

LICENSE AGREEMENT

BETWEEN

AMERICAN GOLF CORPORATION

AND

**CITY OF NEW YORK  
PARKS & RECREATION**

*for*

THE RENOVATION, OPERATION AND MAINTENANCE OF TWO 18-HOLE GOLF COURSES  
and CLUBHOUSE AT PELHAM BAY and SPLIT ROCK GOLF COURSES

BRONX, NEW YORK

X-39-F-GC

DATED: \_\_\_\_\_, 2025

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**LICENSE AGREEMENT** ("License" or "License Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2025, between the City of New York (the "City") acting by and through the Department of Parks & Recreation ("Parks"), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065 (revenue@parks.nyc.gov), and American Golf Corporation ("Licensee"), a corporation organized under the laws of the State of California, whose address is 10670 N Central Expressway, Suite 700, Dallas, TX 75231 (PBallam@americangolf.com and ECook@americangolf.com).

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

**WHEREAS** the two 18-hole golf courses and clubhouse and certain adjacent property located at Pelham Bay and Split Rock Golf Courses at Shore Road north of Bartow Circle in the Borough of the Bronx ("Licensed Premises") is property under the jurisdiction and control of Parks; and

**WHEREAS**, the Commissioner desires to provide for the renovation, operation and maintenance of the Licensed Premises for the accommodation and convenience of and use by the public; and

**WHEREAS**, Parks 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 the Licensed Premises and the holding of a public hearing concerning the intent to award a License Agreement upon the terms and conditions contained herein; and

**WHEREAS**, Licensee desires to renovate, operate and maintain the Licensed Premises for the benefit of the public in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee desire to enter into a License Agreement specifying rights and obligations with respect to the Licensed Premises.

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

**1. GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to renovate, operate and maintain two 18-hole golf courses with a clubhouse at the Licensed Premises, which is depicted in **Exhibit A**, for the use and enjoyment of the general public in accordance with the provisions herein and to the satisfaction of the Commissioner of Parks ("Commissioner"). All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks' prior written approval. Licensee will be responsible for all costs associated with the renovation, operation and maintenance of the Licensed Premises.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders which are or may become necessary to renovate, operate and maintain the Licensed Premises in accordance with the terms of this License and to perform the Capital Improvements required by this License Agreement. Parks shall use reasonable efforts to cooperate with Licensee in obtaining such approvals, permits and licenses, including, but not limited to, executing or authorizing applications in a form reasonably acceptable to Parks for the same as may be necessary to permit Licensee to obtain such approvals, permits or licenses. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein after applicable notice and cure periods. Commissioner may deem as a default, subject to applicable notice and cure provisions, Licensee's failure to fulfill any of its obligations herein for any reason.

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

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to (a) the Commissioner or the Commissioner's representatives and to other City, State and Federal officials or their representatives having jurisdiction for inspection purposes and (b) the Commissioner, the Commissioner's representatives and the New York City Comptroller, in accordance with Article 5 of this License, to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement.

**1.5 (a)** Any business or trade name which Licensee proposes to use in identifying the Licensed Premises or any part of the Licensed Premises shall be subject to the prior written approval of the Commissioner. All intellectual property rights in the Licensed Premises, "Pelham Bay Park" and "Split Rock" name, and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that identify Parks, 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"). 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. Upon Parks' exercising this option for City ownership of such name, Parks hereby grants to Licensee a license to use the name. Such license shall be paid-up, royalty free, non-exclusive, used solely for Licensee's operation of the Licensed Premises, and shall terminate upon the termination of this License Agreement. 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 a restaurant identifier that is not otherwise associated with Parks' property. Licensee may use the name "Pelham Bay Park" and "Split Rock" in connection with its operations under this License Agreement only to identify the location of the Licensed Premises, and any other uses of "Pelham Bay Park" and "Split Rock" or any other City

IP may be only pursuant to a separate written agreement between the City and Licensee. Notwithstanding the foregoing, in no event shall City or Parks own any rights to any intellectual property of Licensee that does not contain a reference to Parks' or City's property or a preexisting City facility name.

(b) Parks may issue a separate Request for Proposals for naming rights of the facility or portions thereof. In the event Parks solicits for and selects a proposal for naming rights, Licensee shall be required to use the name that Parks selects. In the event Parks solicits for and selects a proposal for naming rights, such name will not negatively affect Licensee's ability to operate the Licensed Premises pursuant to this License, or negatively affect Licensee's use of trade names that have been approved by the Commissioner for use at the Licensed Premises.

## **2. DEFINITIONS**

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

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

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

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

(b) "Capital Improvements" shall mean all construction, reconstruction or renovation of the Licensed Premises. Capital Improvements also include (i) all Alterations and "Additional Fixed Equipment," as that term is defined in Section 2.1(j) below, which the Licensee installs or causes to be installed on the Licensed Premises, and (ii) any "Expendable Equipment," as that term is defined in Section 2.1(h) below, which is accepted as Capital Improvements by the City upon Licensee's written request for the purpose of satisfying Licensee's expenditure requirement for Capital Improvements as set forth in Section 6.1(a) below. 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, except as otherwise set forth in Section 11.1(b) and Section 11.1(c) below. Capital Improvements shall include those activities described in Section 6.1 and the Schedule of Capital Improvements attached as **Exhibit D**.

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

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

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

(f) "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.

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

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

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

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

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

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

**(k)** **(i)** “Gross Receipts” shall mean all funds or receipts of any kind (including via cash or credit card payments) received by Licensee from or in connection with its operations at the Licensed Premises, without deduction or set-off of any kind (except as otherwise set forth herein), from the sale or provision of merchandise, food and beverages, or services of any kind; provided that, Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee to the appropriate taxing authority. 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, as long as the orders are in connection with operations at 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 either at or outside of the Licensed Premises shall be included in Gross Receipts at the time of payment. For example, if Licensee receives a one thousand dollars (\$1,000.00) deposit for services to be provided at a later date, the deposit

must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises. In no event shall any income attributable to other premises licensed to any affiliate of Licensee (that are not the Licensed Premises) be included in Gross Receipts (it being understood that such income is subject to preexisting or subsequent arrangements with the City or such other applicable governmental entity with jurisdiction within the State of New York).

The Surcharge Fee shall be deducted from Greens Fees in calculating the percentage fee payable to the City under Section 4.1(a). Licensee may deduct from Gross Receipts the sales of uniforms or clothing required to be worn by employees that Licensee reimburses for employees, so that Licensee receives no financial benefit. For the avoidance of doubt, Licensee may also deduct from Gross Receipts: (1) cash refunds or credits allowed on returns by customers and returns of deposits due to cancellations; (2) funds or credits received from sales or trade-ins of machinery, vehicles, trade fixtures or Personal Equipment to the extent not constituting sales to customers at the Licensed Premises; (3) proceeds of business interruption insurance maintained by Licensee and legal damages awarded to Licensee; and (4) so called “pass-throughs” for catered events, e.g., bands and florists and similar vendors who are hired for catered events by, or on behalf of, a patron of the Licensed Premises, except to the extent there is a mark-up, which mark-up shall be included in Gross Receipts, and except to the extent Licensee uses preferred vendors for catered events in which Licensee would receive a monetary or financial benefit through the customer’s use of the preferred vendor’s service(s), which benefit shall be included in Gross Receipts.

**(ii)** Gross Receipts shall include receipts from all sponsorships, whether in cash or as discounts against purchase price of materials, equipment or commodities, in each case attributable to the Licensed Premises. For the avoidance of doubt, Gross Receipts shall not include any payments for sponsorships to any corporate parent or affiliate of Licensee unless the sponsorship is directly related to Licensee’s operations at the Licensed Premises.

**(iii)** Gross Receipts shall also include all receipts received by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement as provided in Article 14 of this License Agreement from or in connection with its operations at the Licensed Premises from the sale or provision of merchandise, food and beverages, or services of any kind (subject to any and all exclusions and deductions therefrom which are applicable to Gross Receipts as set forth in this Section 2.1(k)), provided that Gross Receipts shall also include Licensee’s income from rental and sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee’s , subcontractors or sublicensees or instructors functioning as independent contractors under a properly authorized agreement with Licensee (pursuant to Article 14 herein). In the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or any other items is approved by Parks, only Licensee’s net receipts from such vending machines shall be included in Gross Receipts.

**(iv)** Subject to the provisions set forth in this Section 2.1(k), 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 by Licensee shall be included in Gross Receipts. Notwithstanding anything to the contrary herein, any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iv):

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

(b) With respect to catered events, a “Gratuity” shall be an amount no greater than 23%, or such higher amount subject to Parks’ prior written approval, of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee’s customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Licensee shall provide documentation reasonably satisfactory to Parks to prove that Gratuities were paid to employees in addition to their regular salaries, and were otherwise in accordance with the foregoing provisions. “Regular Salary” for purposes of this subsection shall mean the set hourly wage for the applicable employee. Such documentation shall be signed and verified by an officer of Licensee.

(v) Gross Receipts shall not include uncollected sales debts known to be bad. Upon request, Licensee shall provide to Parks documentation of its efforts to collect such bad debts.

(l) “Juniors” shall mean persons aged 16 years and under.

(m) “Licensed Premises” or “Premises” shall mean the area designated as such on **Exhibit A**, attached hereto, and shall include the structures, as well as any improvements,



constructed thereon, including, without limitation, all buildings or structures, walkways, curbs, trees and landscaping.

(n) “Licensee’s Special Events” shall mean any ticketed or private functions at the Licensed Premises, excluding “Parks’ Special Events” as defined in Section 13 of this License.

(o) “Operating Year” or “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.

(p) “Special Events” shall mean any private function (e.g. rental of the Licensed Premises through Licensee by third parties) or ticketed event (including, but not limited to, payment of a fee at the door) at the Licensed Premises. Licensee shall submit to Commissioner for Commissioner’s prior approval plans for any such Special Events at the Licensed Premises.

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

(r) “Surcharge Fee” shall mean a \$4.00 fee included in the approved rates for golf charged to the public and collected by the Licensee, in addition to the cost of each round of golf (or any other fees approved by Parks) through March 31, 2024. As of April 1, 2024, the Surcharge Fee will be \$5.00. The Surcharge Fee shall not be charged and collected (nor remitted to Parks) on rounds played by Juniors. Parks and Licensee agree and acknowledge that the Surcharge Fee shall be fixed at \$5.00 starting April 1, 2024 and remain at \$5.00 throughout the Term.

(s) “Surcharge Payment” shall mean the payment to Parks by Licensee of all of the Surcharge Fees collected by Licensee.

(t) “Temporary Use Authorization” shall mean a series of Temporary Use Authorizations first dated January 15, 2024, by and between Parks and Licensee.

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

**3.1** This License shall become effective upon Parks giving the Licensee a written Notice to Proceed following registration with the Comptroller. The Term of the License shall commence upon the date in the written Notice to Proceed (“Commencement Date”), and shall terminate on January 14, 2044, or upon the sooner termination of this License pursuant to any provision of this License (“Termination Date” or “Expiration Date”). The period between the Commencement Date and Termination Date shall be referred to as the “Term” for purposes of this Agreement. Licensee may not commence business operations at the Licensed Premises under this

License Agreement prior to the Commencement Date; provided that, for the avoidance of doubt, Licensee has been conducting, and shall continue to conduct, business operations at the Licensed Premises pursuant to a Temporary Use Authorization until the Commencement Date.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. The Commissioner shall not terminate this License solely for the purpose of issuing a new license to another party, including to another party at higher license fee, for the operation of a golf course and/or restaurant and catering facility at the Licensed Premises. Such termination by the Commissioner under this Section 3.2 shall be effective after twenty-five (25) days written notice is sent to Licensee. The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner in accordance with the terms set forth herein.

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

(a) Should Licensee breach or fail to comply with any of the provisions of this License or any Federal, State or local law, rule, regulation or order affecting this License or the Licensed Premises with regard to any and all matters, Commissioner shall in writing order Licensee to remedy such breach or comply with such provision, law, rule, regulation or order, and in the event that Licensee fails to comply with such written notice or commence, in good faith and with due diligence, efforts to comply with such order within thirty (30) days from the mailing or facsimile transmission thereof, subject to unavoidable delays beyond the reasonable control of Licensee, then this License shall immediately terminate. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to reasons beyond Licensee's control, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter within one (1) year of the initial breach, other than nonmaterial breaches or omissions, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on three (3) days' notice: the appointment of any receiver of Licensee's assets; the making of a general assignment for the benefit of creditors; the occurrence of any act which operates to deprive Licensee permanently of the rights, powers and privileges necessary for the proper conduct and operation of this License; the levy of any attachment or execution which substantially interferes with Licensee's operations under this License and which attachment or execution is not vacated, dismissed, stayed or set aside within a period of sixty (60) days.

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

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

except with respect to any claims for the Unreimbursed CRF Additional License Fees Amount as set forth in Section 6.21(d).

**3.5** In the event Commissioner terminates this License for reasons related to Section 3.3 above, any Personal Equipment of the Licensee on the Licensed Premises used by Licensee to operate the Licensed Premises may be held and used by Commissioner in order to operate the Licensed Premises 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, in accordance with law, 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 and Personal Equipment (other than any such Personal Equipment accepted as Capital Improvements by the City upon Licensee's written request as set forth in Section 6.1(a) below) from the Licensed Premises, unless the Commissioner provides notice to the Licensee that the Commissioner intends to hold and use such Personal Equipment pursuant to Section 3.5), and leave the Licensed Premises in a well maintained state and in good repair, ordinary 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 (other than such Personal Equipment held and used by the Commissioner pursuant to Section 3.5 above); provided that, Licensee shall have thirty (30) days from the Termination Date to remove its Personal Equipment and other personal possessions other than such Personal Equipment which is held and used by the Commissioner pursuant to Section 3.4 above and such Personal Equipment which is accepted as Capital Improvements by the City as set forth in Section 6.1(a) below. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of such property, should Licensee fail to remove all possessions from the Licensed Premises during the time prescribed in this License Agreement subject to the terms hereof. Pursuant to Section 4.4 herein, City may use the Security Deposit to recover such damages in part or in whole.

