 coordination and planning of the event or serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, maître d’, event planner, 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.

**(n)** “Licensed Premises” or “Premises” shall mean the land and premises so denoted on Exhibit A attached hereto, and shall include the catering facility, restaurant/snack bar, Back-of-the-House, the Parking Areas and Drives, the interior and exterior of the entire Dutch Colonial Revival Building structure (excluding the attached wing other than the basement portion of such wing), landscaped areas and sidewalks, as well as any improvements constructed thereon, including, without limitation, walkways, curbs, trees, and landscaping. Licensee shall only operate in the Licensed Premises.

**(o)** “Licensee’s Special Events” shall mean any private or ticketed (including, but not limited to, payment of a fee at the door) function, special events, or programs involving the use of all of the Licensed Premises, for a parks-appropriate purpose at the Licensed Premises, excluding “Parks’ Special Events” as defined in Section 13 of this Agreement, and excluding “Catered Events” as defined above.

**(p)** “Notice to Proceed” shall mean the notice to be provided under Section 3.1.

**(q)** “Parking Areas” and “Drives” shall mean the portions of the Licensed Premises which are utilized for parking and/or vehicular access, ingress, and egress, as the case may be.

**(r)** “Substantial Completion” or “Substantially Complete” shall mean, with respect to an improvement at the Licensed Premises, that the City of New York Department of Buildings (“DOB”) has issued a Temporary Certificate of Occupancy for the improvement or, if earlier, that Commissioner certifies that an improvement to the Licensed Premises has been completed

substantially in accordance with the plans, specifications, schematics, and working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein or set forth as incomplete items as provided for in Section 6.14 herein, and that the improvement may be utilized by the public.

(s) “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.

### **ARTICLE 3: TERM OF LICENSE**

**3.1** This License shall become effective upon Parks’ giving a written Notice to Proceed to Licensee (“Commencement Date”) following registration with the Comptroller and shall terminate on January 15, 2044 (“Termination Date” or “Expiration Date”). The period between the Commencement Date and the Termination Date shall be referred to as the “Term.” In no event shall the Concession become effective prior to registration with the Comptroller.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) days’ prior written notice is sent to Licensee. 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 applicable Federal, State, or local law, rule, regulation, or order affecting the License or the Licensed Premises with regard to any and all matters, Commissioner may in writing order Licensee to remedy such breach or to comply with such provision, law, rule, regulation, or order, and in the event that Licensee fails to comply with such written notice within thirty (30) days from the mailing or electronic transmission thereof, or such longer period required to cure such breach if Licensee has expeditiously commenced curing such breach and is diligently prosecuting such cure to completion, subject to unavoidable delays beyond reasonable control of Licensee, then this License shall immediately terminate upon the Commissioner’s written notice to Licensee advising that this License is terminated. 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 effective upon the mailing of such notice thereof.

(b) The following shall constitute events of default for which this License may be terminated on one (1) day’s prior written notice: the appointment of any receiver of Licensee’s assets; the making of a general assignment for the benefit of creditors under New York’s Debtor and Creditor Law or other similar law; 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 subsections (a) or (b) above shall be deemed to imply or be construed to represent an exclusive enumeration of the 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 that Commissioner terminates this License for reasons outlined in Section 3.3 (a) or (b) above, any property of 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 cease operations, vacate the Licensed Premises, or remove all possessions from the Licensed Premises during the time prescribed in this Agreement. Pursuant to Section 4.4 herein, City may seize the Security Deposit to recover such damages in part or in whole.

**3.8** If this License is terminated for cause as provided in Section 3.3 hereof, 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 proceeding or otherwise, without court order or other judicial approval.

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

(a) If and to the extent necessary, Parks may draw down on the Security Deposit in accordance with Section 4.4; and

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date and Licensee shall remain liable for fees thereafter falling due on the respective dates when such fees would have been payable but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed 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 reasonably required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may deem necessary or advisable without relieving Licensee of any liability under this License Agreement or otherwise affecting any such liability, and/or relicense the Licensed Premises or any portion thereof for the whole or any part of the remainder of the Term or for a longer period. Parks shall in no way be responsible or liable for any failure to relicense any portion(s) of the Licensed Premises or for any failure to collect any fees due on any such relicensing, and no such failure to relicense or to collect fees shall operate to relieve Licensee of any liability under this License Agreement or to otherwise affect any such liability.

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

**3.11** In the event that this License Agreement is terminated, Parks will not consider proposals to reimburse Licensee's unamortized capital improvement costs.

**ARTICLE 4: PAYMENT TO CITY**

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

OPERATING YEAR	GUARANTEED MINIMUM ANNUAL FEE	PERCENTAGE OF ANNUAL GROSS RECEIPTS
1	\$180,000	6%
2	\$195,000	6%
3	\$196,950	6%
4	\$198,920	6%

5	\$200,909	6%
6	\$202,918	6%
7	\$204,947	6%
8	\$206,996	6%
9	\$209,066	6%
10	\$211,157	6%
11	\$213,269	6%
12	\$215,401	6%
13	\$217,555	6%
14	\$219,731	6%
15	\$222,378	6%
16	\$226,826	6%
17	\$231,363	6%
18	\$235,990	6%
19	\$240,710	6%
20	\$245,524	6%

**(b)** In the event of suspension of Licensee’s operations under this License Agreement for a period of time (which time shall be determined by Parks based on the relevant circumstances) due to circumstances beyond the control of Licensee, including, without limitation, acts of God, war, enemy or hostile government actions, revolutions, insurrections, riots, civil commotion, strikes, fire, future pandemics or other casualty, Licensee shall propose for the Commissioner’s approval (which shall not be unreasonably withheld) revised terms related to the payment of fees contemplated by this Section 4.

**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 in each Operating Year in accordance with the Schedule of Minimum Annual Fee Payments, Exhibit B attached hereto and made a part of this License, regardless of whether Licensee has received a bill for it from Parks. If at any time the 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 succeeding month in such Operating Year.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of license fees, percentage fees, or any other charges shall become overdue for ten (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 (30) day month) from the date the sums 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 waiver by Commissioner of such late charges or of Commissioner's right to enforce the provisions of this Article. If any local, State, or Federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

**4.4 (a)** Upon affixing its signature to this License, Licensee shall provide the City with a certified check, interest-bearing instrument or any other negotiable instrument approved by Parks, in the amount of Sixty-One Thousand, Three Hundred and Eighty-One Dollars (\$61,381) payable to the City of New York Department for Parks & Recreation as a security deposit ("Security Deposit"). The Security Deposit shall be held by the City, without liability for the City to pay interest thereon (but if Licensee provides an interest-bearing instrument, any interest accrues to Licensee), as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

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

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

**4.5 (a)** On or before the thirtieth (30<sup>th</sup>) day following each month of each Operating Year, Licensee shall submit to Parks, in a form reasonably satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. The statement shall include the following phrase: "I hereby certify above statement to be true and correct." Licensee also shall

submit a summary report of Gross Receipts for each Operating Year within sixty (60) days after the end of each Operating Year of this License. Each of the reports referenced in this paragraph shall report the Gross Receipts generated at the Licensed Premise in the categories for which rates, fees, or prices are specified in Exhibit C, the Schedule of Approved Hours and Rates, Fees, and Prices, including, without limitation, the following categories:

Beverages (Snack Bar/Restaurant)	Gross Receipts from beverages sold at the Licensed Premises, excluding from Catering Sales at the Licensed Premises.
Food (Snack Bar/Restaurant)	Gross Receipts from food sold at the Licensed Premises, excluding from Catering Sales at the Licensed Premises.
Catering Sales	Gross Receipts from catered events at the Licensed Premises
Catered Event Deposits	Gross Receipts from deposits for catered events at the Licensed Premises
Gift Cards	Gross Receipts from the sale of gift cards redeemable at the Licensed Premises (which shall be appropriately accounted for in order to avoid any duplicate revenue recognition).
Miscellaneous	Any other sources of income realized from Licensee's operations at the Licensed Premises, including, but not limited to, reservation of the Licensed Premises for Licensee's Special Events.

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

**(c)** Licensee is solely responsible for the payment of all Federal, State, and local taxes applicable to the Licensee's operation of the Licensed Premises. With the exception of Federal, State, and City sales taxes, no such applicable taxes may be deducted from Gross Receipts or from the compensation due under this License. Licensee may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts.

**(d)** 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.

**(e)** If in the last monthly statement of Gross Receipts for a given Operating Year, as required by Section 4.5(a), there is indicated any underpayment of the percentage license fees for such year to Parks, then Licensee shall make such payment within thirty (30) days after delivery

of such last monthly statement of Gross Receipts. If such statement indicates any overpayment of the percentage license fees for such year to Parks, verified subject to the City's audit procedures in accordance with Section 4.7 below, then Licensee shall be permitted to offset such amount against the next payments of any fees required hereunder until the overpayment is fully offset (or, if the overpayment is with respect to the final Operating Year, Parks shall use reasonable efforts to reimburse Licensee within ninety (90) days after receipt of such final statement for such Operating Year).

