

**LICENSE AGREEMENT**

**BETWEEN**

**WOLLMAN PARK PARTNERS II LLC**

**AND**

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

*for*

**THE OPERATION AND MAINTENANCE OF**

**WOLLMAN RINK  
CENTRAL PARK, MANHATTAN**

**M10 (5)-A-IS**

**DATED: , 2025**

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**THIS LICENSE AGREEMENT** (“License” or “License Agreement”) made this \_\_\_\_ day of \_\_\_\_\_ 2025, between the City of New York (the “City”) acting by and through its Department of Parks & Recreation (“Parks”), whose address is The Arsenal, 830 Fifth Avenue, New York, New York 10065 and Wollman Park Partners II LLC (“Licensee”), a Delaware limited liability company, with an address of 30 Hudson Yards 72<sup>nd</sup> Floor New York, NY 10001.

**WITNESSETH:**

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

**WHEREAS**, Wollman Rink and surrounding area is located in Central Park in the Borough of Manhattan, which is property under the jurisdiction and control of Parks;

**WHEREAS**, Parks seeks to provide for the operation and maintenance of Wollman Rink, for the accommodation, enjoyment, and convenience of the public;

**WHEREAS**, Parks has complied with the requirements of the Franchise and Concession Review Committee for the selection of concessionaires, including the issuance of a Request for Proposals for the operation and maintenance of the Licensed Premises (as defined in Section 2.1(l));

**WHEREAS**, Licensee expects to invest over \$20 million in Capital Improvements (as defined in Section 2.1(b)), including a guaranteed \$10,892,102 at the Licensed Premises; and

**WHEREAS**, Licensee desires to operate and maintain a concession at the Licensed Premises, in accordance with the terms set forth herein.

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

**1. GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to operate and maintain, or cause to be operated and maintained, at the Licensed Premises a seasonal ice rink, which includes a pro shop, food service facility in the clubhouse, and events and programming space (the “Concession”), in accordance with the provisions herein and to the reasonable satisfaction of the Commissioner of Parks (“Commissioner”). Licensee shall provide public programming, as approved by Parks, during the Ice Rink Season (defined in Section 2.1(r) below). The use of the ice rink for hockey, league or any other group sport play will be subject to

Parks' prior, written approval. During the Non-Ice Rink Season (defined in Section 2.1(s) below) Wollman Rink shall be operated seven (7) days a week, for community ticketed events, free community events, Licensee Special Events (as hereinafter defined) and community activation, subject to Parks' written approval. In addition, subject to Parks' prior written approval, Licensee may operate Mobile Food Units (as hereinafter defined) at the Licensed Premises and place tables and chairs on the upper-level plaza (the "Overlook") of the Licensed Premises for use within the scope of this License (e.g., secondary food service etc.). All plans, schedules, services, events, menu items, merchandise, rates, fees and prices, and hours of operation are subject to Parks' prior written approval. Except as provided herein, Licensee will be responsible for all costs associated with the operation and maintenance of the Licensed Premises.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by federal, New York State ("State") and City laws, rules, regulations and orders which are or may become necessary to operate and maintain the Licensed Premises in accordance with the terms of this License, and to perform the Capital Improvements required by this License Agreement. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein, subject to all applicable notice and cure periods set forth herein. Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein as set forth in this Agreement, as more particularly set forth in Section 3.3 hereof.

**1.3** It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by Parks, but that during the Interim Period and Term (each as defined in Section 3.1), 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 in all material respects (subject to applicable notice and cure periods) and so long as this License is not terminated by Commissioner as permitted pursuant to the provisions of this Agreement.

**1.4** Licensee shall provide, at all times, full and free access to the Licensed Premises to the Commissioner or the Commissioner's representatives and to other City, State and federal officials having jurisdiction, for inspection purposes and to ensure Parks' satisfaction with Licensee's compliance with the terms of this License Agreement. Parks shall have the right to have representatives of Parks or of the City or of the State or Federal governments present to observe the operations at the Licensed Premises. Parks, to the extent possible, agrees to use reasonable efforts to minimize interference with Licensee's business in the Licensed Premises during any such entry and shall repair any damage to the Licensed Premises caused by such entry.