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

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

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

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

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

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

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

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

**4.1** Licensee shall make payments to the City for each Operating Year, consisting of the Surcharge Payment **plus** the greater of (i) the annual minimum fee or (ii) the annual percentage of Gross Receipts derived from the operation of the Licensed Premises (see Section 4.5 below) as set forth below:

YEAR	SURCHARGE PAYMENT	ANNUAL MINIMUM FEE	vs. ANNUAL PERCENTAGE OF GROSS RECEIPTS
1	\$4.00 per round of golf played (excluding Juniors) through March 31, 2024. \$5.00 per round of golf played (excluding Juniors) starting April 1, 2024 and will not be increased through the remainder of the Term.	\$850,000	1. 18% of Gross Receipts from Green Fees, Cart Rentals, Player's Club/Range and Reservation Fees  2. 8% of Gross Receipts from Food & Beverage, Misc. Service Charges and Facility Rental  3. 10% of Gross Receipts from Merchandise and Other Income
2	Same as above	\$850,000	Same as above
3	Same as above	\$850,000	Same as above
4	Same as above	\$850,000	Same as above
5	Same as above	\$850,000	Same as above
6	Same as above	\$950,000	Same as above
7	Same as above	\$950,000	Same as above
8	Same as above	\$950,000	Same as above
9	Same as above	\$950,000	Same as above
10	Same as above	\$950,000	Same as above
11	Same as above	\$1,100,000	Same as above
12	Same as above	\$1,100,000	Same as above
13	Same as above	\$1,100,000	Same as above
14	Same as above	\$1,100,000	Same as above
15	Same as above	\$1,100,000	Same as above
16	Same as above	\$1,200,000	Same as above
17	Same as above	\$1,200,000	Same as above
18	Same as above	\$1,200,000	Same as above
19	Same as above	\$1,200,000	Same as above
20	Same as above	\$1,200,000	Same as above

**4.2 (a)** The minimum annual fee for each Operating Year as set forth in Section 4.1 above shall be paid to the City in twelve (12) equal installments on or before the first day of each month of each Year in accordance with the Schedule of Minimum Annual Fee Payments to be provided by Parks upon its giving Notice to Proceed. Each installment payment is due and payable on the date specified on the Schedule of Minimum Annual Fee Payments regardless of whether Licensee has received a bill for it from Parks. If at any time Licensee's percentage fee for a particular Operating Year as set forth in Section 4.1 becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the percentage fee on the thirtieth (30<sup>th</sup>) day of each month for the prior month's Gross Receipts. The Surcharge Fee is included in the approved rates set forth in **Exhibit C** hereto and the Surcharge Payment shall be paid by Licensee to City. The Surcharge Payment is separate from, and in addition to, the guaranteed annual minimum fee. The calculation of percentage fees payable to the City shall be based on Gross Receipts after deducting the Surcharge Payments.

**(b)** On or before the thirtieth (30<sup>th</sup>) day following each month of each Operating Year, Licensee shall submit to Parks, in a format acceptable to Parks, a report of rounds of golf played at the Licensed Premises during the preceding month, with per round Surcharge Payment, signed and verified by an officer of Licensee.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten (10) days. In the event that payment of any License fees, percentage fees or any other charges shall become overdue for ten (10) days following the date on which such fees are due and payable as provided in this License, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty (30) day month) from the date they were due and payable shall become immediately due and payable to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of one thousand dollars (\$1,000.00), due on the first (1<sup>st</sup>) day of the month must be received no later than the tenth (10<sup>th</sup>) day of the month. If no payment is received, a two percent (2%) late charge in the amount of twenty dollars (\$20.00) will be assessed on the eleventh (11<sup>th</sup>) day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10<sup>th</sup>) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly license fee installment. Failure to abide by the terms of this Section 4.3 shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or the right to enforce the provisions of this Section 4.3. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Section 4.3 is enacted, the rate of interest set forth in this Section 4.3 shall not exceed the maximum rate permitted under such law or regulation.

**4.4 (a)** Upon affixing its signature to this License, Licensee shall deposit with the City the amount of three hundred thousand dollars (\$300,000) as its security deposit ("Security Deposit"). The Security Deposit may be in the form of an interest-bearing instrument or other format approved by Parks. In the event the Security Deposit is in the form of an interest-bearing instrument, Licensee may collect or receive any interest earned on such instrument. The Security Deposit shall be held by the City as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

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

**(c)** If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid or should the City make payments on behalf of the Licensee, or should the Licensee fail to perform any of the terms of this License, including but not limited to the completion of the minimum capital improvement requirement as set forth in Section 6.1, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' written notice, appropriate and apply the Security Deposit or

as much thereof as may be necessary to compensate the City toward the payment of such 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 under this License, 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 annexed hereto as **Exhibit B** or other form satisfactory to Parks, a statement of Gross Receipts, signed and verified to be true and correct by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. Each of the reports of Gross Receipts shall report Gross Receipts generated at the Licensed Premises in the following categories:

Category (Percentage payment, if percentage triggered)	Description:
Greens Fees (18%)	<p>(a) Gross Receipts from rates and charges made at the point of sale related to the total rounds of golf played at the Licensed Premises, and</p> <p>(b) Total Surcharge Payment (number of golf rounds played, other than rounds played by Juniors, multiplied by the Surcharge Fee); and</p> <p>(c) Gross Receipts from Greens Fees portion of Outings, Tournaments, and League Play.</p>
Player's Club Dues (18%)	Gross Receipts related to Player's Club dues at the Licensed Premises.
Golf Cart Rentals (18%)	Gross Receipts from rates and charges made at the point of sale related to the rental of golf carts.
Skate Caddy Rentals (18%)	Gross Receipts from the rental of Skate Caddies.
Golf Club Rentals (10%)	Gross Receipts from rates and charges made at the point of sale related to the rental of golf clubs.
Lessons (10%)	Gross Receipts from rates and charges made at the point of sale related to golf lessons; commissions generated from lessons provided by non-employees.
Club Repair (10%)	Gross Receipts from rates and charges made at the point of sale related to the repair of golf clubs.
Locker Rentals (10%)	Gross Receipts from rates and charges made at the point of sale related to the rental of lockers.
Pro Shop Merchandise (10%)	Gross Receipts from the sale of merchandise at the Pro Shop.

Golf Reservations (18%)	Gross Receipts from rates and charges made at the point of sale related to golf reservations.
Secured Parking (10%)	Gross Receipts from rates and charges made at the point of sale related to secured parking.
Food Service Facility (8%)	Gross Receipts from rates and charges made at the point of sale related to the food service facility at the Licensed Premises, including miscellaneous service charges.
Vending Machines (8%)	Gross Receipts from placement and operation of vending machines at the Licensed Premises.
Driving Range (18%)	Gross Receipts from rates and charges made at the point of sale related to the buckets of balls provided at the driving range at the Licensed Premises.
Licensee's Special Events (8%)	Gross Receipts from food and beverage sales and facility rental fees from Licensee's Special Events, including miscellaneous service charges.
Miscellaneous (10%)	All other Gross Receipts generated at and realized from Licensee's operation of the Licensed Premises (including sublicensed operations).

Simultaneously with Licensee's submission of the statement of Gross Receipts as set forth above in this Section 4.5(a), Licensee shall also submit to Parks the report of rounds of golf played and Surcharge Payment in the form annexed hereto as **Exhibit B-1**.

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

(c) Licensee is solely responsible for the payment of all federal, state and local taxes applicable to the operation of the Licensed Premises. With the exception of federal, state and City sales tax, no such applicable taxes, including but not limited to the New York City Commercial Rent Tax (if applicable), may be deducted from Gross Receipts or from the compensation due under this License. The Licensee may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts.

**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 during such Operating Year, signed and verified by an officer of Licensee. The reports referenced in the preceding sentence shall be in a format approved by Parks.

**4.7 (a)** Licensee, during the Term of this License, shall maintain, and shall cause any sublicensee to maintain, a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner reasonably acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. Regarding Licensee's Special Events, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture



event information, including the time and date of the event, the number of attendees and required payment. Licensee shall also establish a dedicated bank account for all deposits related to the License's generated revenue. Additionally, all books and records maintained pursuant to this License Agreement shall be conveniently segregated from other business matters of Licensee and shall include, but not be limited to: all federal, state and local tax returns and schedules of the Licensee; records of daily bank deposits of the entire receipts from transactions in, at, on or from the Licensed Premises; sales slips, daily dated cash register receipts, and sales books; and duplicate bank deposit slips and bank statements. 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.

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

**(c)** The failure or refusal of the Licensee to furnish any of the statements required to be furnished under this Article within thirty (30) days after its due date, the failure or refusal of the Licensee to maintain adequate internal controls or to keep any of the records as reasonably required by this Article, or the existence of any unexplained discrepancy in the amount of fees required to be due and paid hereunder, as disclosed by audit conducted by Parks and/or the Comptroller, of more than five percent (5%) in any two (2) out of three (3) consecutive months or more than ten percent (10%) in one (1) month, shall be presumed to be a failure to substantially comply with the terms and conditions of this License and in the event similar discrepancies occur again it shall be considered a default hereunder, which shall entitle Parks, at its option, to terminate this License. In addition, the failure or refusal of Licensee to furnish the required statements, to keep the required records or to maintain adequate internal controls shall authorize Parks and/or the Comptroller to make reasonable projections of the amount of Gross Receipts which would have been disclosed had the required statements been furnished or the required records maintained, based upon such extrinsic factors as the auditors deem appropriate in making such projections. With respect to audits or other reviews conducted by Parks pertaining to the calculation of percentage of Gross Receipts payments during a period with missing or lost records, Parks may, at its sole discretion, use the highest grossing month over the past five (5) Operating Years (multiplied by the applicable CPI) to replace any missing monthly records, provided that the prior Operating 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 Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in

Sections 4.1 through 4.7 hereinabove, Licensee may be subject to a charge of five hundred dollars and zero cents (\$500.00) with respect to each incident of breach as liquidated damages, provided that Licensee has been given reasonable notice of such breach and has failed to cure within thirty (30) days of such notice.

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

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

## **5. RIGHT TO AUDIT**

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

**5.2** The failure or refusal of the Licensee to permit Parks, the Comptroller or any other duly authorized representative of the City to audit and examine the Licensee's records, books of account and data or the interference in any way by the Licensee in such an audit or examination is presumed to be a failure to substantially comply with the terms and conditions of this License and a default hereunder which shall entitle Parks to terminate this License pursuant to Section 3.3 above (subject to, for the avoidance of doubt, the notice and cure rights set forth therein, if any).

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

## **6. CAPITAL IMPROVEMENTS**

**6.1 (a)** Licensee shall expend or cause to be expended during the Term of this License a minimum of seven million, nine-hundred fifty-two thousand two hundred twenty-two dollars (\$7,952,222) for Capital Improvements as defined in Section 2.1(b) herein, which shall consist of (x) Lessee's expenditure of four million nine hundred fifty-two thousand two hundred twenty-two dollars (\$4,952,222) for Capital Improvements as outlined and within the timeframes

in **Exhibit D** and (y) Lessee's deposit of, at minimum, three million dollars (\$3,000,000) into the Capital Reserve Fund over the period of twenty (20) years of the Term as set forth in, and subject to the terms of, Section 6.21(b) below. Without limiting the definition of Capital Improvements, or the items referred to therein, it is agreed and understood by the parties hereto that the foregoing amount shall include all design and construction related soft costs, including, but not limited to, (i) the architectural, design, engineering and permitting fees and expenses necessary to implement the Capital Improvements, and (ii) all costs paid for work performed, services rendered and materials furnished for the construction of the Capital Improvements, but the Design Review Fee referenced in Section 6.2 herein shall not be included in the foregoing amount. Such Capital Improvements shall include, but are not limited to, the items listed in the Schedule of Capital Improvements attached hereto as **Exhibit D**. Licensee shall perform and complete all such Capital Improvements in accordance with designs and plans approved by Parks and other applicable governmental agencies having jurisdiction with respect thereto. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld. All Additional Fixed Equipment applied toward the Capital Improvements required in this Section 6 shall become the property of Parks upon installation, at Parks' option. All Expendable Equipment shall remain the property of Licensee throughout the Term and may be replaced and substituted as reasonably determined by Licensee; provided that, if any Expendable Equipment is accepted as Capital Improvements by the City upon Licensee's written request for the purpose of satisfying Licensee's expenditure requirement for Capital Improvements as set forth above in this Section 6.1(a), then such Expendable Equipment shall be the property of Parks and may not be replaced or substituted without Parks' prior approval, which shall not be unreasonably withheld. In the event that either Parks or the Commissioner does not approve any such designs, plans or additional Capital Improvements, as applicable, it shall include upon a request by Licensee, a written response setting forth the reason for disapproval.

(b) Licensee shall comply with the Americans with Disabilities Act ("ADA") in the performance of this License Agreement, as applicable. 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. Licensee will make available a disability-accessible golf cart to golfers upon 48-hours advanced notice.

**6.2 (a)** Intentionally omitted.

(b) Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of seventy-nine thousand five hundred twenty two dollars (\$79,522) (representing one percent (1%) of the cost of the minimum guaranteed Capital Improvements described in Section 6.1 above), as a fee for design review by Parks personnel (the "Design Review Fee").

(c) To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000.00), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one

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

**6.3** The total cost of the Capital Improvements shall be determined by the Commissioner based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require in order to verify the total cost of Capital Improvements. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvements; however, expenditures for Capital Improvements reflected in **Exhibit D** shall be included in the total cost in addition to architectural/engineering fees incurred by the Licensee. In making the determination of the total cost of Capital Improvements, Commissioner may request any information he reasonably believes would be helpful to make such a determination. Licensee shall forward such information to the Commissioner upon the Commissioner's request. Licensee shall spend or cause to be expended the entire amount required to complete the Capital Improvements described in Section 6.1, including any amount needed above any estimated cost shown. In the event Licensee performs all Capital Improvements for less than the amount listed in Section 6.1 herein, any excess monies will be remitted to the City as additional License fees. If Licensee fails to expend the amount listed in Section 6.1 herein by the date of expiration or sooner termination of this License, the City may also require any unexpended monies to be remitted to the City as additional License fees. Parks reserves the right to determine, in its reasonable discretion, whether certain repairs and material purchases can be accepted as Capital Improvements. If the City terminates this License in accordance with Section 3.2, then the City may only require Licensee to remit unexpended monies to the City as additional License fees to the extent such monies represent the cost of Capital Improvements that should have been completed in accordance with the schedule set forth in **Exhibit D** at the time of termination, but have not been completed, except for those Capital Improvements for which Licensee has been granted an Excused Delay pursuant to Section 6.4; however, the City will not refund any portion of the Capital Reserve Fund deposited pursuant to 6.21(b) (provided that, for the avoidance of doubt, Parks shall pay Licensee the Unreimbursed CRF Additional License Fees Amount (as defined below) on or prior to the date of such termination as set forth in Section 6.21(d)).

**6.4** Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as determined by the Commissioner, including acts of God, war, enemies or hostile government actions, pandemics, epidemics, other states of

emergency declared by the City, State or Federal government, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty and supply chain issues for certain required equipment and products necessary for the completion of the Capital Improvements (“Excused Delay”). 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 Licensee fails to finally complete a particular Capital Improvement by the date specified for completion in **Exhibit D** (as may be extended due to an Excused Delay as set forth herein subject to Parks written approval), Licensee may be required to pay the City liquidated damages of One Hundred Dollars (\$100.00) per day until the outstanding Capital 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 or commission, 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 as set forth in **Exhibit D** for a period of thirty (30) days following Licensee’s receipt of written notice thereof from the City shall constitute a default upon which Commissioner may terminate this License Agreement by giving thirty (30) days’ written notice, unless such failure is due to an Excused Delay. In the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Licensed Premises, the scope of the work and the nature of the particular project may be modified with the prior written approval of Parks, provided that in no event shall Licensee expend or cause to be expended less than seven million, nine-hundred fifty two thousand two hundred and twenty-two dollars (\$7,952,222) for Capital Improvements.