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

**4.7 (a)** Licensee, during the Term of this License Agreement, shall maintain, and shall cause any sublicensee 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 and 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. 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. Such books and records maintained pursuant to this License 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 or the Comptroller, and Parks and 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 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 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.

**4.8** In the event that Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in Section 4.1 through 4.7 hereinabove, Licensee may be subject to a charge of five hundred dollars (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

**4.9** License fees shall be made payable to the City of New York Department of Park & 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

#### **ARTICLE 5: RIGHT TO AUDIT**

**5.1** Upon reasonable prior advance written notice to Licensee, 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 applicable to this License for the purpose of examination, audit, review, or any purpose they deem necessary. Upon reasonable prior written notice to Licensee, Licensee shall also permit the inspection by Parks, Comptroller, or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, point of sale systems, and all reports or data generated from or by the point-of-sale system. Licensee shall cooperate fully with and assist Parks, the Comptroller, or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location fifty

(50) miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board, and travel costs incidental to two (2) auditors conducting such examination or audit at said location.

**5.2** The failure or refusal of 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 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.

## **ARTICLE 6: CAPITAL IMPROVEMENTS**

**6.1 (a)** Licensee shall expend or cause to be expended during the Term of this License a minimum of One Million, Eight Hundred and Thirty Thousand Dollars (\$1,830,000.00) for Capital Improvements as defined in Section 2.1(c) herein. The architectural/engineering 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 Exhibit D. Licensee shall perform and complete all such Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of Commissioner, which consent shall not be unreasonably withheld, conditioned, or delayed. All Fixed Equipment and Additional Fixed Equipment and Expendable Equipment applied toward the Capital Improvement required in this Article 6 shall become the property of Parks as and to the extent provided in 6.19 below.

**(b)** Licensee shall provide Americans with Disabilities Act ("ADA") accessibility if and to the extent required by the ADA throughout the Licensed Premises, including, but not limited to, installing ADA accessible counters as needed, 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)** Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of Eighteen Thousand, Three Hundred Dollars (\$18,300.00) representing one percent (1%) of the cost of the minimum guaranteed Capital Improvements described in Section 6.1 above, as a fee for design review by Parks personnel (the "Design Review Fee").

**(b)** To guarantee prompt payment of monies due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her

subcontractors in the performance of any one Capital Improvement Project, as defined below, with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000.00), Licensee shall post or cause to be posted a payment bond or other form of undertaking reasonably 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 desire to post or cause to be posted a payment bond as required hereunder, the following undertaking will satisfy the requirements of this Section 6.2(b): (i) Licensee guarantees payment in accordance with the provisions of Exhibit G, attached hereto and made a part hereof; and (ii) Licensee causes payment bonds to be posted by all contractors of Licensee and their subcontractors guaranteeing prompt payment of monies due to all persons furnishing labor or materials to such contractors or subcontractors in the prosecution of the Capital Improvement Project.

**6.3 (a)** The total cost of the Capital Improvements shall be determined by Commissioner based upon construction documents, invoices, labor time sheets, cancelled checks, credit cards receipts, bank statements, and such other supporting documents or other data as Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditure 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 Commissioner reasonably believes would be helpful to make such a determination. Licensee shall forward such information to Commissioner upon Commissioner’s request.

**(b)** 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. In the event that Licensee performs all Capital Improvements for less than the amount listed in Section 6.1 herein, any excess monies shall be remitted to the City as additional license fees with thirty (30) days following Commissioner's determination of Final Completion. If Licensee by the Expiration Date or sooner termination of this License Agreement has failed to expend the amount listed in Section 6.1 herein, Licensee shall remit to the City any unexpended monies 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 reasonably determined by Commissioner, including acts of God, war, enemy or hostile governments actions, future pandemic-related shutdowns as declared by the City, State, or Federal government, revolutions, insurrection, terrorism, riots, civil commotion, strikes, fire, floods, or other casualty or delay by Parks or any City, State, or Federal permitting authority. In such situations, 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 that 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 subject to a notice and cure period in accordance with Section 3.3. The scope of work may be modified with the prior written approval of Parks in the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Licensed Premises, provided that in no event shall Licensee expend or cause to be expended less than One Million, Eight Hundred and Thirty Thousand Dollars (\$1,830,000.00) for Capital Improvements prior to the Expiration Date, failing which the payment under Section 6.3(b) shall be due.

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

**6.6** At Parks' request, Licensee shall provide Parks with one complete set of final, approved "AS-DESIGNED" plans in a format reasonably acceptable to Parks. Acceptable manual drafting

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

**6.7** For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses from Parks' Revenue Division prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks and a building permit issued by the DOB, insofar as it has jurisdiction over Capital Improvements. Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, sign-offs, public assembly permits, Department of Health and Mental Hygiene ("DOHMH") permits, fire department certificates, and all other permits and approvals including, but not limited to, New York City Department of Environmental Protection ("DEP"), New York City Department of Small Business Services ("SBS"), New York State Department of Environmental Conservation ("DEC"), New York State Historic Preservation Office, New York City Landmarks Preservation Commission, 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, and working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall, except as may be approved by Parks, be new or like new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain, in Licensee's name, all manufacturer's warranties and guarantees for all such equipment and materials included in Licensee's Capital Improvements, as applicable. Licensee shall assign to the City all guarantees and other warranties with respect to any portion of the 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 guarantees 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' approval.

**6.12** Licensee may not cut down, prune, replant, or remove any trees on the Licensed Premises without the prior written approval of Parks. Licensee will report dead and diseased trees to Parks and upon Parks' request Licensee shall remove them. Any attachments to the trees, such as lights, will not be permitted.

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

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

**6.15** Licensee, within three (3) months of Substantial Completion, shall furnish 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 and 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 Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship, or

design may appear or to which damage 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 the License Agreement subject to a notice and cure period in accordance with Section 3.3.

**6.18** Neither Parks, nor the City, its 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, 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 Commissioner or Commissioner's authorized representative.

**6.19** Upon installation, title to all construction, renovation, improvements, and all Additional Fixed 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. The City agrees to advise Licensee whether or not the City will accept title to any Additional Fixed Equipment at a minimum one hundred and eighty (180) days prior to the expiration or earlier termination of the License. To the extent the City chooses not to exercise its option to accept title with respect to any Additional Fixed Equipment, it shall be the responsibility of Licensee to remove such equipment and restore the affected portions of the Licensed Premises to the reasonable satisfaction of Commissioner at the sole cost and expense of the Licensee.

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

## **ARTICLE 7: ALTERATIONS**

**7.1 (a)** Licensee may erect tents from time to time at the Licensed Premises, subject to Parks prior written approval, which approval shall not be unreasonably withheld. Licensee may otherwise alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become the property of City, at its option, upon their attachment, installation, or affixing.

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

**(i)** Obtain Commissioner's written approval (which shall not be unreasonably withheld) for whatever designs, plans, specifications, cost estimates, agreements, and

contractual understandings may pertain to contemplated purchases and/or work; and

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

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

(c) Commissioner may, at 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.

## **ARTICLE 8: FIXED AND EXPENDABLE EQUIPMENT**

**8.1** Licensee shall, at its sole cost and expense and to the reasonable satisfaction of Commissioner, provide, and replace if necessary, all equipment 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** City has title to all Fixed Equipment on the Licensed Premises as of the date of the 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 as and to the extent provided in 6.19 above.

**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 Commissioner reasonably determines is necessary to the operation of this License.

**8.4** Licensee must acquire, replace or repair, or 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 shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event that 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 Article 8 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, to the extent commercially feasible, certain Energy Star approved or other similarly efficient appliances and equipment.

### **ARTICLE 9: UTILITIES**

**9.1** Parks makes no representation 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 or submeter that captures water, gas, and 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 Term. These utility costs include, but are not limited to electricity as well as paying all water and sewer charges that DEP assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

**9.2** Licensee is prohibited from tapping into utilities used, operated, or owned by the City without the prior written approval of Parks.

### **ARTICLE 10: OPERATIONS**

**10.1 (a)** Licensee, at its sole cost and expense, shall renovate, operate, and maintain the Licensed Premises as a food service facility (restaurant and snack bar), catering facility and special event concession in compliance with this Agreement for the use and enjoyment of the general public in compliance with, all laws, rules, regulations, and orders of government agencies having jurisdiction. The exact size and location of the food service facility are subject to Parks’ prior written approval. The size and location of the food service facility as of the Commencement Date have been approved by Parks.

**(b)** Unless otherwise approved in advance in writing by Parks, Licensee may only operate when the park in which the Licensed Premises is located is open. Licensee shall operate the Catered Events year-round and shall operate the restaurant and snack bar to accommodate the golf course season. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks’ prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. At its sole discretion, but based upon written request from

Licensee, Parks may allow changes to Licensee's approved operating hours and 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. In regulating the hours of operation, Commissioner may consider the hours of operation of other similar Parks facilities, the nature of the community and the environs of the concession, Parks Rules and Regulations of operations, the public health and safety, and other similar considerations. 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. For the commencement of operations hereunder, the approved schedule and hours are annexed hereto in Exhibit C.