**1.5 (a)** Any business or trade name which Licensee proposes to use in connection with or in identifying the Licensed Premises or any other part of the Licensed Premises shall be subject to the Commissioner's prior written approval. Commissioner hereby approves, and Licensee shall use the name "Wollman Rink" in connection with its operations under this License to identify the location of the Licensed Premises and to describe the Licensed Premises. The right to use the "Wollman Rink" name may be revoked by the City at any time at the City's sole discretion.

**(b)** The City is the owner of the designations and trademarks "Wollman Rink," "Central Park" and variations thereof. All intellectual property rights in the Licensed Premises, "Wollman Rink," "Central Park," and any other names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images and other intellectual property that

identify Parks, including Parks' signage and the distinctive Parks leaf logo, together with the goodwill that is symbolized by such names, trademarks, service marks, designations and identifications are the property of the City ("City IP"). Licensee may use the name "Wollman Rink" and "Central Park" in connection with its operations under this License Agreement to identify the location of the Licensed Premises and in connection with merchandising, in accordance with the terms in this License and the Trademark License Agreement, incorporated by reference and attached hereto as **Exhibit K**, and any other uses of "Wollman Rink" and "Central Park" or any other City IP may be only used pursuant to a separate written agreement between the City and Licensee. Parks may require that the City own the portion of any new name selected by Licensee for use at the Licensed Premises that indicates Parks' property or uses a pre-existing facility name or otherwise contains any City IP. The City will not own any portion of any new name that consists of the name, portrait, or signature of a living or deceased individual or identifier that is not otherwise associated with Parks' property.

(c) Licensee may not use any City IP as a part of their trade, business, company, LLC or D/B/A name, nor may they incorporate under the laws of any State using any City IP as a part of their trade, business, company, LLC or D/B/A name. To the extent that Licensee has already so incorporated, they will be required to amend their registration and remove from their trade, business, company, LLC or D/B/A name that portion that contains any City IP. Notwithstanding anything to the contrary contained herein, the City agrees that Licensee's use of the name "Wollman Park Partners II LLC" shall be permitted and such name shall not be considered City IP.

(d) Parks reserves the right to approve of any name(s) selected by the Licensee for the Licensed Premises. Parks may issue a separate Request for Proposals for naming rights of the Concession or portions thereof. 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. Licensee may also propose naming rights of the Concession or portions thereof, and Parks shall have approval rights over the name. Licensee shall be required to use the name that Parks approves. Parks is entitled to 50% of fees received from naming rights whether pursuant to the Request for Proposals set forth herein or otherwise proposed by Licensee, and Licensee is entitled to the other 50% of fees received from naming rights. However, Parks is not obligated to approve name(s) proposed by Licensee and, further, Parks' disapproval of any name(s) proposed by Licensee shall not alter the obligations of Licensee set forth in this License Agreement.

## 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, which may include temporary structures, as approved by Parks. Capital Improvements also include all Alterations and Additional Fixed Equipment, as that term is defined in

Section 2.1(j)(i) below, which the Licensee installs or causes to be installed on the Licensed Premises. Capital Improvements shall not include routine maintenance and repair activities required to be performed in the normal course of management and operation of the Licensed Premises. Capital Improvements shall include those activities described in Section 6.1 and the Schedule of Capital Improvements attached as **Exhibit D**.

(c) “Capital Improvement Costs” shall mean all hard and soft costs incurred by or on behalf of Licensee in connection with the performance of Capital Improvements, and shall include architectural and design fees necessary to implement such Capital Improvements, but not include the Design Review Fee referenced in Section 6.2(a).