**6.5** Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Buildings (“DOB”), the New York City Public Design Commission, and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, 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. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. All necessary permits and approvals for Capital Improvements work must be obtained from DOB, including, but not limited to, obtaining a construction permit, Certificate of Occupancy, public assembly permit and letters of no objection, as needed. All designs, outdoor signage, capital work and construction will require prior written approval from Parks, the Public Design Commission of the City of New York, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (if applicable), DOB and any other agency having jurisdiction. All designs for construction to be performed on the structure shall be prepared by licensed architects or engineers and will require prior written approval from Parks. 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. The Licensee shall be required to provide Parks with all plans and specifications, if any, prepared and approved with respect to a Capital Improvement upon the Final Completion of such Capital Improvement. No Capital Improvement shall be deemed Finally

Complete until the Commissioner certifies in writing that the Capital Improvement has been completed to the Commissioner's satisfaction. The Commissioner's determination as to whether a Capital Improvement is Finally Complete shall not be unreasonably withheld.

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

**6.7** For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses, if any, with respect to such Capital Improvements 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 such Capital Improvements and such license and/or building permit are required for such Capital Improvements. Licensee shall also, prior to commencing work with respect to any Capital Improvements, obtain all other necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending (if applicable) and complying with the Certificate of Occupancy, sign-offs, public assembly permits, Department of Health and Mental Hygiene ("DOHMH") permits, fire department certificates and all other permits and approvals including, but not limited to, New York City Department of Environmental Protection ("DEP"), New York State Department of Environmental Conservation, New York State Historic Preservation Office, New York City Landmarks Preservation Commission and/or other government agency approvals and permits, in each case, to the extent necessary for any Alterations to the Licensed Premises. Parks shall use reasonable efforts to cooperate with Licensee to assist Licensee to obtain any required governmental approvals, permits and licenses. Licensee shall notify Commissioner of the specific date on which construction of one or more Capital Improvements shall begin.

**6.8** Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new or like-new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain, in Licensee's name, all manufacturer's warranties and guarantees for all such equipment and materials included in its Capital Improvements, as applicable. Licensee shall assign to the City, if then still in effect and to

the extent assignable, all guarantees and other warranties with respect to equipment and materials installed as part of the Capital Improvements, including Additional Fixed Equipment, 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. In furtherance of the preceding sentence, as applicable, 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 under such guarantees and warranties. 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** Licensee shall choose the means and methods of completing the Capital Improvements unless Parks 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 in accordance with the schedule of Capital Improvements as set forth in **Exhibit D**.

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

**6.12** All trees within Parks' jurisdiction are protected by law from any and all damage thereto including but not limited to any incidental damages, damage to the canopy, or damage to the trunk or root zone during and in the course of any and all construction activities, and also the aftermath of any and all construction activities. Trees may not be cut down, pruned or removed from the Licensed Premises by Licensee or Licensee's employee, sublicensee, agent or contractor without prior written approval from Parks in the form of a Forestry permit. Any attachments to the trees, such as lights, will not be permitted without prior written approval from Parks. More information on Tree Work permits can be found here: <https://www.nycgovparks.org/services/forestry/tree-work-permit>. Licensee shall report dead and diseased trees to Parks upon Licensee obtaining knowledge of such death or disease, and upon Parks' request, Licensee shall remove them.

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

**6.14** Licensee shall provide written notice to Commissioner when it believes that any one or more 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 “punch list” of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all items on that list within a reasonable time as determined by the Commissioner.

**6.15** Licensee, within six (6) months of Substantial Completion of one or more Capital Improvement, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of such Capital Improvements. 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, in each case, to the extent applicable to such Capital Improvement. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the New York City Comptroller upon request.

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

**6.17** Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of any Capital Improvement in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one (1) year period subsequent to the date of the Final Completion of such Capital Improvement. Failure to comply with this Section 6.17, other than due to an Excused Delay, shall constitute a default under this License and may result in the termination of this License if such failure is not cured within the notice and cure period set forth in Section 3.3(a).

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

**6.19** Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment accepted by Parks as Capital Improvements shall vest in and thereafter belong to the City at the City’s option,



which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee, at the termination or expiration of this License, to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee. However, Licensee shall not be required to remove heating, plumbing, air conditioning, electrical wiring, elevators, windows, ventilation fixtures and foundation work if such work has been accepted and approved by Parks as a Capital Improvement.

**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 Department of Buildings (DOB) or other applicable authority. In the event that asbestos removal is deemed necessary, Licensee will remove the asbestos, at its sole cost and expense, according to City, State and Federal regulations. Licensee's costs of asbestos removal, if any, shall be credited toward Licensee's required minimum expenditure for Capital Improvements.

**6.21 (a)** Licensee shall, upon the Commencement Date, deposit \$150,000 into an interest bearing bank account (the "Maintenance Reserve Fund"). This fund shall be utilized by Licensee to maintain the golf course and related facilities in the event of business interruption closures of the golf course and related facilities that materially disrupt or eliminate revenue generating activities. Licensee will replenish the fund quarterly as needed. On the Termination Date, the funds remaining in the Maintenance Reserve Fund shall be returned to Licensee.

**(b)** Licensee shall establish a fund (the "Capital Reserve Fund") with an institutional lender selected by Licensee that shall be available exclusively to pay for additional Capital Improvements and major repairs at the Licensed Premises ("Eligible Work"), but not for ordinary maintenance or routine, minor repairs. Within thirty (30) days after the end of the first month of the first Operating Year and each month thereafter during the remaining Term of this License, Licensee shall make a deposit into the Capital Reserve Fund an amount equal to two percent (2%) of Gross Receipts for the immediately prior month, but in no event less than \$12,500 per month (the "Minimum Monthly Capital Reserve Fund Deposit"). Such Capital Reserve Fund deposits shall not be deducted from total Gross Receipts. The Capital Reserve Fund shall be expended to depletion during the Term of this License for the purposes outlined herein and for projects mutually agreeable to Parks and Licensee. Notwithstanding anything to the contrary herein, if the aggregate amount of the deposits made by Licensee into the Capital Reserve Fund for any Operating Year or, on a cumulative basis, any Operating Years exceeds the greater of (i) two percent (2%) of Gross Receipts for, as applicable, such Operating Year or such Operating Years, or (ii) the product of (x) the Minimum Monthly Capital Reserve Fund Deposit, multiplied by (y) the number of months in, as applicable, such Operating Year or such Operating Years, then such excess amount shall be returned to Licensee from the Capital Reserve Fund within thirty (30) days upon Licensee's delivery of written notice thereof to the Commissioner, which written notice shall include Licensee's calculation of such reconciliation. Licensee shall be entitled to perform such reconciliation set forth in the preceding sentence at any time following each Operating Year with respect to such Operating Year or, on a cumulative basis, such Operating Year and the preceding Operating Years. For the avoidance of doubt, Licensee shall be entitled to use any

excess amount received from the Capital Reserve Fund for any purpose whatsoever without any restrictions under this License.

(c) Licensee shall provide to Parks, an annual report detailing the deposits and balance of the Capital Reserve Fund. In addition, the reports shall include all disbursements from the Capital Reserve Funds as well as the Eligible Work financed by such disbursements. All Eligible Work that constitutes Capital Improvements shall be subject to Parks' approval as set forth in this Section 6.

(d) At Parks' request and on 30 days' prior written notice, Licensee shall remit funds then deposited in the Capital Reserve Fund as additional license fees. If any Capital Reserve Fund deposits are remitted as additional license fees, and at any time, either the Capital Reserve Fund is exhausted or the funds then remaining in the Capital Reserve Fund is insufficient to cover any completed Eligible Work, then Licensee shall be entitled to receive a credit against each subsequent month's licensee fees under this License up to the amount so remitted from the Capital Reserve Fund as additional license fees to cover the costs incurred by Licensee for such completed Eligible Work. For purposes of this provision, Licensee shall direct requests for license fee credits to Parks Chief of Concessions and to Parks Director of Concession Architecture & Development at such addresses provided to Licensee after the Notice to Proceed and updated as necessary by Parks, which request shall include such paid invoices evidencing the costs incurred by Licensee for the completed Eligible Work. Parks shall respond to Licensee's request for a license fee credit within ten (10) business days following Licensee's delivery of such request. If Parks shall fail to respond to Licensee within such ten (10) business day period, then Licensee may deliver a second written notice to Parks requesting Parks' approval thereof. If Parks shall fail to respond to Licensee within five (5) business days after Licensee's delivery of said second notice, then the license fee credit shall be deemed approved. Notwithstanding anything to the contrary in this License, and for the avoidance of doubt, (i) Parks may not disapprove any license fee credit requested by Licensee under this Section 6.21(d) so long as the total amount of such requested credit does not exceed the total amount then remitted by Licensee to Parks from the Capital Reserve Fund as additional license fees, and (ii) upon the expiration or any earlier termination of this License for any reason whatsoever, Parks shall pay to Licensee on or prior to the date of such expiration or earlier termination an amount equal to, if greater than \$0, *the net of* (i) the total amount then remitted by Licensee to Parks from the Capital Reserve Fund as additional license fees under this Section 6.21(d) *less* (ii) the total license fee credit then received by Licensee under this Section 6.21(d) (the "Unreimbursed CRF Additional License Fees Amount").

(e) Upon the expiration or earlier termination of this License, Licensee shall not be entitled to retain the remainder of the Capital Reserve Fund. Such remaining funds shall be disbursed to Parks immediately following Licensee's surrender of the Licensed Premises in accordance with the terms of this License Agreement.

**6.22** In the event that Licensee has proceeded in good faith but has been unable to obtain necessary governmental permits and approvals required to (i) permit the construction and operation of the Capital Improvements in a manner consistent with those set forth in **Exhibit D** hereof, or (ii) otherwise permit the use and operation of the Licensed Premises in a manner consistent with this License Agreement, Parks and Licensee agree to enter into good faith

negotiations to equitably adjust the terms of this License Agreement, including the terms of this Article 6.

## **7. ALTERATIONS**

**7.1 (a)** Except in the case of the installation of Expendable Equipment, or in the case of modifications that are superficial or cosmetic in nature, Licensee may make Alteration of the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of City, at its option, upon their attachment, installation or affixing.

**(b)** In order to make an Alteration of the Licensed Premises, Licensee must:

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

**(ii)** ensure that work performed and Alterations made on the Licensed Premises are undertaken and completed in accordance with submissions approved pursuant to section (i) of this Section 7.1(b), in a good and workmanlike manner, and within a reasonable time; and

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

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

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

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

**8.2** City has title to all Fixed Equipment on the Premises as of the date of Notice to Proceed. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements made to the Licensed Premises (other than Personal Equipment, except as otherwise set forth in Section 6.1(a) above) shall vest in and belong to the City upon installation at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent the City chooses not to exercise such option, at the termination or expiration of this

License, the Licensee shall, at its sole cost and expense and to the satisfaction of Commissioner, be responsible for removing such equipment and restoring the Licensed Premises to Parks in a condition as good as or better than at the commencement of the Term, ordinary wear and tear excepted.

**8.3** Licensee shall supply at its own cost and expense all Expendable Equipment required, in its reasonable discretion unless otherwise required pursuant to this License, for the proper operation of the License, including, but not limited to, personal kitchen equipment, tables and chairs, and office furniture, in each case, to the extent necessary for the proper operation of the License in Licensee's reasonable discretion, and repair or replace same at its own cost and expense as reasonably determined by Licensee and/or when reasonably requested by Commissioner. Licensee must acquire and use for the purpose intended any Expendable Equipment which the Commissioner reasonably determines is necessary for the operation of the License.

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

**8.5** Title to all Expendable Equipment obtained by Licensee (other than that applied toward Capital Improvements as set forth in Section 6.1(a)) shall remain in Licensee and such equipment shall be removed by Licensee at the termination or expiration of this License. In the event such equipment remains in the Licensed Premises following such termination or expiration, Commissioner may treat such property as abandoned and charge all costs and expenses incurred in the removal thereof to Licensee.

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

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

## **9. UTILITIES**

**9.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals, which connections and upgrades shall be deemed to be Capital Improvements to the extent incorporated therein if approved and accepted by Parks. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises and an account with

Con Edison (or other relevant providers) as appropriate. Parks shall use reasonable efforts to cooperate with Licensee in obtaining necessary permits and approvals for such utility lines. 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. Licensee is strictly prohibited from unauthorized use of utilities used, operated, or owned by the City, without the prior written approval of Parks.

## **10. OPERATIONS**

**10.1 (a) (i)** Licensee, at its sole cost and expense, shall renovate, operate, and maintain the Licensed Premises as two 18-hole golf courses, club house, and food service facility for the use and enjoyment of the general public and in such manner as the Commissioner shall reasonably prescribe, as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate when the park in which the Licensed Premises is located is open. The exact hours and days of operation of all operations at the Licensed Premises are subject to Parks' prior written approval. All services, menu items and merchandise and all rates, fees and prices to be charged by Licensee must also be approved in advance in writing by Parks. Annexed hereto as **Exhibit C** is the Schedule of Approved Hours and Rates, Fees and Prices for the commencement of operations hereunder. At its sole discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours and/or 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.

**(ii)** **Exhibit C** includes the golf rates ("greens fees") that have been approved by Parks effective April 1, 2024. Licensee is permitted to increase the greens fees annually as of April 1 each year based on the CPI; however, any greater increase is subject to Parks' prior written approval, which shall not be unreasonably withheld. All greens fees approved by Parks, excluding the rate for Juniors, include the Surcharge Fee, which shall be remitted to Parks for each round played. Licensee is allowed, and even encouraged, to offer seasonal rates, lower rates and/or special programs for senior citizens and youths, although the Surcharge Fee will apply in all instances (except Juniors).

**(b)** Licensee shall comply with all national safety guidelines and federal, state and City laws, rules and regulations related to the renovation, operation, and maintenance of the Licensed Premises. Licensee shall, during the Term, take all measures necessary to provide a safe environment for the public at the Licensed Premises, including but not limited to the following:

**(i)** Installing snow fencing around water bodies on the Licensed Premises by the first week the average temperature is below freezing each winter and removing all snow fencing at the end of each winter.

**(ii)** Providing sufficient numbers of rescue ladders within appropriate proximity of any water bodies on the Licensed Premises.

(iii) Installing signage as necessary, including warnings, about ice conditions and prohibiting swimming at water bodies.

(iv) Inspecting each water feature on a daily basis during the winter months.

(v) Having AED machines on site with at least one trained staff member.