(c) All plans, services, menu items, prices, rates, and fees to be charged by Licensee for any goods, rights, or services provided pursuant to this License Agreement must also be approved in advance in writing by Parks. For the commencement of operations hereunder, the approved fees are annexed hereto in Exhibit C.

(d) 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 reasonably approved in writing by Parks.

(e) 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 Licensed Premises by or on behalf of Licensee.

(f) Licensee shall provide services and sell food and beverages of high grade and good quality and shall maintain adequate inventory to assure a constant supply of food and beverages.

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

(h) Licensee may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, and café equipment at the Licensed Premises are subject to Parks' prior written approval. Licensee must ensure free and open public access to any outdoor seating areas, provided however that access to any outdoor seating area where alcoholic beverages are served may be restricted to comply with Section 10.9 of this License Agreement and the requirements of the New York State Liquor Authority or other agency having jurisdiction.

(i) Alcoholic beverages may be served by Licensee to complement the food service at the Licensed Premises, provided that Licensee obtains, at its sole expense, the appropriate permit(s) and license(s) applicable to the sale or service of alcoholic beverages from the State Liquor Authority and all other agencies having jurisdiction. Alcohol may only be served by Licensee in the immediate vicinity of the Licensed Premises or in a cordoned-off area if Licensee provides exterior seating at the Licensed Premises and must be consumed on the Licensed Premises within designated areas. Licensee must keep in mind that the Licensed Premises is in a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

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

(k) Licensee may, with Parks' prior written approval, install or have installed up to two (2) vending machines inside the Licensed Premises for snack and beverage service. In the event that Licensee places vending machines at the Licensed Premises, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines, attached hereto as Exhibit H-1 and Exhibit H-2 respectively. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, the beverage and food standards may be changed during the Term of the License. In the event that Licensee installs vending machines on the Licensed Premises, the Licensee will be required to comply with any new or changed food or beverage standards in the operation of all vending machines at the Licensed Premises. Notwithstanding the foregoing, if the implementation of such new or changed standards will result in a material adverse effect on Licensee's costs, upon submission to Parks of documentation satisfactory to Parks demonstrating such effect, Licensee and Parks may amend this License as agreed between Parks and Licensee. If Licensee fails to comply with any new or changed food or beverage standards, as directed by Parks, Licensee shall remove any vending machines on the Licensed Premises.

(l) Licensee may, with Parks' prior written approval, use an electric vending cart on the Licensed Premises.

(m) As a part of Licensee's comprehensive composting plan, Licensee shall provide for the general public enriched soil and organized annual composting clinics for both residents and local schools.

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

**(b)** Smoking on the Licensed Premises, except in the parking lots or on sidewalks, is strictly prohibited. Licensee shall adhere to and enforce this policy.

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

**(d)** Licensee will be prohibited from serving any beverages in glass bottles from the snack bar. Single-use plastic beverage bottles as defined herein will also be prohibited for sale at the Licensed Premises. Plastic bottle alternatives, such as aluminum or boxed beverages, are permitted. Single-use plastic beverage bottles are defined as a drink, such as water, in a sealed rigid plastic bottle having a capacity of 21 fluid ounces or less.

**(e)** Licensee shall adhere to and strictly enforce the provisions of this Section 10.2.

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

**10.4** An officer or member of the Licensee shall personally operate this License or employ an

operations manager at the Licensed Premises. An officer or member of the Licensee or manager must be available by telephone during all hours of operation, and Licensee shall continuously notify Commissioner and the Parks Enforcement Patrol Communications Division of a 24-hour email address or cellular telephone number through which Parks may contact the manager, officer, or member in the event of an emergency. Licensee shall replace any manager, officer, employee, subcontractor, or sublicensee whenever reasonably requested by Commissioner.

**10.5** 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.

**10.6** License, 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;
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises; and
- (d) securing the Licensed Premises.

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

**10.8** 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. In addition, Licensee shall immediately, or within twenty-four (24) hours of becoming aware, notify Parks, in writing, of any claim for injury, death, property damage, or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

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

**10.10** Licensee shall maintain close liaison with the Parks Enforcement Patrol ("PEP") and New York City Police Department ("NYPD"). 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.

**10.11 (a)** Licensee may establish an advertising and promotion program regarding its operations under this License Agreement, subject to Parks prior written approval, which shall not be unreasonably withheld, conditioned, or delayed. Licensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter, except advertising matter which contains tobacco, non-tobacco smoking product, electronic cigarette, or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee may release news items to the media as it sees fit. If the Commissioner in his or her 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. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

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

**10.12** The design, placement, and content of all signage, including signage which includes Licensee's name, trade name(s), or logo(s), placed on or about the Licensed Premises, 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 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.

**10.13** Licensee shall comply with all City, State, and Federal requirements to provide safe and accessible opportunities at the Licensed Premises for everyone, including people with disabilities. Licensee shall at a minimum meet the minimum accessibility requirements. Such accessibility shall be clearly indicated by signs and included in all advertising. Licensee shall include in its advertising and promotion program, described in Article 10.11 of this License Agreement, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for

compliance with the applicable provisions of the ADA and regulations pertaining thereto as applicable.

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

**10.15** Should Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a reasonably satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory in the Commissioner's reasonable discretion. 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 reasonably determined by Commissioner, notwithstanding any other provision herein, then Commissioner may terminate this License.

**10.16** 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 or, if it cannot be corrected in such time period, to thereafter diligently pursue correction. During any period where Commissioner determines that an unsafe or emergency condition exists on the Licensed Premises then 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 Commissioner in writing and indicate the period within which such condition shall be corrected. Commissioner, in Commissioner's sole discretion, which shall not be arbitrary or capricious, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate. 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 as provided in this subsection.

**10.17** This License may be suspended in full or in part for any reason, which shall not be arbitrary and capricious, 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 shall be given a reasonable opportunity to propose and submit for the Commissioner's approval, which approval shall not be unreasonably withheld or delayed, a plan to equitably address the impact of the closure (if within Licensee's control, scope, or purview). 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.

**10.18** Licensee shall not use or permit the storage of an 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.

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

**10.20 (a)** Parks' inspectors may visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises, and determine whether or not Licensee is in compliance with the terms of this License. Based on their inspections, Parks may issue notices regarding deficiencies or violations of the terms of this License which Licensee will be obligated to rectify in a timeframe reasonably set forth in the notice. If Licensee fails to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe reasonably set forth in such notice. In the event that Licensee fails to cure the deficiencies or violations in the timeframe reasonably set forth in the notice, at its option, and in addition to any other remedies available to it, Parks may suspend this License in accordance with Section 10.17, terminate this License in accordance with Section 3.3 and/or require Licensee to pay to Parks as liquidated damages five hundred dollars (\$500.00) per day from the date of the notice until the shortcoming(s) has been corrected. Liquidated damages, if not paid promptly, may be deducted from the Security Deposit.

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

1. Filing an Appeal

A. If Licensee wishes to appeal the assessment, a notice of appeal must be delivered to Parks within ten (10) days of the date the assessment is mailed, along with a statement of reasons why Licensee 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 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.

**10.21** 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 remainder of the park in which the Licensed Premises are located. Parks does not guarantee that illegal vendors, persons unauthorized by Parks, or disabled veterans' vendors will not compete with Licensee or operate near the Licensed Premises. Parks encourages Licensee to report illegal vendors by calling 311.

**10.22** 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 the 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.

**10.23** Licensee shall comply with all laws, rules, and regulations of appropriate agencies, including but not limited to DEP, regarding noise levels and the playing of music, and Licensee shall be responsible for payment of any and all fees or royalties to 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 outside of the structures only at a sound level reasonably acceptable to Commissioner. Any musical programming or other types of entertainment must be approved in advance in writing by Parks, except for music accompanying a Catered Event, and, if played outside of the structures, must end no later than 10 P.M. Concerts, other than live music accompanying a Catered Event, are strictly prohibited at the Licensed Premises.

**10.24** Licensee shall, at its sole cost and expense, provide reasonably safe, environmentally efficient lighting throughout the Licensed Premises.

**10.25** Licensee shall provide reasonable means for measuring the satisfaction of its customers. Mechanisms for the evaluation of customer satisfaction include, but are not limited to, providing feedback cards to guest in check presenters; feedback forms online; e-mail and online surveys; mystery shoppers; social media; and direct guest feedback.