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

(e) “Commissioner” shall mean the Commissioner of the City of New York, Department of Parks & Recreation or her designee.

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

(g) “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.

(h) “Expendable Equipment” or “Personal Equipment” shall mean all equipment, other than 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.

(j) “Fixed Equipment” shall mean any property affixed in any way to the Licensed Premises existing at the time Notice to Proceed is given, whose removal would damage the Licensed Premises.

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

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

(k) (i) “Gross Receipts” shall include, without limitation, all funds or receipts of any kind received by Licensee from or in connection with its operations at the Licensed Premises, without

deduction or set-off of any kind, from the sale or provision of merchandise, food and beverages, or services of any kind, provided that Gross Receipts shall exclude (x) 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, (y) the amounts received by Licensee in connection with the sale of inventory and equipment (other than Fixed and Additional Fixed Equipment) outside the ordinary course of Licensee's business, and (z) refunds as specified in Sections 4.5(e) and (f). Gross Receipts shall include any funds received for orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises, and shall include all receipts of Licensee or orders taken at the Licensed Premises by Licensee for services to be rendered by Licensee in the future either at or outside of the Licensed Premises. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises. All receipts from rentals related to the Licensed Premises shall be included in Gross Receipts regardless of where the rental originates. All revenue generated through Licensee's Special Events (hereinafter defined) 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.

(iii) Gross Receipts shall also include all sales made by any other operator(s) using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in Article 14 herein, but excluding amounts charged by any party which reserves the Licensed Premises or a portion of the Licensed Premises for a Parks' Special Event or Licensee's Special Event and which amounts are retained by such party. In the event that the use of vending machines on the Licensed Premises for the sale of food, drink, or other items is approved by Parks, only Licensee's net receipts from such vending machines shall be included in Gross Receipts. Further, Gross Receipts shall 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. In addition, Gross Receipts shall include the net (but only the net) income received by Licensee in connection with services provided by skating instructors. For clarity, if Licensee charges a student fifty dollars (\$50.00) for a lesson and subsequently pays the skating instructor thirty dollars (\$30.00), the amount to be reported as Gross Receipts is the net amount of twenty dollars (\$20.00).

(iv) Gross Receipts shall include sales made for cash or credit (credit sales shall be included in Gross Receipts as of the date of the sale), regardless of whether the sales are paid or uncollected, as specified in Sections 4.5(e) and (f), it being the distinct intention and agreement of the parties that all sums due to be received by Licensee from all sources from the operation of this License shall be included in Gross Receipts, provided however that any gratuities transmitted by Licensee directly or indirectly to employees and staff shall not be included within Gross Receipts. For purposes of this subsection (iv):

(1) 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). Upon Parks' request 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.

(2) With respect to catered events, a "Gratuity" shall be an amount no greater than 20% of the catering food and beverage sales for the event, provided that such Gratuity is a charge that: (i) is separately stated on the bill or invoice given to Licensee's customer, (ii) is specifically designated as a gratuity, or purports to be a gratuity, and (iii) is paid over by Licensee in total to its employees (other than management) who actually provide services at the event, and who are primarily engaged in the serving of food or beverages to guests, patrons or customers, including, but not limited to, wait staff, bartenders, captains, bussing personnel, and similar staff. Upon Parks' request 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.

(3) Notwithstanding anything set forth in this Section 2.1(k), Licensee shall comply with all applicable laws, rules, and regulations, including but not limited to City, State, and federal labor laws.

(l) "Licensed Premises" or "Premises" or "Wollman Rink" shall mean the areas designated on **Exhibit A**, attached hereto, and shall include the structures, as well as any improvements, constructed thereon, including, without limitation, all buildings or structures (including clubhouse, the Overlook, and ice rink), walkways, curbs, trees (attached hereto in **Exhibit A-1**) and landscaping, and drainage ponds.