(c) Develop, operate, and maintain a food service facility at a high standard of quality. The size and location of the food service facility are subject to Parks' prior written approval. All prices and menu items are subject to Parks' prior written approval.

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

(e) Any staff assigned by Licensee to sell food and beverages to the public at the Licensed Premises must possess all required Federal, State, and City authorizations and possess, and at all times display, appropriate DOHMH permits. Licensee may only operate the Licensed Premises if it has obtained the appropriate valid permits and authorizations required by DOHMH. At all times that any of the food service operations at the Licensed Premises are operating, a staff person with a valid DOHMH food handler's license must be present. If Licensee operates without all necessary permits and licenses, it may be subject to fines and/or confiscation of merchandise and vending units. Parks shall use reasonable efforts to cooperate with Licensee to assist Licensee to obtain all such necessary permits and licenses. The food service facility is subject to DOHMH letter grading program.

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

(g) Licensee may place tables, chairs, and umbrellas at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, and food service facility equipment at the Licensed Premises are subject to Parks' prior written approval, which shall not be unreasonably withheld. 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 10.1(h) of this License Agreement and the requirements of the New York State Liquor Authority or other agency having jurisdiction.

(h) Alcoholic beverages may be served by Licensee to complement the food service at the Licensed Premises, provided that Licensee obtains, at its sole expense, the appropriate permits(s) and license(s) applicable to the sale or service of alcoholic beverages from the New York State Liquor Authority (SLA) and all other agencies having jurisdiction. Alcoholic beverages may only be served in the immediate vicinity of the Licensed Premises and/or in a cordoned-off area if exterior seating is proposed and must be consumed on the Licensed Premises within

designated areas. All efforts must be made by Licensee to keep alcohol consumption discrete. As Licensed Premises is a public park, consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

(i) Licensee must operate and maintain a clubhouse at the Licensed Premises, which must include public restrooms and a food service facility, and may include storage, office space, serving counter, indoor seating, outdoor seating, snack bar and/or pro shop.

(j) Licensee must operate a pro shop in the clubhouse at the Licensed Premises for the sale of merchandise, supplies and equipment. The size and location of the pro shop are subject to Parks' prior written approval, which shall not be unreasonably withheld. All merchandise, supplies, and equipment to be sold at the pro shop 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) With Parks' prior written approval (which shall not be unreasonably withheld), Licensee may install or have installed vending machines at the Licensed Premises for snack and beverage service. A maximum of two (2) vending machines may be placed inside the Licensed Premises. 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 **Exhibits E-1 and E-2** respectively. Licensee shall remove any vending machine at the direction of the Commissioner. In addition, the beverage and/or 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 and/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 and/or changed food or beverage standards, as directed by Parks, Licensee shall remove any vending machines on the Licensed Premises.

(l) Pursuant to Executive Order 54, Licensee may not sell single-use plastic beverage bottles with capacity less than twenty-one fluid ounces (21 fl. oz.) at the Licensed Premises.

(m) Licensee may erect a temporary tent with Parks' written approval, which shall not be unreasonably withheld. Licensee shall be responsible for securing all necessary

permits for any temporary tent. Parks shall use reasonable efforts to cooperate with Licensee to assist Licensee to obtain all such necessary permits.

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

**10.3 (a)** Smoking of any tobacco product, non-tobacco smoking product, or the use of electronic cigarettes is strictly prohibited at the Licensed Premises, except in the parking lots or on sidewalks along the park perimeter. Licensee shall adhere to and enforce this policy.

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

**(c)** Licensee is prohibited from selling any beverages in glass bottles for consumption with the exception of restaurant/catering facilities on the Licensed Premises. All beverages for consumption outside of such areas must be in non-glass, shatterproof containers.

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

**10.4** Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy or, if applicable, Temporary 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, if required. 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 hereunder. 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, Temporary Certificate(s) of Occupancy or "Letter(s) of No Objection." Nothing in this section shall limit Licensee's obligation to pay the fees due under this License Agreement. Licensee is required to obtain a Temporary Certificate of Occupancy for the installation and operation of temporary structures.

**10.5** An officer or member of the Licensee shall personally operate this License or Licensee shall employ an operations manager at the Licensed Premises. A member of the Licensee



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

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

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

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

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

**10.9** Licensee shall promptly notify Parks within twenty-four (24) hours, in writing of any major accidents, claim for injury, death, property damage, or theft which shall be asserted against Licensee with respect to the Licensed Premises of which Licensee becomes aware. 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.

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

**10.11** Licensee shall maintain close liaison with Parks' Enforcement Patrol (PEP), the New York City Police Department (NYPD), and other police officials, and shall reasonably cooperate with all efforts to remove illegal vendors from the Licensed Premises. Licensee shall use its best efforts to prevent illegal activity on the Licensed Premises.

**10.12 (a)** Licensee may establish an advertising and promotion program, subject to Parks' prior written approval. Licensee and any sublicensee shall have the right to print or to arrange for the printing of programs or brochures containing any advertising matter except

advertising which contains tobacco, non-tobacco smoking product, electronic cigarette or alcoholic beverage advertising, which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11. Licensee and any sublicensee may release news items to the media as they see fit. If the Commissioner in the Commissioner's reasonable discretion, however, determines any advertising or other releases to be unacceptable, then Licensee shall, and/or shall cause such sublicensee (as applicable) to, cease or alter such advertisements or releases as directed by the Commissioner. 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 prior written approval of the Commissioner. The Commissioner shall have prior approval as to design and distribution of all advertising and promotional materials.

**(b)** All advertising with third parties holding events at the Licensed Premises must be approved in advance in writing by Parks. Any failure to submit such advertising to Parks for pre-approval at least fourteen (14) days in advance of such event may result in the immediate cancellation of the event.

**10.13** Under no circumstances shall Licensee be permitted to place advertisements on the exterior of its Concession area or on any building or structure at the Licensed Premises. Licensee is prohibited from displaying, placing, or permitting the placement of advertisements in the Licensed Premises and on umbrellas installed within the Licensed Premises without the prior written approval of Parks. The display or placement of advertising for tobacco products, non-tobacco smoking products, or electronic cigarettes shall not be permitted. The display or placement of advertising of alcoholic beverages shall not be permitted, but Licensee may display signage approved by Parks setting forth its offerings of alcoholic beverages. If advertising is allowed, the following standards will apply: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services, or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Licensee shall not advertise any product brands without Parks' prior written approval. Any prohibited material displayed or placed shall be immediately removed by Licensee upon notice from Parks at Licensee's sole cost and expense. Any and all signage is subject to Parks' prior written approval, which shall not be unreasonably withheld. The design and placement of all signage posted at the Licensed Premises, including any signage which includes Licensee's name, trade name(s) or logo(s), shall be subject to Parks' prior written approval (which shall not be unreasonably withheld), shall be appropriately located, and shall state that the Licensed Premises are a New York City Department of Parks & Recreation concession operated by Licensee. Signage shall also comply with ADA standards. A sample of each new sign shall be sent for Parks' approval to Parks' Revenue Division, The Arsenal, Central Park, 830 Fifth Avenue, New York, NY 10065. Any prohibited material displayed or placed shall be immediately removed by Licensee upon notice from Parks, at Licensee's sole cost and expense.

**10.14** Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. The placement, design and content of all directional signage is subject to Parks' prior written approval.

Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, it shall be Licensee's responsibility to obtain any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. Parks shall use reasonable efforts to cooperate with Licensee to assist Licensee to obtain all such necessary approvals and permits. The design and content of all such signs are subject to Commissioner's reasonable prior approval.

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

**10.16** Should the Commissioner decide that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory, with specification as to the improvements or corrections to be made. 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, notwithstanding any other provisions herein, then Commissioner may terminate this License.

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

**10.18** This License may be suspended in full or in part with written notice from Parks for any delay in performance resulting from any acts of God, war, enemies or hostile government actions, pandemics, epidemics; other states of emergency declared by the City, state or federal government, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. Such suspension shall be immediately effective upon the mailing, facsimile, hand delivery or delivery by overnight service thereof. In the event of such notice, Licensee shall have a ten (10) day opportunity to cure or cease operations to the extent the Commissioner has determined that a cure is possible or that a delay in ceasing operations is acceptable as set forth in the notice. The Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the suspension and Parks will engage in good faith negotiations regarding such proposal. 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.

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

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

**10.21** Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License. Based on their inspections, should Licensee fail 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 time frame set forth in such notice. If Licensee fails to cure the violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, require the Licensee to pay to Parks as liquidated damages five hundred dollars (\$500.00) per day from the date of the notice, with respect to each violation of the License, until the shortcomings have been corrected. Such liquidated damages, if not paid promptly, may be deducted from the Licensee's Security Deposit.

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

1. Filing an Appeal

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

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

2. Adjudication of Appeal

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

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

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

**10.23** Parks makes no representations that there is adequate storage space at the Licensed Premises. Licensee shall be responsible, at its sole cost and expense, for obtaining any additional storage space required for its operations at the Licensed Premises. 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, which shall not be unreasonably withheld. Licensee shall store all outdoor equipment on a nightly basis and anytime its operations at the Licensed Premises are closed.

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

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

**10.26** Licensee shall comply with all laws, rules and regulations of appropriate agencies, including DEP, regarding noise levels, and Licensee shall be responsible for payment of any and all fees or royalties to the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), or such other entity as they may require for such music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Any musical programming or other types of entertainment must be approved in advance in writing by Parks. **All outdoor amplified sound must end no later than 10pm.**

**10.27 (a)** Licensee may not close the golf course for an entire day for the purposes of holding any tournament, outing, or league play event without the prior written approval of Parks. Any request to close a golf course for an entire day must be submitted at least sixty (60) days in advance of the date of the proposed event. At Parks' request, the Licensee will send an annual list of all tournament outings. Licensee must also comply with the following:

(b) Weekends:

(i) No more than two (2) hours of starting times per weekend may be used for tournaments, outings, or league play events.

(ii) All tournaments, outings, or league play events consisting of two (2) hours of starting times may commence only at or after 12:00 noon. All tournaments, outings, or league play events consisting of less than two (2) hours of starting times may commence only at or after 11:00 A.M.

(iii) If more than one tournament, outing, or league play event is scheduled for one weekend day, such events must be separated by an equal amount of starting times for golfers not affiliated with such events.

(iv) No tournaments, outings, or league play events may be scheduled on the last Sunday of each month.

(c) Weekdays:

(i) No more than three (3) tournaments, outings, or league play events per week may be scheduled before 10:00 A.M. and no more than three (3) tournaments, outings, or league play events per week may be scheduled at or after 10:00 A.M.

(ii) All tournament, outing, or league play event starting times must be separated by an equal amount of starting times for golfers not affiliated with such events.

(iii) If more than one tournament, outing, or league play event is scheduled for one weekday, such events must be separated by an equal amount of starting times for golfers not affiliated with such events.

(d) In the event that a tournament, outing, or league play event is postponed, it may not be rescheduled within thirty (30) days of the original date.

(e) Parks reserves the right to modify these rules at any time.

**10.28** Licensee shall install and use the City approved call-in and online reservation system, or GolfNow or other comparable system, approved by the City at its own cost and expense. Moreover, if the City develops any further changes to the City's centralized golf reservation system in effect as of the date of this License Agreement, Licensee will be required to connect to and use such system at its own cost and expense.

**10.29** Licensee shall cooperate with Parks in organizing public programming (e.g. youth outreach programs, discounted/free concession services, special programs/accommodations for senior citizens and persons with disabilities, and scholarships for youth in need).

(a) Licensee shall promote and conduct a junior development or youth program with scholarship and fee-based membership. Such programs shall include, but not be limited to the

following components: teaching programs, special tournaments, exhibitions, clinics and league play. Licensee shall develop and promote a Junior Golf Program for high school and college students. Parks encourages the Licensee to cooperate with local school golf coaches and athletic directors to establish a schedule to accommodate school athletic programs.

(b) Licensee shall provide free on-course and practice area access for Parks-sponsored youth instruction, development programs, or other Parks approved purposes. Tee times shall be provided, if needed, at no cost for up to six (6) foursomes twice a week between the hours of 12:00 P.M. and 5:00 P.M. during the months of July and August. Time shall also be provided at no cost for up to ten (10) foursomes once a week between the hours of 6:00 P.M. and 8:00 P.M. during the months of May through September. The Licensee is also expected to provide use of the course at no cost, if needed, for one weekday during July or August for junior tournaments. These times and dates may take place at other dates and times as approved by Parks.

(c) Licensee shall provide Parks with an annual report detailing its compliance with the requirements of this section 10.29. This report shall be submitted within thirty (30) days of the end of each Operating Year.

**10.30** The Commissioner shall have the right to reasonably approve the days and times on which deliveries to Licensee may be made.

**10.31** Licensee shall install drinking water coolers throughout the golf course at such locations as shall be approved by Parks and will take reasonable steps to refill them throughout each day the course is open.

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

**10.33** 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 NYC Earned Safe and Sick Time Act Contract Rider annexed hereto as **Exhibit E**.

**10.34** Licensee shall employ preventative maintenance techniques to discourage errant golf balls outside of the golf course property, such as redirecting tees as needed, providing additional plantings, and installing netting. In accordance with the requirements on page 19 of the RFP, to the extent a third-party makes a claim against Parks and Licensee with respect to an errant golf ball, as between Parks and Licensee, Licensee shall be responsible for any and all damages which result from such claim. However, Parks acknowledges that nothing in this section shall preclude Licensee from raising any legal defenses available to it; and, for the avoidance of doubt, this provision shall not be read to place strict or per se liability on Licensee in connection with any and all damage regarding errant golf balls and that other parties (other than the City or Parks) may be responsible based on the circumstances surrounding the cause of the errant golf balls. Notwithstanding the above, Licensee shall continue to indemnify, hold harmless, and defend the City and its officials and employees from all claims pursuant to Section 19.

**10.35** Licensee shall incorporate sustainable practices as set forth in **Exhibit I**. For purposes of this Section 10.35, if any such sustainable practices are included as Capital

Improvements on **Exhibit D**, then such sustainable practices shall be incorporated within the timeframe therefor set forth on **Exhibit D**.

**10.36** Intentionally deleted.

**10.37** Licensee will be required to provide free on-course access for supervised City Parks Foundation Junior Golf Program after 6 p.m.

**10.38** Licensee may use electronic tee sheets in its operations.

**10.39** Licensee will provide event planning services for corporate events, fundraiser outings and other special occasions at the Licensed Premises.

**10.40** Licensee may use a monthly dues subscription model known as “The Players Club.” All program terms and conditions are subject to Parks review and approval.

**10.41** 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. Parks' concession unit will coordinate these activities with the licensee.

**10.42** Licensee agrees, within a reasonable period of time following the Commencement Date, to comply with the requirements set forth in **Exhibit J**.