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

**10.27** Subject to prior written approval from Parks, Licensee may conduct Licensee's Special Events at the Licensed Premises. Licensee shall, at least thirty (30) days in advance, submit to Parks for approval, with such supporting documentation as Parks shall reasonably require, all plans

for any Licensee's Special Events at the Licensed Premises for the following month, and 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 or sponsored by Parks and such closure has been announced to the public at least two 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 estimated number of attendees, and required payment. All catered events must be primarily related to dining activities. Events for which dining is merely incidental to the primary activities during the event are prohibited. All revenue generated for Licensee through such Special Events must be reported to Parks as Gross Receipts. Notwithstanding anything to the contrary in this Section, 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 constitute an unreasonable limitation on the use and enjoyment of the Licensed Premises, except for the catering facility as described in the Schedule A, by the general public.

**10.28 (a)** Beginning two (2) years prior to the expiration of the License, at the same time Licensee provides to Parks its monthly report of Gross Receipts as required by Section 4.5, or in the event of a proposed assignment of this License Agreement by Licensee at any time during the Term, then at the same time Licensee submits to Parks the proposed assignment documents in accordance with Article 14 of this License, Licensee shall provide to Parks a list of all events or reservations scheduled at the Licensed Premises for any date(s) after the Termination/Expiration Date. Licensee shall provide Parks with the corresponding date of the event or reservation, the number of expected attendees, patron contact information (in compliance with applicable law), deposit information, deposit amount, and the terms of any deposit. Licensee shall consult with all patrons seeking to schedule an event or reserve all or part of the Licensed Premises for any date(s) after the Termination/Expiration Date.

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

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

**10.29** Beginning two (2) years prior to the termination or expiration of the License, at the same time Licensee provides to Parks its monthly report of Gross Receipts as required by Section 4.5, or in the event of a proposed assignment of this License Agreement by Licensee at any time during the Term, then at the same time Licensee submits to Parks the proposed assignment documents in

accordance with Article 14 of this License, Licensee shall provide to Parks a list of any unexpired, unused, or partially used gift cards, gift certificates, or other forms of credit usable for good or services sold or rendered by Licensee at the Licensed Premises that Licensee has issued during the Term. If so, directed in writing by the Commissioner, Licensee shall provide to any successor concessionaire the list of outstanding credits, and negotiate in good faith the transfer of such credits to the new concessionaire.

**10.30** Licensee agrees to work in good faith to cooperate with Parks' efforts to advance Parks-approved volunteering events and programming at or near the Licensed Premises in accordance with Article 13. Parks' concession unit will coordinate these activities with the Licensee.

**10.31** Parking spaces are available for Licensee's staff and patrons in the Parking Areas of the Licensed Premises. Licensee must maintain the Parking Areas and Drives at all times. In accordance with Section 10.12 of this Agreement, Licensee may place signage in the Parking Areas of the Licensed Premises indicating that the parking spaces are reserved for the Licensee's staff and patrons. If Licensee obtains the consent of the concessionaire at the South Shore Golf Course, Licensee and its staff and patrons may park in other parking lots at the South Shore Golf Course when the Parking Areas are full. Licensee's responsibilities with respect to the Parking Areas and Drives includes snow removal, repairs, and keeping the area clean, neat, and free of litter and debris. Licensee is also responsible for ensuring that the parking lot is in complete compliance with the requirements of the ADA, as applicable, as well as with all applicable City, State, and Federal regulations including striping and signage specifications at all times during the Term. No revenue generating activities in the South parking lot will be allowed without prior written approval from Parks.

## **ARTICLE 11: MAINTENANCE, SANITATION AND REPAIRS**

**11.1 (a)** Licensee, at its sole cost and expense (or through arrangements with third parties), will renovate, maintain, and operate the Licensed Premises in a 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 (including the entire exterior of the Dutch Colonial Revival Building), restrooms, building systems, utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, parking lots, paved areas, tables, chairs, umbrellas, vaults, gutters, curbs, and fixtures. In addition, all signs and structures on the Licensed Premises must be kept in good condition and free of graffiti. The erecting of any ancillary structures at the Licensed Premises shall be subject to Parks' prior written approval.

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

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

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

**11.4 (a)** Pursuant to a plan approved by Parks, Licensee shall, at its sole cost and expense, be responsible for the clean-up and removal of all snow, waste, debris, garbage, refuse, rubbish, and litter from the Licensed Premises and the area within fifty (50) feet of the Licensed Premises, except for (1) the area around the golf shop for which the concessionaire at the adjacent golf course is responsible and (2) public right of ways, including Huguenot Avenue and Raily Court. Licensee shall provide easily accessible, adequate waste and recycling receptacles at the Licensed Premises that are approved by Parks and shall 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. All rubbish removal schedules are subject to Parks' prior written approval. In addition, Licensee shall demonstrate to Parks' satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition throughout the Term.

**(b)** Licensee will provide separate receptacles for recyclable items, and shall conform to all City, State, and Federal recycling laws, as the same may exist from time-to-time. Where reasonably feasible, Licensee shall provide for its patrons' use appropriately sized and well-positioned blue plastic recycling bins or receptacles for bottles and cans, and green bins or receptacles for papers, catalogs, and magazines. These containers shall be properly labeled with recycling logos and the containers, and the areas around them, shall be maintained in a clean, sanitary, and graffiti-free state.

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

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

**11.7** At its sole cost and expense, Licensee shall keep all signs and structures in good condition and shall remove any and all graffiti, which may appear on the buildings, signs, and structures on the Licensed Premises during the Term hereof. Such graffiti removal shall be commenced within

twenty-four (24) hours from the time Licensee becomes aware of the graffiti and shall continue until such graffiti is removed.

**11.8** Licensee shall be responsible for regular pest control inspections and extermination, as needed. 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 NYS DEC and register such tanks with DEP. Licensee assumes all registration and update costs. Licensee must keep a copy of the PBS Certificate on-site at the Licensed Premises and provide copies to Parks’ 5-Boro Office on Randalls Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five (5) years to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals, or additions of tanks must receive prior written approval from Parks. Parks represents that, as of the date of this License Agreement, there are no vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100-gallon capacity on the Licensed Premises.

**11.10** Licensee shall make commercially reasonable efforts to:

(a) Use “Green Seal” and EPA Safer Choice Standard products and supplies in its daily maintenance and office work;

(b) 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;

(c) End the use of plastic bags in its retail operations;

(d) Implement a comprehensive recycling program to minimize the amount of recyclable waste headed to landfills;

(e) Maintain recycling receptacles around the Licensed Premises;

(f) Install new water conserving, energy efficient plumbing fixtures including but not limited to low-flow flush-o-meters, and sink faucets;

(g) Replace all existing lighting with energy-efficient LED and/or Compact Fluorescent Lights (CFL) and install motion sensors to reduce lighting consumption;

(h) Upgrade the HVAC mechanic systems on the Licensed Premises as needed to more energy efficient systems; and

(i) Use Energy Star vending machines and some Energy Star appliances.

**11.11** Licensee shall clean and maintain all exhaust vents, screens, grease traps, and exhaust on a regular basis.

### **ARTICLE 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 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, Commissioner, or their agents, unless the same is, in each instance, in writing and duly signed by Commissioner or Commissioner's duly authorized representative.

### **ARTICLE 13: RESERVATION FOR SPECIAL EVENTS**

**13.1** For the purposes of this Section 13 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 reasonably 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 Section 13 shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, at the Licensed Premises, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event.

**13.2** Parks, acting on behalf of the City, reserves the right to host a number of annual events, without cost to Parks (except as explicitly set forth herein), 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. During any such Parks Special Event, Licensee shall be obligated to operate the entire Licensed Premises without cost to Parks, however the City will pay for Licensee's costs for food and beverage items or such other operational costs connected with Parks Special Events. Such costs for Parks Special Events must be reported to Parks, but may be excluded from the calculation of Gross Receipts.

### **ARTICLE 14: PROHIBITION AGAINST TRANSFER; ASSIGNMENTS, AND SUBLICENSES**

**14.1 (a)** Subject to the terms of this Article 14, Licensee shall not sell, transfer, assign, sublicense, or encumber in any way this License, ten percent (10%) or more of the shares of or

interest in Licensee, or any interest therein, or consent, allow, or permit any other person or party to use any part of the Licensed Premises, buildings, space, or facilities covered by this License, nor shall this License be transferred by operation of law, unless approved (which approval shall not be unreasonably withheld, conditioned or delayed) in advance in writing by Commissioner, it being the purpose of this License Agreement to grant this License solely to Licensee herein named. Parks reserves the right to require payment of a reasonable transfer fee intended solely to compensate Parks for the cost and expense of reviewing the transaction as a condition of the granting of any required consent or approval.

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

**(c)** The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of, or change in more than ten percent (10%) in stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee may be made under any circumstance if such sale will result in a change of control of Licensee violative of the intent of this Article 14, without the prior written consent of Commissioner.

**14.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of more than ten (10%) of stock or voting control of Licensee in the Licensed Premises, without the prior written consent of Commissioner, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be reasonably required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to Commissioner together with a certification that it shall provide management control acceptable to Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms, and corporations that 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 intended to compensate Parks for the cost and expense of reviewing the transaction as a condition of the granting of any required consent or approval.