(m) "Licensee's Special Events" shall mean any catered or private function (e.g. reservation of all or part of the Licensed Premises through Licensee by third parties, or any ticketed (including, but not limited to, a payment of a fee at the door)) at the Licensed Premises for a Parks-appropriate purpose.

(n) "Mobile Food Unit" shall be defined as a self-contained service operation, located in a vehicle or a movable stand, self-or otherwise propelled, used to store, prepare, display or serve and sell food intended for individual portion service or group catering. Non-processing carts, processing carts, processing mobile trucks, and non-processing mobile trucks shall all be considered Mobile Food Units, in accordance with the guidelines attached in **Exhibits J-1 and J-2**.

(o) "Substantial Completion" or "Substantially Complete" shall mean, with respect to an improvement at the Licensed Premises, that the Commissioner certifies that an improvement to the Licensed Premises has been completed substantially in accordance with the plans, specifications, schematics, working and mechanical drawings approved by Parks, notwithstanding that minor work remains to be completed in accordance with work schedules provided for herein and/or set forth as incomplete or outstanding items as provided for in Section 6.13 herein, and that the improvement

may be utilized by the public and if applicable, a temporary certificate of occupancy has been obtained by Licensee.

(p) “Unavoidable Delay(s)” shall mean delays attributable to any and all causes beyond Licensee’s reasonable control and without Licensee’s fault or negligence as reasonably determined by the Commissioner, including without limitation, delays resulting from actions of Parks or the City (provided such are not themselves the result of actions by Licensee), the delay of any permitting entity to grant any permit (provided that complete applications for such permitting are made and submitted by the party applying for such permit to the permitting entity in an expeditious manner and such party has made diligent and good faith efforts to comply with all conditions of the permitting entity to grant such permits), orders of any court of competent jurisdiction, acts of God (including inordinately severe weather conditions), war, enemies or hostile government actions, future pandemic-related shutdowns as declared by the City, State or federal government, revolutions, insurrection, riots, civil commotion, strikes, mitigation of hazardous materials, fire or other casualty, for which Licensee has given the Commissioner notice in writing within thirty (30) days after Licensee knows of any such delay and of the effect of such delay on its ability to perform any of its obligations under this License.

(q) “Year” or “Operating Year” shall both refer to the period between the Commencement Date (or its anniversary in any year other than Year 1) and the day before the anniversary of such date in the immediately following calendar year, except that the final Year of the Term (as hereinafter defined) of the License Agreement shall end on the Expiration Date (as hereinafter defined).

(r) “Ice Rink Season” shall mean the period each Year during which the Licensee shall open Wollman Rink to the public for ice skating, beginning no later than November 15 each calendar year and ending no earlier than March 15 the following calendar year, in each case, weather permitting, or such other dates as shall be reasonably approved by Parks.

(s) “Non-Ice Rink Season” shall mean the period between the end of any Ice Rink Season and the beginning of the next subsequent Ice Rink Season. The exact dates are subject to Parks’ approval

(t) “Transition Period” shall mean the period between the Ice Rink Season and Non-Ice Rink Season to allow for seasonal changeover during which time the Licensed Premises or portions thereof may be closed to the public. The exact dates are subject to Parks’ approval.

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

**3.1** This License shall become effective upon Parks giving written Notice to Proceed to Licensee following registration with the Comptroller but not sooner than May 1, 2027 (“Notice to Proceed”) The Concession shall commence (“Commencement Date”) on the first to occur of (i) the first day that the Licensee opens for business operations at the Licensed Premises, or (ii) November 1, 2027. The period between the Notice to Proceed and the Commencement Date shall be referred to as the “Interim Period.” The Concession shall terminate twenty (20) years from the Commencement Date (“Termination Date” or “Expiration Date”), subject to earlier termination pursuant to the terms of this License Agreement. The period between the Commencement Date and Termination Date shall be referred to as the “License Term” or the “Term.” Licensee may not commence business operations at

the Licensed Premises under this License prior to the Commencement Date, but may perform construction and other pre-business operation work during the Interim Period.