**10.43** Licensee may offer public programming and non-golf related events, subject to the terms of this License, including but not limited to the following: Family Day, Farmers Markets, Concerts, Community Egg Hunt, Trunk or Treat, Breakfast with Santa, Comedy Night, and Movie Night.

**10.44** Licensee may offer private events, subject to the terms of this License, including but not limited to the following: Weddings, Chamber of Commerce membership and events, Bridal Showers, Bridal Show (WSW), Proms, Graduations, Birthdays of all ages, Baptisms, Business meetings. Restaurant open for public to come in (cyclists), Host parking for Bartow-Pell, Mansion across the street, Movie filming.

**10.45** At Parks' request, Licensee shall sell Parks related merchandise produced by vendors authorized by the City of New York.

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

**11.1 (a)** In conjunction with the Maintenance Operating standards as attached in **Exhibit H**, Licensee shall, at its sole cost and expense (or through arrangements with third parties), renovate, operate and maintain the Licensed Premises in good and safe condition and in accordance with industry standards. This includes, but is not limited to, the maintenance and repair of the entire Licensed Premises, all interior and exterior structures, building systems, restrooms utility systems and connections, sewer systems and connections, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures. In addition, Licensee must keep all signs and structures on the Licensed Premises in good condition and free of graffiti. The erecting of any ancillary



structures at the Licensed Premises not contemplated by the Capital Improvements shall be subject to Parks' prior written approval.

**(b)** Licensee will be responsible for all year-round pruning, landscaping, maintenance and all general grounds maintenance at the Licensed Premises. Licensee shall take all necessary measures to ensure the durability of the golf course throughout the Term. Licensee shall provide an adequate number of annual and seasonal staff in order to maintain the course as a high-quality amenity for the public. In maintaining the course, Licensee shall use as guidelines the standards set by the United States Golf Association (USGA) for turf management and golf course maintenance, as well as best management practices to minimize the use of fertilizers, herbicides, and pesticides, particularly in areas near any water bodies including the ponds. Licensee is responsible for any necessary maintenance and repairs to pond liner(s) at the Licensed Premises which are not covered by the liner warranty, as well as for dredging the detention and retention ponds within the Licensed Premises; provided that, notwithstanding anything to the contrary herein, any and all costs incurred by Licensee in connection with such maintenance or repair of pond liner(s) or such dredging of detention and retention ponds shall be considered as Capital Improvement expenditures for purposes of satisfying Licensee's expenditure requirement for Capital Improvements under Section 6.1(a) above.

**(c)** Licensee shall, at its sole cost and expense, operate and maintain the existing irrigation system at the Licensed Premises in good and working order. This shall include the repair and replacement of all equipment and material as needed, including the booster pump system, lake lift pump system, electrical system, weather station, radio system, computer system, control, decoder and/or satellite system, irrigation heads and lines, pump house structure and all other associated equipment and material in accordance with operation and maintenance manuals. Notwithstanding anything to the contrary herein, any and all costs incurred by Licensee in connection with replacement of any equipment or material for the irrigation system at the Licensed Premises shall be considered as Capital Improvement expenditures for purposes of satisfying Licensee's expenditure requirement for Capital Improvements under Section 6.1(a) above. Each fall, Licensee shall winterize the entire system, and, each spring, Licensee shall start up, pressurize and fill the system. Licensee shall repair any leaks, replace any damaged or missing irrigation heads, and maintain all equipment and pump houses in a clean and orderly manner. In addition, Licensee shall maintain the grounds and overflow structures, keeping them free from algae, debris and trash, and making repairs as needed. Licensee shall, at its sole cost and expense, retain the services of qualified technicians and/or service firms to fully comply with all provisions of the irrigation system's operation and maintenance manual, as issued by Flowtronex PSI Pumping Systems.

**(d)** Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, any trees on the Licensed Premises shall be pruned by Licensee as needed. Licensee shall 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, which shall not be unreasonably withheld. In addition, Licensee shall 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 and Parks

shall use reasonable efforts to cooperate with Licensee and assist Licensee to obtain such permits, approvals and authorizations. Licensee shall improve the horticultural amenities at the golf course by establishing planting areas for flowers, flowering shrubs, and flowering trees at strategic locations throughout the golf course, such as the entrance to the course, around the clubhouse, along the course perimeter, and at the tee boxes where necessary. All plans for horticultural improvements, including proposed locations and designs, as well as the types and approximate quantities of flowers, flowering shrubs, and flowering trees proposed for each planting area, are subject to Parks' prior written approval, which shall not be unreasonably withheld. Licensee shall adhere to all rules and regulations established by the United States Department of Agriculture, the New York State Department of Agriculture & Markets, and Parks concerning infestation control and treatment and general tree trimming and removal practices. Restrictions may apply for trees planted in areas that may be identified as quarantine zones because of the Asian Long Horned Beetle (*Anoplophora glabripennis*), an invasive beetle known to attack maple, horse chestnut, elm, willow, birch, poplar, and ash trees. Licensee shall not plant any species on the New York State Prohibited and Regulated invasive Plants list: [https://www.dec.ny.gov/docs/lands\\_forests\\_pdf/isprohibitedplants2.pdf](https://www.dec.ny.gov/docs/lands_forests_pdf/isprohibitedplants2.pdf).

(e) Licensee shall promote water conservation measures at the facility by installing low water consumption toilets in construction of new restrooms; planting low-water tolerant species of shrubs, plants and flowers throughout the facility; watering the grounds very conservatively and only during peak evaporation times; and regularly check for leaks and upgrading the plumbing system throughout the facility to the extent such upgrade is reasonably necessary; provided that, if approved by Parks (which shall not be unreasonably withheld), Licensee's costs for upgrading the plumbing system shall be credited toward Licensee's required minimum expenditure for Capital Improvements.

(f) Licensee shall install Energy Star approved or other similarly efficient appliances and equipment in accordance with **Exhibit D**.

(g) Licensee shall use commercially reasonable efforts to use "Green Seal" eco-friendly cleaning supplies, soaps, light bulbs, paint, paper products or other similarly efficient products as part of its operation of the Licensed Premises.

(h) Licensee shall maintain "no mow zones" as part of Licensee's landscape and horticultural plans in order to expand the width of riparian buffers pursuant to **Exhibit H** and **Exhibit I**.

(i) Licensee shall operate the Licensed Premises in conformity with the environmental sustainability plans outlined on **Exhibit I**, which the parties acknowledge align with the Audubon Cooperative Sanctuary Program for Golf Courses.

(j) Licensee shall adhere to all rules and regulations established by the New York City Administrative Code, the New York State Department of Environmental Conservation ("NYSDEC") and the United States Army Corps of Engineers ("USACE") concerning the protection of wetlands and waters. Licensee shall remain in compliance with all rules and

regulations established by the NYSDEC, the USACE, and the United States Environmental Protection Agency (“US EPA”).

**11.2** Licensee shall, at its sole cost and expense, be responsible for maintaining the parking lot within the Leased Premises and securing it in accordance with the security plan approved by Parks pursuant to Section 10.8. Such maintenance shall include repair work on curbs, including paving and striping. There are a limited number of parking spaces available at the Licensed Premises for facility staff and patrons. Licensee shall ensure that the number, placement, and specifications of all accessible spaces must comply with ADA guidelines as well as with all City, State, and Federal regulations, including striping and signage specifications. Licensee will be responsible for providing drainage in compliance with the NYSDEC Part 360 Permit for any additional parking spaces that the Licensee constructs. Licensee shall carefully monitor and record the number of cars that enter the parking lot at all times and ensure that the parking lot has a smooth traffic flow to available parking spaces and exit gates.

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

**11.4** 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.

**11.5** Licensee shall be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter from the Licensed Premises and the area within fifty (50) feet of the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles, approved by Parks, and have these receptacles emptied on a daily basis and removed by a private carter. The location and placement of all waste and recycling receptacles is subject to Parks' prior written approval, which shall not be unreasonably withheld. Pursuant to Local Law 146 of 2013, Licensee shall comply with NYC Commercial Organics Rules to the extent applicable to the Licensed Premises. Licensee shall comply with all City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition throughout the Term.

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

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

promptly after Licensee becomes aware of the appearance of any such graffiti and shall continue until such graffiti is removed.

**11.8** Licensee shall conduct regular pest control inspections and extermination, as needed. Under no circumstances may Licensee use a baiting system for pest control or extermination. 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. Licensee shall adhere to all rules and regulations established by the New York City Administrative Code, the NYSDEC, and the US EPA concerning pesticide usage. All pesticide applications must be performed by licensed pesticide applicators, adhering to the principles and practices of an Integrated Pest Management (IPM) approach as defined by the US EPA.

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

**11.10** Licensee shall be responsible for cleaning and maintaining any restrooms at the Licensed Premises.

## **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. Parks shall use reasonable efforts to cooperate with Licensee in obtaining the necessary approval, permits and licenses.

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

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

**13.1 (a)** 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 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, , 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.

(b) Parks, acting on behalf of the City, reserves the right to host up to two (2) annual events, without cost to Parks (except as expressly set forth herein), at the Licensed Premises, including benefits, tournaments, and other non-profit or public events. The dates of such events shall be mutually agreed upon by Parks and Licensee 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. Such costs for Parks Special Events must be reported to Parks, but may be excluded from calculation of Gross Receipts.

(c) Up to three times a year, Parks may request, and Licensee shall be required to provide, non-exclusive use of the entire Licensed Premises by way of free rounds of golf for up to 25 attendees, in order to host benefits, programs and other non-profit or public events, at no cost to Parks.

**13.2** Subject to prior written approval from Parks, Licensee may conduct special events or programs (e.g., either arranged by Licensee or by reservation of all or part of the Licensed Premises through Licensee by third parties) at the Licensed Premises. Licensee shall submit to Parks for approval all plans for any Licensee's Special Events at the Licensed Premises. Any ticketed (including, but not limited to, payment of a fee at the door) events also require prior written approval from Parks shall be submitted to Parks for approval at least thirty (30) days in advance with such supporting documentation as Parks shall reasonably require. In no event shall the entire Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved by Parks in advance in writing or sponsored by Parks, and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events. All catered events must be primarily related to dining activities. Licensee must document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. All revenue generated through such Licensee's Special Events must be reported to Parks as Gross Receipts and the amount thereof will be calculated in a manner consistent with the definition of Gross Receipts as set forth in Section 2.1(k) above and this License Agreement. Notwithstanding anything to the contrary in this Section 13.2, Parks reserves the right to review Licensee's use of the Licensed Premises for Licensee's Special Events and require that Licensee obtain Parks' prior written approval for all Licensee's Special Events, of any type, if, in the reasonable determination of the Commissioner, the nature and frequency of Licensee's Special Events constitutes an unreasonable limitation on the use and enjoyment of the Licensed Premises by the general public.

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

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

Should Licensee choose to assign or sublicense the management and operation of any element of the Licensed Premises to another party, Licensee shall seek the approval of the Commissioner by submitting a written request including proposed assignment or sublicense documents as provided herein. All sublicensees shall be subject to the same internal control requirements as the licensee. All terms and conditions of sublicense agreements and operations thereunder, including payment to the City, are subject to Parks' prior written approval. The Commissioner may request any additional information the Commissioner deems necessary and Licensee shall promptly comply with such requests.

The term "assignment" shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in, whether directly or indirectly, forty-nine percent (49%) or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law.

**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 forty-nine percent (49%) or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant indicating that the proposed assignee or sublicensee has a financial net worth acceptable to the Commissioner together with a certification that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

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

**14.4** In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee

to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the renovation, operation and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks' directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement and indemnifying the City as set forth in Section 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** Notwithstanding anything to the contrary set forth in this Article 14, Commissioner's consent shall not be required for (a) any transfer, assignment or sublicense of all or any portion of Licensee's interest in this License to any corporation, partnership, limited liability company or other entity which controls, is controlled by or is under common control with Licensee, or (b) to any corporation resulting from the merger of or consolidation with Licensee or any of its parent entities, provided that, in each such case, that the proposed assignee/transferee is found by Parks to be responsible consistent with Section 1-07 of the FCRC Concession Rules, found at Title 12 of the Rules of the City of New York, and further provided that the proposed assignee/transferee agrees in writing to assume all of Licensee's responsibilities and obligations under this License.

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

## **15. PARKS CONSTRUCTION**

**15.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term, at Parks' sole cost and expense. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least 1 week prior written notice of any such work and not to interfere substantially with Licensee's operations or use of the Licensed Premises. Parks may temporarily close a part or all of the Licensed Premises for a Parks purpose as determined by the Commissioner. In the event that Licensee must close the Licensed Premises for the purposes provided for in this License because of such Parks' work (a determination by Licensee, in consultation with Parks, that Licensee cannot substantially operate its business in the Licensed Premises), then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence, intentional tortious act or intentional tortious omission of Licensee.

## **16. COMPLIANCE WITH LAWS**

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

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

## **17. NON-DISCRIMINATION**

**17.1** Licensee shall not unlawfully discriminate against any employee, applicant for employment or patron because of race, creed, color, national origin, age, sex, handicap, marital status, or sexual orientation. Any violation of this Section 17.1, subject to any applicable notice and cure provisions, shall be a material breach of this License.

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

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

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

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

### **19.1 Licensee Responsibility**

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

B. The Licensee shall be solely responsible for taking all reasonable precautions to protect the persons and property of the City or others from damage, loss or injury resulting from any and all operations under this License; provided that, Parks shall inform Licensee of any hazards or nuisances related to the Licensed Premises of which it has or obtains actual knowledge during any inspection of the Licensed Premises.



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

D. The Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or local environmental, health and/or safety-related laws, regulations, standards, decisions of the courts, permits or permit conditions, currently existing or as amended or adapted in the future which are or become applicable to the Licensee or the Licensed Premises (collectively “Environmental Laws”). Except (i) for the possession, storage, use and transportation of ordinary quantities of Hazardous Materials customarily used in Licensee’s business, including as may be contained in any vehicle at the Licensed Premises, (ii) for any disposal of Hazardous Materials incidentally released in de minimis quantities that do not require remediation, or (iii) as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of the Licensee’s personnel to cause or permit, any Hazardous Materials to be brought upon, stored, used generated, treated or disposed of on the Licensed Premises. As used herein, “Hazardous Materials” means any chemical, substance or material which is now or becomes in the future listed, defined or regulated in any manner by any Environmental Law based upon, directly or indirectly, its properties or effects. Licensee may order a Phase I or Phase II environmental site assessment in connection with the Capital Improvements.

## **19.2 Indemnification and Related Obligations**

A. To the fullest extent permitted by law, the Licensee shall indemnify, defend and hold the City and its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys’ fees and disbursements) (collectively, “Claims”) arising out of or related to any of the operations under this License (regardless of whether or not the Licensee itself had been negligent, except to the extent caused by the gross negligence, intentional tortious act or intentional tortious omission of the City or its officials, employees, agents or representatives) and/or the Licensee’s failure to comply with the law or any of the requirements of this License, in each case, other than such Claims caused by the gross negligence, intentional tortious act or intentional tortious omission of the City or its officials, employees, agents or representatives. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by the Licensee, the City and its officials and employees shall be partially indemnified by the Licensee to the fullest extent permitted by law.