**14.3** No consent to or approval of any assignment or sublicense granted pursuant to this Article 14 shall constitute consent to or approval of any subsequent assignment or sublicense. Failure to comply with this provision shall, after notice and failure to cure, 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 reasonable 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.

#### **ARTICLE 15: PARKS CONSTRUCTION**

**15.1 (a)** Parks reserves the right to perform safety, maintenance, or construction work deemed necessary by Commissioner in Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by Commissioner. Parks shall use its reasonable efforts to give Licensee at least 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 Commissioner. In the event that Licensee must close all or part of the Licensed Premises for the purposes provided for in this License because of such Parks' work, then Licensee may propose and submit for Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License.

**(b)** Licensee shall be responsible for security of all of Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages, and injury are caused by the negligence or intentional tortious acts or omissions of Licensee.

#### **ARTICLE 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, Federal agency, or governmental entity having



jurisdiction over operations of the License and the Licensed Premises or Licensee's use and occupation thereof.

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

### **ARTICLE 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 ADA and regulations pertaining thereto as applicable. Any violation of this Article 17 shall be a material breach of this License, and may result in the termination of the License Agreement subject to a notice and cure period in accordance with Section 3.3.

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

### **ARTICLE 18: NO WAIVER OF RIGHTS**

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

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

#### **19.1 Licensee Responsibility**

(a) In connection with Licensee's renovation, operation, and maintenance of the Licensed Premises under this License Agreement, 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 sublicensees, contractors, or subcontractors.

(b) In connection with Licensee's renovation, operation, and maintenance of the Licensed Premises, 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) In connection with Licensee’s renovation, operation, and maintenance of the Licensed Premises, 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) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all Federal, State, or City environmental, health, and safety-related laws, regulations, standards, decisions of the courts, permits, or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to Licensee or the Licensed Premises (collectively “Environmental Laws”). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, store, used, generated, treated, or disposed of on the Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance, or material which is now or becomes in the future listed, defined, or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects.

## **19.2 Indemnification and Related Obligations**

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend, and hold the City and its officials and employees (collectively, the “Indemnitees”, each an “Indemnitee”) 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 of Licensee, its affiliates, and their respective officers, directors, employees, agents, successors, assigns, and contractors under this License (regardless of whether or not Licensee itself has been negligent) or 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 any Indemnitee from being completely indemnified by Licensee, such Indemnitee shall be partially indemnified by Licensee to the fullest extent permitted by law.

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

## **ARTICLE 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, 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.

(b) 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 One Million Dollars (\$1,000,000) per occurrence for bodily injury (including death) and property damage and One Million Dollars (\$1,000,000) 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 Three Million Dollars (\$3,000,000). 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 Indemnitees 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 CG 20 37, and the limits for the Indemnitees shall be no lower than Licensee’s. “Blanket” or other forms are also acceptable if they provide the Indemnitees with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

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

(a) The Licensee shall maintain, or for workers not directly employed by Licensee, cause to be maintained, 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) If vehicles are used in connection with Licensee’s operations under this License Agreement, 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) Reserved.

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

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

## **20.6 Flood Insurance**

(a) If applicable, Licensee shall maintain flood insurance through the National Flood Insurance Program (“NFIP”) for each building on the Premises. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the NFIP for both the building and its contents. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

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

## **20.7 Liquor Law Liability Insurance**

(a) In the event the Licensee or any sublicensee or contractor shall serve alcohol on the Licensed 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 Indemnitees

as additional insureds. Such insurance shall be effective prior to the commencement of any such service of alcohol and continue throughout such service. The Commissioner may increase or decrease the limit(s) if the Commissioner reasonably believes that the nature of such operations merits an increase or decrease.

## **20.8 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, delivery, receipt, or disposal of any petroleum products, asbestos, lead, polychlorinated biphenyls (“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/ and 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 Indemnitees as Additional Insureds. Coverage for the Indemnitees shall be at least as broad as the Licensee’s. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor’s work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

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

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

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

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

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

(d) There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, the Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance

under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

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

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

## **20.10 Proof of Insurance**

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

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

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

## **20.11 Miscellaneous**

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

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

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

(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 twenty (20) days after such event, or sooner if required by the insurance policy. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City of New

York c/o Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

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

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

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

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

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

## **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.

## **ARTICLE 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.** Commissioner or agency head whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five (5) days written notice to the parties involved to determine if any penalties should attach for the failure of any person to testify.

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

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

(i) The disqualification for a period not to exceed five (5) years from the date of an adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit, or license with or from the City; and/or

(ii) The cancellation or termination of any and all existing City contracts, leases, permits, or licenses that the refusal to testify concerns and that have not been assigned as permitted under this License, 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) Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Sections 22.1(d)(i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22.1(d)(iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under Section 22.1(c) above, provided that the party or entity has given actual notice to Commissioner or agency head upon the acquisition of the interest, or at the hearing called for in Section 22.1(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, Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days written notice in the event that Licensee fails to promptly report in writing to 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.

### **ARTICLE 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 affect 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.

#### **ARTICLE 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 or Parks 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 or Parks 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 that 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 Parks are adverse parties, Licensee shall diligently render to Parks and/or 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.

#### **ARTICLE 25: CUMULATIVE REMEDIES - NO WAIVER**

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

## **ARTICLE 26: EMPLOYEES**

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

## **ARTICLE 27: INDEPENDENT STATUS OF LICENSEE**

**27.1** Licensee is not an employee of Parks or the City and in accordance with such independent status neither Licensee nor its employees or agents will hold themselves out as, nor claim to be officers, 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.

## **ARTICLE 28: CREDITOR-DEBTOR PROCEEDINGS**

**28.1** In the event that 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, which results in Licensee's inability to pay its license fees and/or any other charges due to the City for all periods prior to the institution of such proceedings, the Security Deposit shall be deemed to be applied first to the payment of license fees and/or other charges due the City and the balance, if any, of the Security Deposit may be retained by the City in partial liquidation of the City's damages.

## **ARTICLE 29: CONFLICT OF INTEREST**

**29.1** Licensee represents and warrants that neither it nor any of its directors, officers, members, partners, or employees has any interest nor shall they acquire any interest, directly or indirectly, which would or may conflict in any manner or degree with the performance or rendering of the services herein provided. Licensee further represents and warrants that in the performance of this License no person having such interest or possible interest shall be employed by it. No elected official or other officer or employee of the City or Department, 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.

### **ARTICLE 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, 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.

### **ARTICLE 31: NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

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

### **ARTICLE 32: ALL LEGAL PROVISIONS DEEMED INCLUDED**

**32.1** 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.

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

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

### **ARTICLE 34: JUDICIAL INTERPRETATION**

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

## **ARTICLE 35: MODIFICATION OF AGREEMENT**

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

## **ARTICLE 36: NOTICES**

**36.1** Where provision is made herein for notice or other communication to be given in writing, the same shall be given by hand delivery or by mailing a copy of such notice or other communication by certified mail, return receipt requested, addressed to Commissioner or to the attention of Licensee at their respective addresses provided below, or to any other address that Licensee shall have filed with Commissioner. A copy of all such notices shall also be given by electronic mail to the electronic mail addresses for each party provided below.

Parks: NYC Parks Revenue Division  
830 5<sup>th</sup> Avenue, Room 407  
New York, NY 10065

Licensee: SSC&R LLC  
3980 Amboy Road  
Staten Island, NY 10308  
Attn: Joseph Tranchina, Managing Member  
Email: [joe@iophospitality.com](mailto:joe@iophospitality.com)

## **ARTICLE 37: LICENSEE ORGANIZATION, POWER AND AUTHORITY**

**37.1** 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.

## **ARTICLE 38: MISCELLANEOUS**

**38.1** 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.

**ARTICLE 39: ENTIRE AGREEMENT**

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

**ARTICLE 40: COUNTERPARTS**

**40.1** 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.

***[SIGNATURE PAGE TO FOLLOW]***

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**



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

**CITY OF NEW YORK PARKS &  
RECREATION**

**SSC&R LLC**

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

**Alex Han  
Chief of Concessions**

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

**Joseph Tranchina  
Managing Member**

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

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

**APPROVED AS TO FORM & CERTIFIED AS TO LEGAL AUTHORITY**

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

STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF NEW YORK )

On this \_\_\_\_ day of \_\_\_\_\_, 2025 before me personally came Alex 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 forgoing instrument and she acknowledged that she executed the same in her official capacity and for the purpose mentioned therein.