**3.2** Notwithstanding any language contained herein, this License is terminable at will by the Commissioner at any time. Such termination shall be effective after twenty-five (25) days' written notice is sent to Licensee (the "Termination Effective Date"). In the event of such termination, Licensee shall not be obligated to make payments set forth in Article 4 beyond the Termination Effective Date, except for balances outstanding and unpaid, as of the Termination Effective Date. Prior to exercising the termination right set forth in this Section 3.2, Parks and Licensee shall in good faith attempt to negotiate a mutually acceptable solution. If the Commissioner terminates this License pursuant to this Section 3.2, Licensee shall have the right to appeal the termination, in writing, to the Commissioner within ten (10) days of the Termination Effective Date for a final administrative decision (in addition to all rights that Licensee has in law and in equity with respect thereto). The Commissioner, the City, its employees and agents shall not be liable for damages to Licensee in the event that this License is terminated by Commissioner as provided for herein.

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

(a) Should Licensee breach or fail to comply in any material respect with any of the provisions of this License or fail to comply in any respect with any federal, State or local law, rule, regulation or order affecting the 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 thereof, subject to Unavoidable Delays, then this License shall immediately terminate upon notice from the Commissioner. In the event such breach or failure to comply cannot be remedied within such thirty (30) day period due to Unavoidable Delays, the cure period shall be extended for such period as may be reasonably necessary in the Commissioner's judgment to cure such breach. If said breach or failure to comply is corrected, and a repeated violation of the same provision, law, rule, regulation or order follows thereafter, Commissioner, by notice in writing, may revoke and terminate this License, such revocation and termination to be immediately effective on the mailing thereof.

(b) The following shall constitute events of default for which this License may be terminated on ten (10) days' notice: the appointment of any receiver of Licensee's assets; the making of a general assignment by Licensee 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 the City.

**3.5** In the event the Commissioner terminates this License pursuant to Section 3.3 above, any property of the Licensee on the Licensed Premises may be held and used by the Commissioner in order to operate the License during the balance of the calendar year and may be held and used thereafter until all amounts owed by Licensee hereunder, at the time of termination of this License, are paid in full. Notwithstanding the foregoing, Commissioner may not operate the License utilizing any of Licensee's names, trademarks, service marks, copyrights, patents, trade names, service names, logos, domain names, identifiers, images, and other intellectual property that identify Licensee (collectively, "Licensee IP"), subject to the conditions in the Trademark License Agreement in **Exhibit K**. Commissioner shall ensure all Licensee IP is removed from the Licensed Premises prior to operating the Licensed Premises.

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

**3.7** Licensee shall, upon the expiration or sooner termination of this License, remove all personal possessions from the Licensed Premises, unless such property is held by the Commissioner pursuant to Section 3.5, and leave the Licensed Premises in as good or better condition as at the Commencement Date, reasonable wear and tear, casualty and damage for which Licensee is not responsible under this License excepted. Licensee acknowledges that any personal property remaining on the Licensed Premises within fifteen (15) calendar days following the expiration or sooner termination of this License is intended by Licensee to be abandoned, unless such property is held by the Commissioner pursuant to Section 3.5. Licensee shall remain liable to the City for any damages, including lost revenues and the cost of removal or disposal of property, should Licensee fail to remove all possessions from the Licensed Premises (other than possessions which are permitted or required to remain on the Licensed Premises pursuant to the terms and conditions of this License) during the time prescribed in this Agreement. Pursuant to Section 4.4 herein, City may use the Security Deposit, if applicable, to recover such damages in part or in whole. In the event that Licensee removes personal property from the Licensed Premises beyond the expiration or sooner termination of the License as contemplated by this Section, then Licensee's obligations with respect to insurance and indemnification under this License shall continue until such property is removed.