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

## **20. INSURANCE**

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

A. From the date this License Agreement is executed through the date of its expiration or termination, the Licensee shall ensure that the types of insurance indicated in this Article 20 are obtained and remain in force, and that such insurance adheres to all requirements herein.

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

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

A. The Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and Two Million Dollars (\$2,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). Licensee shall maintain coverage for products/completed operations in the amount of Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

B. Such Commercial General Liability insurance shall name the City, together with its officials and employees, as an Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37. "Blanket" or other forms are also acceptable if they provide the City, together with its officials and employees, with coverage at least as broad as ISO Form CG 20 26 and CG 20 37.

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

The Licensee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees of Licensee involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York, and Licensee shall require such insurance to be maintained for any workers not directly employed by Licensee who are involved in the Licensee's operations under this License if applicable.

### **20.4 Commercial Automobile Liability Insurance**

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) for each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA0001. 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 Licensed Premises (“Concession Structures”), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind, subsidence and earthquake. Such insurance shall be “occurrence” (rather than “claims-made”) based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

B. This Section 20.5 does not require coverage for damage caused by flooding.

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

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

## **20.6 Flood Insurance**

A. If the Licensed Premises includes any structure or building, as defined by the Federal Emergency Management Agency (“FEMA”), in a special flood area designated by FEMA as of the date hereof or at any time in the future as a Special Flood Hazard Area (“SFHA”), then the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building on the Licensed Premises. Each building shall be insured separately. For each building, the Licensee shall maintain the maximum limits available under the NFIP for both the building and its contents. The Licensee shall assure that the City is listed as a loss payee on the NFIP insurance.

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

#### **20.7 Liquor Law Liability Insurance**

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

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

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

B. If required, the Contractors Pollution Liability Insurance shall each have a limit of at least One Million Dollars (\$1,000,000), and provide coverage for the Licensee as Named Insured or Additional Insured and the City, together with its officials and employees, as Additional Insured. Coverage for the City shall be at least as broad as the Licensee's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three (3) years after the termination of such work.

C. Licensee represents and warrants that its operations at the Licensed Premises will not involve petroleum products, asbestos, lead, polychlorinated biphenyls (PCBs) or any other hazardous materials unless required under this License Agreement or otherwise in compliance with applicable laws.

#### **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; provided that, for the avoidance of doubt, the Commissioner has approved in writing Licensee’s right to self-insure up to a maximum of two hundred fifty thousand dollars (\$250,000.00) per occurrence. 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. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of the Commissioner, Licensee’s operations warrant it.

G. 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 thirty (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.

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

I. At Licensee’s option, any insurance required to be carried under this License may be included as part of any blanket or other policy or policies of insurance, subject to the provisions of this License.

## **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:

1. Form C-105.2, Certificate of Workers' Compensation Insurance;
2. Form U-26.3, State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Form SI-12, Certificate of Workers' Compensation Self-Insurance;
4. Form GSI-105.2, Certificate of Participation in Worker's Compensation Group Self-Insurance;
5. Form DB-120.1, Certificate of Disability Benefits Insurance;
6. Form DB-155, Certificate of Disability Benefits Self-Insurance;
7. Form CE-200 – Affidavit of Exemption;
8. Other forms approved by the New York State Workers' Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

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

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

E. Acceptance or approval by the Commissioner of a Certificate of Insurance or any other matter does not waive Licensee's obligation to ensure that insurance fully consistent

with the requirements of this Article is secured and maintained, nor does it waive Licensee's liability for its failure to do so.

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

#### **20.11 Miscellaneous**

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

B. Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, and such insurance shall include the City, including its officials and employees, as an Additional Insured with coverage at least as broad as ISO Forms CG 20 26 and 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.

## **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, his agents, and City from any and all demands, claims, actions, and causes of action arising from any of the causes aforesaid.

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



## **22. INVESTIGATIONS**

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

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

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

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

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

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

**(i)** The disqualification for a period not to exceed five (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)** The Commissioner or agency head shall consider and address in reaching his or her determination and in assessing an appropriate penalty the factors in Section 22.1(d) (i) and (ii) below. He or she may also consider, if relevant and appropriate, the criteria established in Sections 22.1(d) (iii) and (iv) below in addition to any other information which may be relevant and appropriate.

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

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

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

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

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

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

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

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

(f) In addition to and notwithstanding any other provision of this License the Commissioner or agency head may in his or her sole discretion terminate this License Agreement upon not less than three (3) days written notice in the event Licensee fails to promptly report in writing to the Commissioner of Investigation of the City of New York any solicitation of money goods requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City of other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this License Agreement by the Licensee, or affecting the performance or this License Agreement.

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

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

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

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

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

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

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

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

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

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

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

(d) In the event any claim is made or any action brought in any way relating to this License Agreement herein other than an action or proceeding in which Licensee and the City are adverse parties, Licensee shall diligently render to the City of New York without additional compensation any and all assistance which the City of New York may reasonably require of Licensee.

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

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

## **26. EMPLOYEES**

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

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

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

will not make any claim, demand, or application to or for any right or privilege applicable to an officer of, or employee of, the City, including but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

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

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

## **29. CONFLICT OF INTEREST**

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

## **30. PROCUREMENT OF AGREEMENT**

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

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

**31. NO CLAIM AGAINST 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.

**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.

**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.

**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.

**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 be modified from time to time by agreement in writing, but no modification of this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

**36. NOTICES**

**36.1** 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 at the beginning of this License Agreement, or to any other address that Licensee shall have filed with Commissioner. Notices may also be given by electronic mail to the electronic mail addresses for each party provided at the beginning of this License Agreement (or any other email address that Licensee shall provide to Commissioner in writing); provided that, any notice sent by electronic mail shall not be deemed

given to the other party for purposes hereof if the sender receives an automated reply that the email could not be delivered.

**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 the State of California and authorized to do business in the State of New York and has the power and authority to enter into this License Agreement and perform its obligations hereunder. This is a continuing representation and warranty.

**38. MISCELLANEOUS**

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

**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.

**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 Follows)*

**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  
DEPARTMENT OF  
PARKS & RECREATION

AMERICAN GOLF CORPORATION

By: \_\_\_\_\_  
Alexander Han  
Chief of Concessions

By: \_\_\_\_\_  
Paul Ballam  
\_\_\_\_\_

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 Alexander Han to me known, and known to be the Chief of Concessions of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the 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 \_\_\_\_\_ who, being duly sworn by me did depose and say that he is the \_\_\_\_\_ of American Golf Corp and that he executed the foregoing instrument and acknowledged that he executed the same for the purposes mentioned therein.

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

# EXHIBIT A

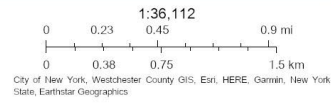
## LICENSED PREMISES

Pelham Split GC



11/25/2022, 3:24:01 PM

 NYC\_Parks\_Concession\_6413



## **EXHIBIT B**

### **MONTHLY REPORT OF GROSS RECEIPTS**

#### **MONTHLY GROSS RECEIPTS AND GOLF COURSE ACTIVITIES**

(conducted through the last day of the month)

PEHLAM BAY PARK and SPLIT ROCK GOLF COURSES

MONTH:	
<b>REVENUE CATEGORY</b>	
<b>Golf Course Greens Fees:</b>	\$
Resident	
Less Rain Checks	
Trade Round Income	
<b>Total Greens Fees ***</b>	
Golf Cart	
Skate Caddy	
Club Rental Fees	
Club Repairs	
Locker Rentals	
Golf Reservation Fees	
Secured Parking Fees	
Vending Machines	
Catered Events Sales - Non Golf	
Food & Beverages Sales	
Lessons and Commissions	
Pro Shop Merchandise Sales	
Driving Range Fees	
Special Event Fees	
Misc.	
<b>TOTAL GROSS RECEIPTS</b>	\$
<b>GOLF COURSE ACTIVITY</b>	
Resident Rounds	
Less Rain Checks	
Trade Rounds	
<b>TOTAL ROUNDS PLAYED</b>	

**\*\*\*See attached Greens Fee Report**

*I hereby certify the above statement to be true and correct.*

Signature: \_\_\_\_\_

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

Name & Title: \_\_\_\_\_

**EXHIBIT B-1**

PELHAM BAY PARK and SPLIT ROCK GOLF COURSE

GREENS FEE REPORT FOR THE MONTH ENDED: \_\_\_\_\_  
(Gross Revenue and the Number of Rounds Played)

	# of Rounds Played	Total Revenue (including Surcharge)	Revenue Subject to _____% (not including Surcharge)	Surcharge Payment (per Round)
<b>Greens Fee Category:</b>				
<b>WEEKENDS AND HOLIDAYS</b>				
Early Morning (9 Holes)				
18 Holes (before 12:00 p.m.)				
18 Holes (at or after 12:00 p.m.)				
Twilight				
<b>WEEKDAYS</b>				
Early Morning (9 Holes)				
18 Holes (before 12:00 p.m.)				
18 Holes (at or after 12:00 p.m.)				
Twilight				
Seniors				
Juniors				N/A
<b>TOTAL</b>				

*I hereby certify the above statement to be true and correct.*

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

Name & Title: \_\_\_\_\_

## **EXHIBIT C**

### **SCHEDULE OF OPERATING HOURS, RATES, FEES, PRICES AND PROGRAMMING**

Operating hours:

The course will be open 365 days per year weather permitting.

2. Opening Times – Golf course and clubhouse will open one-half hour before sunrise and the first tee time will be as early as daylight will allow. The clubhouse grill room will also open at this time to provide all of our services to our guests.

3. Closing Times – Golf course and clubhouse will close approximately one hour after sundown based on demand for a given day. High-demand days and catered event days will extend closing.

### **SCHEDULE OF APPROVED FEES**

All menu items and prices must be approved by Parks.

GOLF RATES (“GREENS FEES”) AND OTHER FEES through March 31, 2024:

Rates for March 14, 2024 - March 31, 2024:

Days	Category	Approved Rate
Monday – Friday	Early Morning (9 Holes)	\$23.00
	18 Holes (before 12:00 p.m.)	\$47.00
	18 Holes (at or after 12:00 p.m.)	\$37.00
	Twilight	\$32.00
	Seniors (62 years old and over)	30.00
	Juniors (16 years old and under)	7.75
Saturday & Sunday, Holidays	Early Morning (9 Holes)	\$25.00
	18 Holes (before 12:00 p.m.)	\$57.00
	18 Holes (at or after 12:00 p.m.)	\$44.00
	Twilight	\$34.00
Category		Approved Rate
Reservation Fee		\$5.00
Golf Cart Rental (daily-per two people); half-\$20.00		\$40.00
Rental Clubs		\$35.00 per set
Parking fee (where applicable)		\$3.00

\*Each of the aforementioned rates, excluding the rate for Juniors, incorporates a surcharge of \$4.00 Licensee is allowed, and even encouraged, to offer seasonal rates, lower rates and/or special programs for senior citizens and youths, although the \$4.00 per round surcharge will apply in all instances (except Juniors).

GOLF RATES (“GREENS FEES”) AND OTHER FEES STARTING AS OF APRIL 1, 2024:

Days	Category	Approved Rate
Monday – Friday	Early Morning (9 Holes)	\$25.00
	18 holes before 2pm (1pm November-March)	\$50.00
	18 holes after 2pm (1pm November-March)	\$40.00
	Twilight	\$35.00
	Seniors (62 years old and over)	\$32.00
	Juniors (16 years old and under)	\$7.75
Saturday & Sunday, Holidays	Early Morning (9 Holes)	\$27.00
	18 holes before 2pm (1pm November-March)	\$62.00
	18 holes after 2pm (1pm November-March)	\$50.00
	Twilight	\$36.00
Category		Approved Rate
Reservation Fee		\$5.00
Golf Cart Rental (daily-per two people); half- \$20.50		\$41.00
Rental Clubs		\$35.00 per set
Parking fee (where applicable)		\$3.00

\*Each of the aforementioned rates, excluding the rate for Juniors, incorporates a surcharge of \$5.00 Licensee is allowed, and even encouraged, to offer seasonal rates, lower rates and/or special programs for senior citizens and youths, although the \$5.00 per round surcharge will apply in all instances (except Juniors).

The Licensee will be permitted to increase the rates annually based on the Consumer Price Index (CPI) for the New York City region; any greater increases are subject to Parks’ approval. Each of the aforementioned rates, excluding the rate for Juniors, incorporates the Surcharge Fee, which shall be remitted to Parks for each round played. Rates, fees and prices for any item not covered above shall be submitted by Licensee to Parks for Parks’ prior written approval.



# THE GRILL ROOM

## APPETIZERS

### THREE CHEESE QUESADILLA | 10

Pepper jack, cheddar & American cheese, guacamole, salsa, & sour cream

**ADD:** Chicken \*4 | Beef \*6 | Shrimp \*8

### BUFFALO WINGS | 14

(7) Wings tossed in our house-made hot sauce served with blue cheese dressing

### CHICKEN TENDERS | 12

(4) Paired with golden fries served with honey mustard or BBQ sauce

## THE CLASSICS

*Served with a side of fries or chips*

### THE BRONX CLASSIC DOG | 9

All beef hot dog served with sauerkraut or sautéed onions

**ADD:** Bacon \*2 | Sautéed Mushrooms or Onions \*2

### PELHAM BAY - THE CLASSIC WAY | 12

All beef patty, American cheese, lettuce, tomato, onion on a toasted bun

**ADD:** Caddies a Bacon \*2 | Sautéed Onions \*2

Sautéed Mushrooms \*2 | Fried Egg \*2

### ENGLISH STYLE FISH & CHIPS | 15

Beer-battered cod fillets fried until golden brown, served with tartar sauce & malt vinegar

## SANDWICHES

*Served with a side of fries or chips. All sandwiches can also be requested as a wrap for easy eats on the course.*

### TURKEY, BACON, RANCH SUB | 14

Roasted turkey breast piled high with applewood smoked bacon, tomato, lettuce & ranch dressing on a club roll

### THE N.Y. STEAKWICH | 15

Sliced, marinated beef, grilled peppers & onions with melted cheddar on a steak roll

### THE SPLIT ROCK TRIPLE STACK | 12

Applewood smoked bacon, lettuce, and tomatoes on toasted sliced bread

### BRONX CHICKEN | 14

Blackened chicken breast, sautéed peppers, onions & melted mozzarella on a Kaiser roll

### TRADITIONAL TUNA SANDWICH | 14

House-made, solid white albacore tuna, lettuce & tomato on toasted sliced bread

\*Consuming raw or undercooked meat, fish, shellfish, or fresh eggs may increase your risk of food-borne illness, especially if you have certain medical conditions. If you or a guest have a food allergy, please bring it to our attention. We will do our best to accommodate you.