\_\_\_\_\_  
**Notary Public**

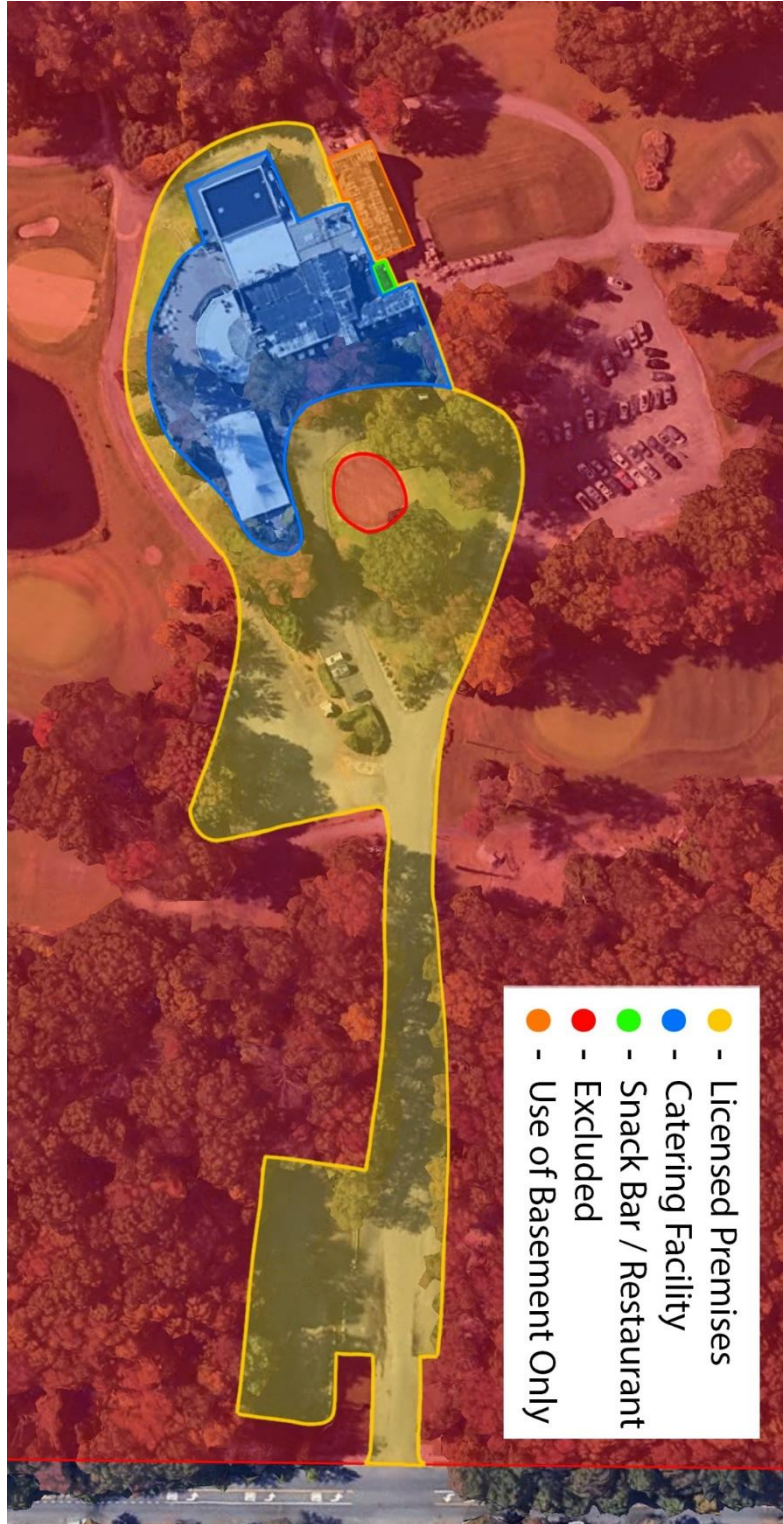
STATE OF NEW YORK    )  
  ) ss.:  
COUNTY OF                    )

On this \_\_\_\_ day of \_\_\_\_\_, 2025 before me personally came Joseph Tranchina, who, being duly sworn by me did depose and say that he is the Managing Member of SSC&R LLC and who executed the foregoing instrument for the purposes mentioned herein.

\_\_\_\_\_  
**Notary Public**

\_\_\_\_\_  
Notary Public

**EXHIBIT A**  
**LICENSED PREMISES**



**EXHIBIT B**

**SCHEDULE OF ANNUAL FEE PAYMENTS**

(TO BE PROVIDED UPON Notice To Proceed)

## **EXHIBIT C**

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

#### **Hours of Operations:**

Restaurant / snack bar during golf season (March 15 – November 1): Monday - Sunday 6:00 A.M. to 8:00 P.M.

Snack bar / restaurant: Appropriate to accommodate the golf course hours of operation.

Catering operations: Sales Office shall be open Monday - Sunday 10:00 A.M. to 8:00 P.M.

Banquets Operations: As contracted and for scheduled general public dining options.

#### **Rates, Fees and Prices:**

Below are sample menus for the Snack Bar and Restaurant. All menu items and prices are subject to Parks prior written approval.

# Snack Bar / Restaurant Menu

## ◆ BREAKFAST ◆

BACON, EGG & CHEESE	\$4.75
SAUSAGE, EGG & CHEESE	\$4.75
EGG & CHEESE	\$3.75
BACON & EGG	\$4.00
SAUSAGE & EGG	\$4.00
BAGEL W/ CREAM CHEESE OR BUTTER	\$3.50
ROLL W/ CREAM CHEESE OR BUTTER	\$3.50
CEREAL IN A CUP	\$3.50
ASSORTED MUFFINS	\$3.25
HOT OATMEAL IN A CUP	\$3.50
YOGURT PARFAIT	\$6.25

## ◆ LUNCH ◆

TURKEY CLUB	\$8.50
CRISP ROMAINE, TOMATO, BACON & MAYO	
HAM & CHEESE	\$6.50
LETTUCE & TOMATO	
TUNA MELT	\$7.00
LETTUCE & TOMATO	
HAMBURGER	\$6.00
LETTUCE & TOMATO ON A TOASTED BUN	
ADD BACON \$1.50    ADD CHEESE \$1.50	
HAMBURGER COMBO	\$11.25
COMES WITH FRIES & FREE FOUNTAIN DRINK	
TURKEY & CHEESE	\$6.50
TURKEY CLUB	\$8.50
PB & J	\$3.25
GRILLED CHEESE	\$4.00
ADD BACON \$1.50	
HOT DOG	\$2.95
CHOICE OF SAUEERKRAUT OR ONIONS	
ADD CHILI & CHEESE \$1.75	
PASTRAMI & SWISS	\$8.00
SERVED HOT OR COLD	
CHICKEN TERIYAKI BOWL	\$10.00
SAUSAGE & PEPPERS	\$10.00
CHILI BOWL	\$6.25
CHICKEN WRAP	\$8.00
CHICKEN TENDERS	\$7.50
CHICKEN TENDERS COMBO	\$12.00
COMES WITH FRIES & FREE FOUNTAIN DRINK	
FRENCH FRIES	\$5.25



## ◆Dinner◆

### Appetizers

SPINACH & ARTICHOKE DIP	\$15.00
Served with salsa and warm tortilla chips	
FAIRWAY WINGS	\$17.00
Choice of buffalo, BBQ or Teriyaki	
GRILLED CIABATTA	\$13.00
Fennel, sweet peppadew peppers, marinated olives	
OFF THE TEE SLIDERS	\$16.00
Freshly ground beef on Martin's potato bun's served with lettuce, tomato, pickles, and our signature sauces	

### Salads

Add Chicken Steak or Shrimp to any salad	
CAESAR SALAD	\$16.00
Baby gem lettuce, Reggiano, fresh croutons	
THE WEDGE	\$17.00
Iceberg lettuce, tomatoes, egg, bacon, croutons, blue cheese dressing	
BURRATA	\$19.00
Toasted ciabatta, arugula, roasted tomatoes and house vinaigrette	

### Entrees

Braised Pork Ragu	\$26.00
Slowly braised pork shoulder, goat cheese crema	
Mezzo Rigatoni	\$21.00
Roasted eggplant, spicy tomato sauce, burrata	
BRANZINO	\$29.00
Marcona almonds, lemon, fresh herbs and rainbow cauliflower	
SCOTTISH SALMON	\$31.00
Pan roasted, with lemon butter, whipped potatoes and Broccoli	
PAN ROASTED CHICKEN	\$24.00
Dry herbs, garlic sauce and whipped potatoes	
BARBECUE RIBS	\$33.00
Danish pork slow cooked, served with fries & coleslaw	
NY STRIP	\$41.00
House rub, served with creamy peppercorn sauce and french fries	



◆ **Dessert** ◆

\$10

Hot Fudge Sundae  
 Clubhouse Peach Cobbler  
 Home-Made Key Lime Pie  
 Chipper Chocolate Chip Baked Cookie

◆ **Beverages** ◆

**COCKTAILS TO GO**

\$12

BLOODY MARY, TITO'S & RED BULL,  
 TRANSFUSION, SCREWDRIVER, JACK & COKE

**GLASS OF WINE**

\$12

CABARNET, WHITE WINE

**BEER ON TAP**

\$5

SAM ADDAMS SUMMER ALE, COORS LIGHT, BLUE  
 MOON



**DRINKS**

BOTTLED WATER	\$3.00
GATORADE	\$3.00
20 oz SODAS	\$3.00
PEPSI, DIET PEPSI, GINGER ALE, DIET GINGER ALE, SELTZER, BRISKICED TEA	
FRESH UNSWEETENED ICED TEA	\$3.00
COCONUT WATER	\$4.00
ENERGY DRINK	\$4.00
FRUIT SMOOTHIE	\$6.75