**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, if applicable.

(b) Licensee shall pay to Parks all fees payable under this License Agreement by Licensee to Parks to the Termination Date including total amounts that have been deferred and Licensee shall

remain liable for fees thereafter falling due on the respective dates when such fees would have been payable through the end of the corresponding Operating Year but for the termination of this License Agreement, provided the Licensed Premises are not re-licensed or operated at an equal or higher license fee (if at a lower fee, then only the net difference shall be owed by Licensee).

(c) Parks may complete all repair, maintenance and construction work required to be performed by Licensee hereunder and may repair and alter any portion(s) of the Licensed Premises in such manner as Parks may reasonably 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 Interim Period or 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 Interim Period or 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 in an amount equal to the **greater** of the (1) Minimum Annual Fee **OR** (2) 21.2% of the Licensee's annual Gross Receipts for such Operating Year (excluding Gross Receipts for food and beverage sales) **plus** 1% of annual Gross Receipts from food and beverage sales up to one million dollars (\$1,000,000.00) **plus** 5% of annual Gross Receipts from food and beverage sales over one million dollars (\$1,000,000.00) ("Percentage Fee(s)") (Minimum Annual Fee and Percentage Fee(s) individually and together, as applicable, the "License Fee(s)"), as set forth in the table below:

OPERATING YEAR	MINIMUM ANNUAL FEE	VS.	PERCENTAGE FEE
1	\$3,400,000.00		(a) 21.2% of Gross Receipts (excluding Gross Receipts for food and beverage sales) <b>plus</b> (b) 1%

		of Gross Receipts from food and beverage sales up to \$1,000,000.00 <b>plus</b> (c) 5% of Gross Receipts from food and beverage sales over \$1,000,000.00
2	\$3,502,000.00	Same as above
3	\$3,607,060.00	Same as above
4	\$3,715,272.00	Same as above
5	\$3,826,730.00	Same as above
6	\$3,941,532.00	Same as above
7	\$4,059,778.00	Same as above
8	\$4,181,571.00	Same as above
9	\$4,307,018.00	Same as above
10	\$4,436,229.00	Same as above
11	\$4,569,316.00	Same as above
12	\$4,706,395.00	Same as above
13	\$4,847,587.00	Same as above
14	\$4,993,015.00	Same as above
15	\$5,142,805.00	Same as above
16	\$5,297,089.00	Same as above
17	\$5,456,002.00	Same as above
18	\$5,619,682.00	Same as above
19	\$5,788,272.00	Same as above
20	\$5,961,921.00	Same as above

**4.2 (a)** Notwithstanding Section 4.1, for Operating Years 1, 2, and 3, Licensee shall make License Fee payments in accordance with the Payment Schedule in **Exhibit L**. From Operating Year 4, the Minimum Annual Fee payable during each Operating Year shall be paid to the City in twelve (12) equal monthly installments on or before the first (1st) day of each month of each Operating Year. Each License Fee 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 from Operating Year 4 the Percentage Fee for a particular Operating Year becomes applicable, Licensee shall thereafter for the remainder of such Operating Year pay the Percentage Fee on the thirtieth (30th) day of each month for the prior month's Gross Receipts. During the Term, however, if Percentage Fees become applicable, the aggregate payment of License Fee(s) to the City for a particular Operating Year shall not exceed the Percentage Fee for such Operating Year. Parks shall provide Licensee with a detailed Schedule of Minimum Annual fee payment, which shall include the schedule in **Exhibit L**, upon its giving Notice to Proceed.

**(b)** Licensee shall make deposits to a Capital Reserve Fund (as defined in Section 6.2(c)) in accordance with Section 6.2(c) herein.