## **EXHIBIT D**

### **CAPITAL IMPROVEMENTS**

The total cost of Capital Improvements shall be a minimum of **\$7,952,222** consisting of (i) Licensee's expenditure of **\$4,952,222** for Capital Improvements as outlined and within the timeframes below, and (ii) Licensee's deposit of, at minimum, **\$3,000,000** into the Capital Reserve Fund over the period of 20 years of the Term as set forth in, and subject to the terms of, Section 6.21(b) of this License Agreement.

Capital Improvements of the Licensed Premises shall include, but not be limited to, the following:

#### **Pelham Bay and Split Rock Golf Courses**

20 Year Minimum Capital Investment: \$4,952,222

**Phase one – Years 2024-2028** Total \$1,303,190

##### **Pelham Golf Course**

- Belgium Block Curbing
- Cart Path Improvement
- Improve Drainage
- Trim Trees and Clear Underbrush
- Tee Improvement
- Turf Improvement
- Brush / Perimeter Clearing Hole #18
- Irrigation Expansion

##### **Split Rock**

- Belgium Block Curbing
- Cart Path Improvement
- Improve Drainage
- Trim Trees and Clear Underbrush
- Tee Improvement
- Turf Improvement
- Water Filtration System Halfway House
- Irrigation Expansion

**Phase Two – Years 2029-2038** Total \$3,100,000

##### **Pelham Golf Course**

- Bunker Renovation

##### **Split Rock Golf Course**

- Bunker Renovation

##### **Clubhouse**

- FF&E – Energy Star Equipment
- HV/AC - Energy Star Equipment
- Electric Cart Fleet – Electric
- Electric Cart Fleet – Building
- Parking Lot Improvements
- Roofing Repair and Improvement

**Additional Capital to be Spent During Term Total \$549,032**

- Miscellaneous Repair / Replacement / Refurbishment
- As needed Perimeter Fencing
- As needed Irrigation Piping, Lines, Heads

## EXHIBIT E

### NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER

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#### 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. Licensees 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 Licensee 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 Licensee 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 Licensee 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 Licensee 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, Licensee will receive a findings letter detailing any employee relief and civil penalties owed. Pursuant to the findings, Licensee 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 Licensee. The Licensee is advised to review the ESSTA and the DCWP Rules in their entirety. The Licensee 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 Licensee can get more information about how to comply with the ESSTA and the DCWP Rules. The Licensee 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;
- 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

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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.

policy.

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 E-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 E-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.**

## Meal Standards

Meal items include salads, sandwiches, burritos, and combination packaged items such as tuna lunch kits. Breakfast breads and pastries must meet the snack standards.

**1** Require each meal meet all of the following criteria:

**Calories:** no more than 700 calories (all items  $\leq 200$  calories must follow snack standards)

**Total fat:** no more than 35% of calories

Salads: no more than 60% of calories

**Saturated fat:** no more than 10% of calories

Salads: no more than 20% of calories

**Trans fat:** 0 grams trans fat

**Sodium:** no more than 800 mg

Soup: no more than 480 mg per 8 ounces

**Sugar:** no more than 35% of calories

**2** Refrigerated machines must stock fresh fruit and vegetable items.

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

Required for City agencies only.

**4** 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).

## **EXHIBIT F**

### **CERTIFICATES OF INSURANCE**

#### **Instructions to New York City Agencies, Departments, and Offices**

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

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

-- OR --

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

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

## **EXHIBIT G**

### **Payment Guarantee**

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

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

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

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

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

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

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

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

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

(B) Nothing in this **Exhibit G** shall prevent a beneficiary providing labor, services or material for the Capital Improvement Project from suing the person, firm or corporation for whom

such labor, services or material was provided for any amounts due and owing the beneficiary by such person, firm or corporation.

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

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

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

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

shall inform the Licensee of any defenses to the demand and shall forward to the Licensee any documents the Licensee requests concerning the demand.

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

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

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

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

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

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

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

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



## **EXHIBIT H**

### **Golf Course Maintenance Operating Standards**

These standards are a guideline to promote consistency and are subject to seasonal or weather variations.

- Frequency of mowing will be subject to change depending on turf growth and health during different times of the year. Efficiency in irrigation practices, correct identification of disease thresholds and integrated pest management all contribute to successfully achieving these maintenance standards and the product quality expected by our guests. The goal is to produce a product that results in a quality experience for golfers and provides an aesthetically pleasing recreational amenity to the City.

#### **1. Greens, practice greens, and nurseries**

##### **A. Mowing**

- April-October: Mowing and/or rolling 6 times per week with the objective of meeting a green speed that meets or exceeds a stimpmeter reading of 9.0.
- November-March: Mowing and/or rolling as needed consistent with seasonal weather conditions.

B. Change cup locations on all greens and practice putting greens daily in season and three times weekly in the off-season, if weather conditions/ground-freeze allows.

- Cups should be no closer than seven feet from the edge of green.

C. Ball marks will be repaired daily. Efforts will be made to repair all damaged turf areas as quickly as possible.

D. Green aerification program will be based on ISTRC (International Sports Turf Research Center) surface displacement chart with a minimal annual surface displacement of 9.5%. Core-aerifications will be performed, typically two-times per year, while the turf is at peak growth (Spring and Fall) and soil temperatures allow for proper turf recovery.

### **ISTRC**

#### **International Sports Turf Research Center Aerification Displacement Chart**

Tine Size	1.25" x 1.25" Centers	1.5" x 1.5" Centers	2.0" x 2.0" Centers	2.5" x 2.5" Centers	5" x 5" Centers
1/4" Hollow Tines	3.14%	2.18%	1.23%	0.79%	
3/8" Hollow Tines	7.07%	4.91%	2.76%	1.77%	
1/2" Hollow Tines	12.57%	8.73%	4.91%	3.14%	
5/8" Hollow Tines		13.64%	7.67%	4.91%	
5/8" Hollow Vertidrain					1.23%
3/4" Hollow Tines				7.07%	1.77%
3/4" Hollow Vertidrain					1.77%
1" Hollow Tines					3.14%
1" Hollow Vertidrain					3.14%
7/8" Drill & Fill (7" Ctrs)					1.23%
Graden Verticutter (15 Blades @ 1" Spacings)	1mm Blade 3.93%	2mm Blade 7.87%	3mm Blade 11.81%		

Note: 1/4" Quadlines remove as much material as Regular 1/2" Hollow Tines  
3/8" minimum for ease of topdressing fill if replacement of material is required  
For double aerification make two passes at approx. 37° (slightly less than 45°) to minimize overlap

E. Top-dress all greens, practice putting greens, and nurseries:

- After any aerification performed with ½ or larger tines.
- As needed to maintain a smooth putting surface/ at least monthly during the growing season.
- Topdressing sand will be sand or a sand-organic mix the meets the USGA Greens Section specifications.

F. Light vertical mowing/grooming of all greens, putting greens and nurseries shall be performed monthly during the growing season, or as appropriate, to provide smooth and true putting surfaces. Heavy dethatching shall be performed during the active growing season to promote turf health.

G. Spiking of all greens and practice greens shall be performed as needed between aerifications to maintain water infiltration rates.

H. Fertilization - All greens, practice putting greens and nurseries shall be fertilized with nitrogen, phosphorus, potash and other elements in the amounts needed, based on soil testing report findings, to provide quality turf, maintain color and growth without allowing for excessive or succulent growth. The goal being to provide the best possible putting surface and not to produce the maximum amount of growth or a specific turf color.

#### Greens Fertility Application Program

GREENS	April	28-0-0 250 gals (Bi-weekly applications)
GREENS	May	Seablend 12-0-12
GREENS	May	Panna Sea Plus
GREENS	June	14-2-14
GREENS	July	Renova
GREENS	August	CPR
GREENS	August	NK
GREENS	August	P
GREENS	August	Panna Sea Plus
GREENS	September	Seablend 12-0-12
GREENS	September	14-2-14
GREENS	October	CPR
GREENS	November	Seablend 12-0-12

I. Fungicides- All greens, practice greens, and nurseries shall receive appropriate fungicide applications to prevent and/or control fungal disease activity.

J. Weed Control- All greens, practice putting greens and nurseries shall be maintained free of undesirable grasses and weeds. Pre-emergent herbicides shall be used as necessary to prevent intrusion into the greens of weeds that are difficult to eradicate, such as goosegrass, crabgrass, etc.

K. Insecticides- All greens, practice greens and nurseries shall be treated as necessary to prevent and/or halt insect damage.

## Greens Pesticide / Herbicide Application Program

GREENS	April	Ipro 2	GREENS	July	Signature EXTRA
GREENS	May	Proxy	GREENS	July	Primo Maxx
GREENS	May	Lexicon	GREENS	July	Proxy
GREENS	May	T-Nex	GREENS	July	Enclave
GREENS	May	tebuconazole	GREENS	July	Banol
GREENS	May	Proxy	GREENS	August	Honor
GREENS	May	Mefenoxam	GREENS	August	Ference
GREENS	May	Secure	GREENS	August	Primo Maxx
GREENS	May	Primo maxx	GREENS	August	Sygnature XTRA
GREENS	June	Ference	GREENS	August	Daconil Action
GREENS	June	T-Nex	GREENS	August	Daconil Action
GREENS	June	Daconil Action	GREENS	August	Primo Maxx
GREENS	June	Signature Xtra	GREENS	August	T-Nex
GREENS	June	Primo maxx	GREENS	August	26 GT
GREENS	June	Banol	GREENS	August	Primo Maxx
GREENS	June	Heritage	GREENS	September	Primo Maxx
GREENS	June	Xzemplar	GREENS	September	Daconil Action
GREENS	June	Scimitar	GREENS	September	CLT 825
GREENS	June	Primo maxx	GREENS	September	Acelepryn
GREENS	June	Primo Maxx	GREENS	September	Tebuconazole 3.5
GREENS	June	Signature Xtra	GREENS	September	Primo Maxx
GREENS	June	26 GT	GREENS	October	Pegasus DFX
GREENS	July	Lexicon	GREENS	October	Primo Maxx
GREENS	July	Banner maxx	GREENS	November	Pegasus DFX
GREENS	July	Prouvant			
GREENS	July	Daconil Action			

### 2. Tees - All areas used for tee surfaces

- A. Mowing-All tees shall be mowed at a height between 0.375” – 0.650” two to three times per week during the growing season. Consideration for mowing frequency will be provided for surfaces that are treated with Plant Growth Regulators (PGRs). Surfaces that have a growth rate controlled with PGRs will be mowed at a frequency that maintains the targeted mowing height. Mowing heights will be adjusted in the fall going into dormancy. Off-season will be performed as needed.
- B. Topdressing- Divots filling will be performed at a frequency to promote healing of worn areas and to help maintain level tee surfaces. Holes shall be filled with sand after any aerification performed with 5/8” tines or larger.
- C. Set-up- Tee markers, filling of divots, trash and all tee equipment shall be moved at a frequency that provides proper playing surfaces and supports turf health with a minimum of three (3) teeing areas with markers; used unless maintenance, safety or pace of play issues arise.
- D. Fungicides- All tees shall receive appropriate fungicide applications to prevent and/or control fungal disease activity.

E. Weed control- The objective of the weed control program is to achieve weed-free playing surfaces. Specific and timely applications of pre- and/or post-emergent herbicides will be utilized based on weed pressure and seasonality.

Tee Pesticide / Herbicide Application Program

TEES	April	Proxy
TEES	April	Primo maxx
TEES	April	Chlorothalonil
TEES	April	Scimitar
TEES	May	Dimension
TEES	May	T-Nex
TEES	May	26 GT
TEES	June	T-Nex
TEES	June	Tebuconazole
TEES	June	T-Nex
TEES	July	CLT 825
TEES	July	T-Nex
TEES	July	Xzemplar
TEES	August	T-Nex
TEES	August	Enclave
TEES	September	Propiconazole 14.3
TEES	October	Pegasus DFX

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F. Vertical Mowing- All tees will be verticut/dethatched as required and at times, in conjunction with core-aerification.

G. Aerification- All tees will be aerified as needed to promote healthy and level tee surfaces. A combination of core-aerification and solid-tine aerification may be utilized to promote healthy turf. The aerification practices will take place when the soil temperatures and growth rates of the turf promote rapid response for healing. Aerification holes 5/8" or larger will be filled with sand.

H. Fertilization- All tees surfaces shall be fertilized with nitrogen, phosphorus, potash and other elements, based on soil testing report findings. The goal of the fertility program is to provide healthy and appealing turf, that allows for a true hitting surface on all tees.

Tee Fertility Application Program

TEES	March	NX Pro 29-0-10
TEES	April	NX Pro 29-0-10
TEES	April	Nitrozyme
TEES	April	EI 30-0-0
TEES	May	Nitrozyme
TEES	May	EI 30-0-0
TEES	June	Nitrozyme
TEES	June	EI 30-0-0
TEES	July	Nitrozyme
TEES	July	EI 30-0-0
TEES	August	Nitrozyme
TEES	September	NX Pro 29-0-10
TEES	October	NX Pro 29-0-10
TEES	October	NX Pro 29-0-10

### 3. Fairways- All Areas of play except greens, tees, rough and natural growth areas

- A. Mowing – All fairways shall be mowed two (with use of growth regulators) to three (without the use of growth regulators) times per week at a height between 0.424” – 0.650” April - October and mowed as needed, November - March and maintained at 0.650” – 0.825”.
- B. Aerification- All fairways shall be aerified a minimum of once annually when soil temperatures and growth rates promote rapid response for healing. Special attention will be provided to settled areas during all mechanical practices to promote level playing surfaces (drain lines, irrigation lines, etc).
- C. Fertilization-All fairways shall be fertilized with nitrogen, phosphorus, potash and other elements, based on soil testing report findings. The goal of the fertility program is to provide healthy and appealing turf that allows for a smooth and consistent playing surface.

#### Fairway/Rough Fertility Application Program

FAIRWAYS	April	EI 30-0-0
FAIRWAYS	April	Nitrozyme
FAIRWAYS	May	EI 30-0-0
FAIRWAYS	May	Nitrozyme
FAIRWAYS	June	EI 30-0-0
FAIRWAYS	June	Nitrozyme
FAIRWAYS	July	EI 30-0-0
FAIRWAYS	July	Nitrozyme
FAIRWAYS	August	EI 30-0-0
FAIRWAYS	August	Nitrozyme

- D. Vertical Mowing- all fairways shall be verticut, as necessary, to control mat or thatch buildup.
- E. Weed Control - The objective of the weed control program is to achieve weed-free playing surfaces. Specific and timely applications of pre- and/or post-emergent herbicides will be utilized based on weed pressure and seasonality.

- F. Fungicides - All fairways shall receive appropriate fungicide applications to prevent and/or control fungal disease activity.