**FOUNTAIN SODA – 20 OZ - \$2.00**

PEPSI, DIET PEPSI, GINGER ALE, LEMONADE,  
 CLUB SODA, ICED TEA, CRANBERRY JUICE

**COFFEES, TEAS, & MORE**

COFFEE/ TEA	SMALL : \$1.75
REGULAR OR DECAF	LARGE : \$2.25
ESPRESSO SHOT	\$2.00
HOT CHOCOLATE	\$3.25
FROZEN HOT CHOCOLATE	\$6.00





## EXHIBIT D

### CAPITAL INVESTMENT

The Licensee will complete a minimum of One Million, Eight Hundred and Thirty Thousand Dollars (\$1,830,000.00) in Capital Improvements to the Licensed Premises which will include the following:

➤ **Dutch Colonial Revival Building - Interior:**

- The following work is to be completed between 45 and 180 days following the Commencement Date:
  - The renovation of restrooms, including water saving devices, motion light sensors, and hand dryers.
  - The upgrade of some of the kitchen equipment as needed to high efficiency/energy star equipment.
  - The installation of new insulation and high efficiency windows and glazing as needed within the property.
  - The upgrade of some of the building systems including upgraded HVAC systems to higher efficiency equipment, energy saving LED lighting and water saving devices which will be added to the plumbing system.
  - The renovation of 1<sup>st</sup> floor ballroom which includes some new high efficiency glass, enlarged ceilings, upgraded energy efficient HVAC system and upgraded high efficiency lighting.
  - The upgrade of electric equipment.
- The timing of the following work is to be determined during the course of the Term:
  - The expansion and renovation of the 2<sup>nd</sup> floor ballroom as previously approved including upgraded HVAC systems to higher efficiency equipment, energy efficient lighting, and plumbing systems upgrades.

➤ **Dutch Colonial Revival Building - Exterior:**

- The following work is to be completed approximately 180 days following the Commencement Date:
  - The upgrade of roofing as needed.
  - The patio renovation to increase accessibility and outdoor use. The installation of a patio pergola, new paving stones to increase permeable surfaces, installation of a rain garden and landscaping to include deciduous trees.
  - The upgrade of entry porte-cochere.
- Licensee to submit schedule for the following work upon Parks' request:
  - Licensee will be discussing the possibility of installing solar power on the property by consulting with NY-Sun.

➤ **General Work:**

- The following work is to be completed between 120 and 180 days following the Commencement Date:

- The renovation of entryway and parking lots including new grading, landscape lighting, fencing, paving, curbing, landscaping, and fencing.
- The installation of electric charging station/waiting area, free public wi-fi, and bike rack.
- The improvement of accessibility within the property.
- The timing of the following work is to be determined during the course of the Term:
  - The installation of LED lighting in portions of the property and the use of some environmentally friendly products as well as some products bearing the Green Seal. SSC&R LLC intends to incorporate some Green Building Design elements within the proposed work.
  - The installation of some water conserving fixtures and Energy Star appliances within the Licensed Premises.
- Notwithstanding anything to the contrary contained herein, the above estimates for each category serve as guidelines, and Licensee shall have the right to interchange values between categories and improvements, subject to Parks' prior reasonable approval.

## EXHIBIT E

### NYC EARNED SAFE AND SICK TIME ACT CONTRACT RIDER

(To supersede Section 4.06 of the January 2018 Appendix A and Section 35.5 of the March 2017 Standard Construction Contract and to be attached to other City contracts and solicitations)

A. *Introduction and General Provisions.*

1. The Earned Safe and Sick Time Act (“ESSTA”), codified at Title 20, Chapter 8 of the New York City Administrative Code, also known as the “Paid Safe and Sick Leave Law,” requires covered employees (as defined in Admin. Code § 20-912) in New York City (“City”) to be provided with paid safe and sick time. Contractors of the City or of other governmental entities may be required to provide safe and sick time pursuant to the ESSTA. The ESSTA is enforced by the City’s Department of Consumer and Worker Protection (“DCWP”), which has promulgated 6 RCNY §§ 7-101 and 201 et seq. (“DCWP Rules”).

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

3. The Contractor must notify (with a copy to DCWP at [ComplianceMonitoring@dcwp.nyc.gov](mailto:ComplianceMonitoring@dcwp.nyc.gov)) the Agency Chief Contracting Officer of the City Agency or other entity with whom it is contracting in writing within 10 days of receipt of a complaint (whether oral or written) or notice of investigation regarding the ESSTA involving the performance of this agreement. Additionally, the Contractor must cooperate with DCWP’s guidance and must comply with DCWP’s subpoenas, requests for information, and other document demands as set forth in the ESSTA and the DCWP Rules. More information is available at <https://www1.nyc.gov/site/dca/about/paid-sick-leave-what-employers-need-to-know.page>.

4. Upon conclusion of a DCWP investigation, Contractor will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Contractor will have the opportunity to settle any violations and cure the breach of this agreement caused by failure to comply with the ESSTA either i) without a trial by entering into a consent order or ii) appearing before an impartial judge at the City’s administrative tribunal. In addition to and notwithstanding any other rights and remedies available to the City, non-payment of relief and penalties owed pursuant to a consent order or final adjudication within 30 days of such consent order or final adjudication may result in the termination of this agreement without further opportunity to settle or cure the violations.

5. The ESSTA is briefly summarized below for the convenience of the Contractor. The Contractor is advised to review the ESSTA and the DCWP Rules in their entirety. The Contractor may go to [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) for 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 Contractor can get more information about how to comply with the ESSTA and the DCWP Rules. The Contractor acknowledges that it is responsible for compliance with the ESSTA and the DCWP Rules notwithstanding any inconsistent language contained herein.

B. *Pursuant to the ESSTA and DCWP Rules: Applicability, Accrual, and Use.*

1. An employee who works within the City must be provided paid safe and sick time.<sup>1</sup> Employers with one hundred or more employees are required to provide 56 hours of safe and sick time for an employee each calendar year. Employers with fewer than one hundred employees are required to provide 40 hours of sick leave each calendar year. Employers must provide a minimum of one hour of safe and sick time for every 30 hours worked by an employee and compensation for such safe and sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage at the time the paid safe or sick time is taken. Employers are not discouraged or prohibited from providing more generous safe and sick time policies than what the ESSTA requires.

2. Employees have the right to determine how much safe and sick time they will use, provided that an employer may set a reasonable minimum increment for the use of safe and sick time not to exceed four hours per day. For the use of safe time or sick time beyond the set minimum increment, an employer may set fixed periods of up to thirty minutes beyond the minimum increment. In addition, an employee may carry over up to 40 or 56 hours of unused safe and sick time to the following calendar year, provided that no employer is required to carry over unused paid safe and sick time if the employee is paid for such unused safe and sick time and the employer provides the employee with at least the legally required amount of paid safe and sick time for such employee for the immediately subsequent calendar year on the first day of such calendar year.

3. An employee entitled to safe and sick time pursuant to the ESSTA may use safe and sick time for any of the following:

a. 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;

b. such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild, or grandparent, the child or parent of an employee's spouse or domestic partner, any other individual related by blood to the employee, and any other individual whose close association with the employee is the equivalent of a family relationship) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;

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<sup>1</sup> Pursuant to the ESSTA, if fewer than five employees work for the same employer, and the employer had a net income of less than one million dollars during the previous tax year, such employer has the option of providing such employees uncompensated safe and sick time.

c. closure of such employee's place of business by order of a public official due to a public health emergency;

d. such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency; or

e. when the employee or a family member has been the victim of a family offense matter, sexual offense, stalking, or human trafficking:

1. to obtain services from a domestic violence shelter, rape crisis center, or other shelter or services program for relief from a family offense matter, sexual offense, stalking, or human trafficking;

2. to participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future family offense matters, sexual offenses, stalking, or human trafficking;

3. to meet with a civil attorney or other social service provider to obtain information and advice on, and prepare for or participate in any criminal or civil proceeding, including but not limited to, matters related to a family offense matter, sexual offense, stalking, human trafficking, custody, visitation, matrimonial issues, orders of protection, immigration, housing, discrimination in employment, housing or consumer credit;

4. to file a complaint or domestic incident report with law enforcement;

5. to meet with a district attorney's office;

6. to enroll children in a new school; or

7. to take other actions necessary to maintain, improve, or restore the physical, psychological, or economic, health or safety of the employee or the employee's family member or to protect those who associate or work with the employee.

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require

disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees 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 safe and sick time to an employee because of non-compliance with such a policy.

6. An employer must provide a pay statement or other form of written documentation that informs the employee of the amount of safe/sick time accrued and used during the relevant pay period and the total balance of the employee's accrued safe/sick time available for use.

7. Safe and 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 safe and sick time was used.

C. *Exemptions and Exceptions.* Notwithstanding the above, the ESSTA does not apply to any of the following:

1. an independent contractor who does not meet the definition of employee under N.Y. Labor Law § 190(2);

2. an employee covered by a valid collective bargaining agreement, if the provisions of the ESSTA are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the ESSTA for such employee;

3. 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 their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

4. an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;

5. 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

6. a participant in a Work Experience Program (WEP) under N.Y. Social Services Law § 336-c.

D. *Retaliation Prohibited.* An employer shall not take any adverse action against an employee that penalizes the employee for, or is reasonably likely to deter the employee from or interfere with the employee exercising or attempting in good faith to exercise any right provided by the ESSTA. In addition, an employer shall not interfere with any investigation, proceeding, or hearing pursuant to the ESSTA.

E. *Notice of Rights.*

1. An employer must provide its employees with written notice of their rights pursuant to the ESSTA. Such notice must be in English and the primary language spoken by an employee, provided that DCWP has made available a translation into such language. Downloadable notices are available on DCWP's website at <https://www1.nyc.gov/site/dca/about/Paid-Safe-Sick-Leave-Notice-of-Employee-Rights.page>. The notice must be provided to the employees by a method that reasonably ensures personal receipt by the employee.

2. Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed \$50.00 for each employee who was not given appropriate notice.

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

G. *Enforcement and Penalties.*

1. Upon receiving a complaint alleging a violation of the ESSTA, DCWP must investigate such complaint. DCWP may also open an investigation to determine compliance with the ESSTA on its own initiative. Upon notification of a complaint or an investigation by DCWP, the employer must provide DCWP with a written response and any such other information as DCWP may request. If DCWP believes that a violation of the ESSTA has occurred, it has the right to issue a notice of violation to the employer.

2. DCWP has the power to grant an employee or former employee all appropriate relief as set forth in Admin. Code § 20-924(d). Such relief may include, but is not limited to, treble damages for the wages that should have been paid; statutory damages for unlawful retaliation; and damages, including statutory damages, full compensation for wages and benefits lost, and reinstatement, for unlawful discharge. In addition, DCWP may impose on an employer found to have violated the ESSTA civil penalties not to exceed \$500.00 for a first violation, \$750.00 for a second violation within two years of the first violation, and \$1,000.00 for each succeeding violation within two years of the previous violation. When an employer has a policy or practice of not providing or refusing to allow the use of safe and sick time to its employees, DCWP may seek penalties and relief on a per employee basis.



3. Pursuant to Admin. Code § 20-924.2, (a) where reasonable cause exists to believe that an employer is engaged in a pattern or practice of violations of the ESSTA, the Corporation Counsel may commence a civil action on behalf of the City in a court of competent jurisdiction by filing a complaint setting forth facts relating to such pattern or practice and requesting relief, which may include injunctive relief, civil penalties and any other appropriate relief. Nothing in § 20-924.2 prohibits DCWP from exercising its authority under section 20-924 or the Charter, provided that a civil action pursuant to § 20-924.2 shall not have previously been commenced.

H. *More Generous Policies and Other Legal Requirements.* Nothing in the ESSTA is intended to discourage, prohibit, diminish, or impair the adoption or retention of a more generous safe and 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 safe and sick time. The ESSTA provides minimum requirements pertaining to safe and 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 safe and sick leave or time, whether paid or unpaid, or that extends other protections to employees. The ESSTA may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.



**EXHIBIT F**

**CERTIFICATES OF INSURANCE**

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

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

-- OR --

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

**CITY OF NEW YORK**

**CERTIFICATION BY INSURANCE BROKER OR AGENT**

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

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[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.



## EXHIBIT H-1

### CITYWIDE BEVERAGE VENDING MACHINES STANDARDS

#### New York City Food Standards | **Beverage Vending Machines**

*This document outlines standards for beverage vending machines on City property (per Executive Order 8). The New York City (NYC) Food Standards, under which the Standards for Beverage Vending Machines fall, aim to reduce the availability and consumption of sugary drinks, with the goal of improving the health of all New Yorkers. Other organizations may also adopt the Standards for Beverage Vending Machines to offer healthier beverage choices to their clients, staff and visitors.*

For more information, please contact [nycfoodstandards@health.nyc.gov](mailto:nycfoodstandards@health.nyc.gov).

### **Section 1. Standards for Cold Beverage Vending Machines**

*The following standards apply to cold beverage vending machines serving people of all ages. Additional standards for cold beverage vending machines serving children are described in Section 2.*

- 1. Require** all beverages stocked contain  $\leq 24$  calories per 8 ounces (oz) and no added sugars.

**There are two exceptions:**

- | 100% fruit juice with no added sweeteners may be stocked in a maximum of two slots. This maximum applies no matter how many slots a machine has.
- | Unsweetened 1% and nonfat milk and nutritionally equivalent milk substitutes (such as soy milk) that contain  $\leq 9$  grams of total sugar may be stocked in an unlimited number of slots.

Sugary drinks are beverages with added sugars (such as sodas, sports and energy drinks, and sweetened iced tea) and cannot be stocked.

- 2. Require** the top row of each machine be stocked with at least two slots of water.
  - | Water must contain 0 calories and no added colors, flavors or sweeteners.
  - | If drinking water (such as from a water fountain) is available near a machine, the slots of water can be substituted with slots of unsweetened and unflavored seltzer.
  - | Recommend machines be stocked with water and unsweetened seltzer only.
  - | Recommend setting lower prices for water and unsweetened seltzer than for other beverages.
- 3. Require** 100% fruit juice with no added sweeteners be sold in 12-ounce or smaller containers and stocked only on the bottom row.
- 4. Require** advertisements on machines be of water or unsweetened seltzer only.
- 5. Require** calorie information be posted, as packaged, for each beverage.

## Section 2. Additional Standards for Cold Beverage Vending Machines Serving Children

*Children (age 18 and younger) have different nutritional needs than adults. Cold beverage vending machines serving children are required to follow the standards described in Section 1, unless stated otherwise below.*

- 1. Require** beverages do not contain low- or no-calorie sweeteners, or artificial colors or flavors.
- 2. Require**, for sites serving children age 12 and younger, beverages contain  $\leq 10$  calories per 8 oz.
- 3. Require**, for sites serving children age 12 and younger, beverages do not contain caffeine.

## Section 3. Standards for Hot Beverage Machines

*The following standards apply to hot beverage machines serving people of all ages.*

- 1. Require** all beverages contain  $\leq 24$  calories per 8 oz and no added sugars.
  - Condiments (such as milk, sugar, and low- and no-calorie sweeteners) can contain  $> 24$  calories per 8 oz.
- 2. Require** calorie information be posted, as packaged, for each beverage.

Executive Order 54 of 2020 ended the purchase of single-use plastic bottles and restricted their sale on City property. To read Executive Order 54 of 2020, visit [nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-54.pdf](https://nyc.gov/assets/home/downloads/pdf/executive-orders/2020/eo-54.pdf).

For more information, visit [nyc.gov/health](https://nyc.gov/health) and search for **NYC Food Standards**, or call **311**.

## EXHIBIT H-2

### STANDARDS FOR FOOD VENDING MACHINES

New York City  
Food Standards

# FOOD VENDING MACHINES

## Snack Standards

**1** Require snacks meet all of the following criteria, per package:

**Calories:** no more than 200 calories

**Total fat:** no more than 7 grams

- Nuts, seeds, nut butters and cheese are exempt
- Products containing nuts or nut butters are exempt

**Saturated fat:** no more than 2 grams

- Nuts, seeds, nut butters and cheese are exempt

**Trans fat:** 0 grams trans fat

**Sodium:** no more than 200 mg

- Cottage cheese: no more than 400 mg

**Sugar:** no more than 10 grams

- Fruit and vegetable products with no added sugar are exempt
- Yogurt: no more than 30 grams sugar per 8 ounces

**Fiber:** contain at least 2 grams of fiber, if product is grain/potato-based (e.g. granola bars, crackers, pretzels, cookies, chips)

**2** Require calorie information is posted for each food item, as packaged.

Required for City agencies only.

**3** For programs serving children age 18 and under: products cannot contain artificial flavors, artificial colors, artificial sweeteners, or other non-nutritive sweeteners (e.g. stevia, erythritol).

**4** Recommend limit grain/potato-based snacks to no more than 50% of food items in machine.

*Follow these Standards to provide healthier food options.*

Organizations, such as hospitals, worksites, and community-based organizations can adopt the Standards to improve the food environment for employees and visitors.

City agencies follow these standards per Executive Order 122.

These Standards apply to all types of food vending machines including non-refrigerated "snack" and refrigerated machines.

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

For more information, please contact: [nycfoodstandards@health.nyc.gov](mailto:nycfoodstandards@health.nyc.gov)



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