Fairway/Rough Pesticide/Herbicide Application Program

FAIRWAYS	April	t-nex
FAIRWAYS	April	Up-Star Gold
FAIRWAYS	May	Secure
FAIRWAYS	May	T-Nex
FAIRWAYS	May	Dimension
FAIRWAYS	May	t-nex
FAIRWAYS	June	Tebuconazole
FAIRWAYS	June	t-nex
FAIRWAYS	July	Xzemplar
FAIRWAYS	July	CLT 825
FAIRWAYS	July	t-nex
FAIRWAYS	August	Propiconazole
FAIRWAYS	August	t-nex
FAIRWAYS	September	Tebuconazole
FAIRWAYS	September	t-nex
FAIRWAYS	September	Propiconazole
FAIRWAYS	October	Pegasus DFX

4. Roughs - All turfed areas of play except greens, tees, fairways and transitional natural growth areas.

- A. Mowing - All roughs shall be mowed weekly during the growing season. Rough height shall not exceed 2.75" without direct approval. Rough mowing shall not be suspended for any tournament without such approval. The goal is to have clear and defined difference in the height of cut between the rough and the fairway.
- B. Aerification- Roughs shall be aerified to promote healthy turf.
- C. Fertilization- Roughs shall be fertilized with nitrogen, phosphorus, potash and other elements, the goal of the fertility program is to provide healthy turf that provides definition to the course.
- D. Weed Control- The objective of the weed control program is to achieve weed-free playing surfaces. Specific and timely applications of pre- and/or post-emergent herbicides will be utilized based on anticipated weed pressure, activity of specific weed populations, and seasonality.

5. Planter - All areas planted with ornamental plants, not intended for golf play and having a definable border.

- A. Clean-up - All planters shall be maintained free of trash and debris
- B. Weed Control - The objective of the weed control program is to achieve weed-free areas. Specific and timely applications of pre- and/or post-emergent herbicides will be utilized based on weed pressure and seasonality.
- C. Trimming - The plant material (trees, shrubbery, and ground cover) in the planters shall be trimmed to protect from wind, insect damage and for appearance.
- D. Plantings - Change annual plant material plantings a minimum of once per each Operating Year.

6. Trees - All trees within the property lines of the golf course

- A. Pruning - All trees shall be properly pruned, if permitted by the NYC-Forestry Department, for safety, playability, shade-reduction, and for protection from the wind and pest damage.
- B. Mowing- Large area mowers shall not be used within one foot of the trunk of any tree.
- C. Removal and replacement- All dead trees shall be removed, once permitted by NYC-Forestry, as quickly as allowable.
- D. Downed Limbs – All downed limbs shall be removed quickly.

7. Irrigation- All equipment required to irrigate all areas of the property.

- A. As previously identified, American Golf utilizes industry leading technology and practices regarding irrigation water applications and target water use reductions (Example: Turf Scout TDR-350 Digital Water Meter).
- B. Repair or replace all heads, valves, controllers, wiring, and pipe as needed to maintain the proper operation of the golf course irrigation system (including greens, tees, fairways, planters, flower beds, etc.) on an on-going basis. Once completed and tested, irrigation repairs need to be made timely, backfilled, and covered within 48 hours.
- C. The golf course shall be irrigated as necessary to support proper growth of golf turf and associated landscaping.
- D. Drainage basins need to be routinely monitored and maintained free of debris that would slow drainage. Basins need to be maintained at a level and in a safe condition.

8. Clubhouse and Structures - All structures within the boundaries of the golf course

- A. Course Restrooms - All course restrooms shall be maintained daily in order to provide clean and sanitary facilities for the users and the employees of the course. Soap, towels, toilet paper, etc. shall be provided in adequate quantity at all times. Portable facilities shall be maintained similarly. All toilets shall be maintained in a like-new condition with appropriate fixtures. Future bathroom renovations will meet ADA ordinances/requirements and meet plumbing codes. Slip free flooring shall be maintained. Touch-up painting will be completed annually.
- B. All buildings and structures shall be maintained in good repair at all times. Surrounding areas shall be maintained free of weeds, brush, disorganized junk or broken- down equipment, trash piles, etc. Interior areas shall be clean and neatly organized, safe and sanitary for customers and employees. Painting, rodent and insect control, and landscaping shall be performed as necessary. “Housekeeping” duties shall be assigned to all maintenance crew members and shall be performed daily. Exterior areas shall be clean and maintained in good repair at all times.

9. Omitted

10. Cart Paths

Maintain all cart paths in a safe and clean condition and repair promptly as needed.

11. Edging

All sidewalks, patios and concrete paths must be kept edged. Edging around valve boxes, meter boxes, backflow preventers, etc. shall be done as needed to insure that there are no obstructions of play or maintenance from growth around these items.

## 12. Sand Bunkers

All bunkers shall be raked mechanically and/or hand raked a minimum of 6 times per week in season and as-required in the off-season. Bunkers will be edged as needed, monthly between April and September, to maintain the appropriate boundary and definition between the turf and the bunker. Bunker surrounds will be blown to put sand back into the bunker that may have been blown out or dragged out by maintenance equipment. Bunker sand depth will be inspected regularly. Sand depth will be measured to ensure proper sand depths for safety and playability. Replacement of sand material in order to maintain the proper sand depths will be with the same or a compatible material to the existing bunker material.

## 13. Landscape Areas

The various planting areas throughout the course shall be cultivated, weeded, and pruned on a regular basis with at least two replanting programs for annuals scheduled each Operating Year, depending on the length of the season.

## 14. Trash and Refuse / Perimeter Maintenance

A. Shall be collected daily and removed from within the property in a safe, sanitary and lawful manner as necessary to minimize or eliminate problems from refuse odors, insects, etc. Approved trash receptacles, including recyclable containers, shall be conveniently stationed at tee complexes and other appropriate areas and emptied daily.

B. Trash shall not be allowed to accumulate in abandoned fixtures such as water cooler holders.

C. Trash and refuse littered on and/or around the perimeter of the property will be removed in large sections daily with the goal of clearing the full perimeter on a weekly basis. American Golf will continue to safely remove discarded trash and debris, including but not limited to: bricks, siding, flooring, & siding, toilets, sinks, showers, plumbing materials, cabinets, roofing, and removed driveway and concrete.

## 15. Vertebrate pest control

Shall be routinely performed throughout the property on and on-going basis, in such a manner that vertebrate pest populations are controlled.

## 16. Soil Test

Analysis will be performed annually by an industry recognized and approved professional laboratory.

## 17. Storage Tanks

Testing and inspection of all storage tanks located on the property will be inspected routinely and per-code requirement(s) to maintain compliance with Local, New York State, and Federal guidelines. The testing performed by certified inspectors verifies that no leakage from such tank(s) has occurred or is occurring. Additional monitoring systems and waste petroleum product removal will meet code compliance requirements for functionality and removal.



## **EXHIBIT I**

### **Environmental Sustainability Plans**

1. **Golf Course Maintenance Standards are developed and defined by the following Sustainable and environmentally friendly focus and objectives:**
  - a. Integrated Pest Management
  - b. Environmental Sustainability
  - c. Water Conservation
  - d. Reduced Carbon Emissions
2. **Integrated Pest Management**
  - a. Reduce use of chemical applications. This management strategy focuses on reducing disease and insect pressure by minimizing the turf's susceptibility to pests. The knowledge of environmental factors that induce pathogen activity and the reduction of turf "stress" (i.e., increased mowing height, proper fertility programs, and the reduction of soil compaction and thatch through regular aerification programs) has and will continue to greatly reduce the use of chemical applications.
  - b. Disease Diagnostic Testing (performed weekly, biweekly, or as environmental factors dictate). American Golf Corporation (AGC) will utilize the Department of Plant Biology and Pathology at Rutgers University, or similar accredited laboratory, for disease identification. This allows our Superintendents to minimize chemical applications by definitively identifying the causal agent. This testing procedure has eliminated the use of inaccurate chemical applications and assists in the identification of the safest chemical control products.
  - c. All of the chemical applications made by American Golf will continue to address New York State, Federal, and EPA safety, usage, and product label requirements.
3. **Reduce Pesticide Use**

Reduce pesticide applications throughout the golf course by employing strategic agronomic practices:

  - a. Soil Fertility Testing through soil science laboratories – This information will be used to develop fertility programs and identify fertilizer applications that promote turf health by specifically addressing nutrient deficiencies in the soil while simultaneously eliminating excessive nutrient application.
  - b. Soil Moisture Management – AGC will continue to use digital soil moisture meters that monitor, define, and manage irrigation applications to turf. This practice will assist with overall reductions of irrigation applications while producing healthier turf.
  - c. Strategic Cultural Programing – AGC will insure that our cultural programs (turf/soil aerification, mowing heights, top-dressing, seed variety selection, etc.) are directed at the site-specific requirements of each golf course to enhance turf health and vigor.
  - d. Turf Disease Identification – While our disease tolerance thresholds are considered 'high', AGC will regularly utilize turf disease diagnostic laboratories to assist with correct turf disease identification (if present) and insure that pesticide applications are specifically targeted at active pathogens.

- e. Advanced Pesticide Programing – Include OSHA’s Hazard Communication Standard and Training Compliance, proper use of all personal protective equipment (PPE) identified on pesticide label, regular sprayer/application equipment calibration, rotation of pesticide chemistry to reduce application resistance, New York State Certified Pesticide Applicator/Technician employed on staff, and pesticide storage and handling standards that exceed industry safety standards.

#### 4. Environmental Sustainability

- a. Habitat Protection – AGC maintains ‘no maintenance zones’ throughout each of the New York City Parks golf courses it operates. This includes areas that do not receive any pesticide applications and/or the removal of native plant species and specimens.



- b. Reduced Maintenance Turf Areas – 17.46 Acres  
The “Reduced Maintenance Turf Areas” receive zero irrigation, limited fertility applications, and minimal to zero pesticide management applications. Within these areas; reduced maintenance turf-type integration selections includes Tall Fescue (*Festuca arundinacea*) and Rough-stalked meadow-grass (*Poa trivialis*). These turf variety selections support our shared objectives.
- c. Natural Water Storage and Protection Area – 5.96 Acres  
The protection of the natural water storage pond includes a no-maintenance buffer zone that surrounds the natural feature. This buffer zone reduces/eliminates the potential

runoff and leachates from fertility and pesticide applications into the water. The inclusion of indigenous aquatic plants will be examined and incorporated into the feature to protect the natural resource and aquatic habit.

d. Naturalized Habitat Establishment and Protection Areas – 84.86 Acres

The golf course contains many internal naturalized habitats to protect and encourage native wildlife community development while providing ecological biodiversity. These habitats consist of natural wooded areas with little to zero maintenance activity. American Golf will continue to work with the NYC-Forestry Department to enhance and expand these natural habitat areas with indigenous plantings.

e. New Habitat Establishment – AGC has installed and will continue to maintain numerous nesting boxes throughout the golf courses to encourage new and/or returning populations of birds and bats (which incidentally assist with mosquito control on the golf course).

f. Biodiversity Protection – AGC will continue to support the diversity of wildlife species in order to enhance and encourage indigenous population growth. By providing numerous habitat locations, types, and options, in conjunction with protecting native plant and tree species, AGC continues to observe increased wildlife populations.

## **5. Water Conservation**

a. Efficient water use is also an essential part of Integrated Pest Management (IPM) for promoting healthy turf-grass that is better able to tolerate environmental stress, resist pests, weeds and disease, and is required to minimize pesticide applications. In accordance with the City of New York - Department of Environmental Protection - Drought Management and Contingency Plan dated October 1, 2012, American Golf will utilize industry-leading turf-grass management strategies developed by the United States Golf Association – Green Section, the Golf Course Superintendents Association of America, and our internal agronomic teams that are designed to maximize both Irrigation Water Conservation and turf-grass quality.

b. Additionally, through daily and site-specific adjustments, American Golf Corporation will utilize the Computerized Central Control Systems in conjunction with the on-site Weather Station to apply the correct Evapotranspiration (ET) rates based on requirements for irrigation applications and water volume usage for the golf course. All primary irrigation applications will be made at night in order to limit evaporation and loss. Supplemental site-specific water applications will be made utilizing both in-field visual and technical (Spectrum Technologies – Field Scout TDR 350 – soil moisture meter) inspection techniques.

c. Daily Irrigation System and semi-annual Pump Station Preventative Maintenance Programs will be performed to eliminate water waste, miss-application, and ensure irrigation water usage accuracy.

d. Turf-grass cultural management strategies such as regular core-aerification to relieve soil compaction, vertical mowing/de-thatching of turf-grass, and proper turf-grass fertility management programs will also be utilized to provide the correct physical properties of the soil and turf-grass health to leverage rainfall and eliminate wasteful irrigation applications.

## **6. Reduced Carbon Emissions**

American Golf Corporation continually commits to reducing carbon emissions and lowering petroleum-based fuel usage. This section is broken down into two primary categories:

- a. Rental Cart Fleet Emissions and
- b. Golf Course Maintenance Equipment Emissions

7. **Rental Cart Fleet Emissions** As outlined in Exhibit D, AGC commits to capital investments in order to utilize an Electric Rental Cart Fleet and in turn, eliminate the largest carbon emissions contributor at the golf course.

- a. Electric Rental Cart Fleet Timing
  - i. Electrical Service and an Enclosed Storage facility will need to be provided PRIOR to acquiring an Electric Cart Rental Fleet.
- b. Electrical Service Upgrade
  - i. This capital investment will be for the procurement and installation of the required electrical service required to charge and store the 80 Cart, lithium battery-powered rental fleet. Each of the 80 carts will require (1) dedicated 110/120Volt, 15Amp breaker for the charging system. Additionally, each charger will draw 7.3Amps, have a capacity of 725 Watts, and require an input frequency of 50 or 60Hz. American Golf will work cooperatively with the electric provider, Consolidated Edison (ConEd), and the property owner, NYC-Parks, to install the required electrical service and ensure the installation is approved by the NYC Department of Buildings.
- c. Electric Rental Cart Fleet Storage Building
  - i. The conversion to an Electric Rental Cart Fleet requires an enclosed storage and charging facility. American Golf has a history of success with, and recommends, the use and installation of a prefabricated, engineer design stamped, steel building. Prefabricated steel buildings have a useful life expectancy of 50 to 100-years (Sustainable Construction) while providing the fastest to completion storage option. American Golf will work with Local, Borough, City, and State review and approval committees/entities to insure the Electric Cart Fleet Storage Facility is accepted and achieves final NYC Department of Buildings approval(s).
- d. Potential Extended Sustainability Partnership. In addition to the Reduced Carbon Emissions, American Golf views the Electric Cart Storage Facility as a prime location for Photovoltaic Panel/Solar Panel utilization. Local, State, and/or Federal support for this project, if available, will provide American Golf the ability to redirect some/all of the proposed Capital Investment into additional NYC-Parks approved projects over the life of the License.