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten days. In the event that payment of any License 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 reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of \$1,000.00, due on the 1<sup>st</sup> day of the month must be received no later than the tenth (10<sup>th</sup>) day of the month. If no payment is received, a two percent (2%) late charge in the amount of \$20.00 will be assessed on the eleventh (11<sup>th</sup>) day of the month. If such late fee(s) and all arrearages (including prior two percent (2%) charges) are not paid in full by the tenth (10<sup>th</sup>) day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly License fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder, subject to the provisions of Section 3.3(a) hereof. No failure to bill Licensee for late charges shall constitute a waiver of such late charges or the right to enforce the provisions of this Article, provided that any late charges or other fees not billed to Licensee within two (2) years following the expiration or sooner termination of this Agreement shall be deemed waived. If any local, State or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

**4.4 (a)** Upon Licensee's execution of this License, Licensee shall provide, in a format approved by Parks, a security deposit in an amount equaling one million four hundred ninety thousand four hundred eighty dollars and twenty-five cents (\$1,490,480.25). The City shall not issue the Notice to Proceed without receipt of a security deposit in the amount set forth above (the "Security Deposit") in the form of a certified check payable to the City of New York, or satisfactory information of funds deposited with the Comptroller in an interest-bearing account as provided in subsection (b) below, or letter of credit, or a combination of all three. The Security Deposit shall be held by the City, without liability for the City to pay interest thereon (except as provided in Section 4.4(b) below), 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 Interim Period and the Term of this License, subject to the provisions of Section 4.4(b) and (c) below.

**(b)** The City shall not be obligated to place or keep cash deposited hereunder in interest bearing bank accounts. The Security Deposit may be held in an interest-bearing account and Licensee shall cooperate with the City as may be required in establishing the same. The Licensee shall collect or receive annually any interest or income earned on such negotiable interest-bearing instrument, less any part thereof or amount which the City is or may hereafter be entitled or authorized by law to retain or to charge in connection therewith, whether as or in lieu of administrative expense or custodial charge, or otherwise. Upon notice from Licensee with confirmation from the Comptroller that Licensee's interest-bearing account has been created and the Security Deposit has been deposited into the account, Parks will return to Licensee that portion of the certified check referenced in Section 4.4(a) provided to Parks for the Security Deposit.

**(c)** If any fees or other charges or sums payable by Licensee to the City shall be overdue and unpaid (beyond the ten day period set forth in Section 4.3 hereof) 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 (beyond the thirty-day period set forth in Section 3.3(a) hereof, as may be extended pursuant to the provisions of Section 3.3(a)), including but not limited to the completion of the minimum capital improvement requirement as set forth in Section 6.1, then Parks may, at its option, and without prejudice to any other remedy which the City may have on account thereof, after ten (10) days' notice, appropriate and apply the Security Deposit or as much thereof as may be necessary to compensate the City toward the payment of License fees, late charges, liquidated damages or other sums due from the Licensee or towards any loss, damage or expense sustained by the City resulting from such default on the part of Licensee. In such event, the Licensee shall restore the Security Deposit to the original sum deposited within ten (10) business days after written demand therefor. In the event Licensee shall fully and faithfully comply with all of the terms, covenants and conditions of this License and pay all License fees and other charges and sums payable by Licensee to the City, the Security Deposit shall be returned to Licensee upon the surrender of the Licensed Premises by the Licensee in compliance with the provisions of this License (including a surrender following a termination of this License pursuant to the provisions of Section 3.2 of this License). The City may make application against the Security Deposit only to the extent necessary to cure Licensee's default and mitigate any damage to Licensor by such default (beyond the expiration of all applicable notice and cure periods); the balance of the Security Deposit shall be refunded to Licensee.

**4.5 (a)** On or before the thirtieth (30<sup>th</sup>) day following the end of each month of each Operating Year, Licensee shall submit to Parks, in a form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated by Licensee under this License Agreement and by all sublicensees under properly authorized sublicense agreements during the preceding month. The statement shall include the following phrase: "I hereby certify above statement to be true and correct, to the best of my knowledge." Each such report shall report the Gross Receipts generated at the Licensed Premises including, without limitation, following categories:

Admissions	Gross Receipts from rates and charges for use of the Licensed Premises, including the actual numbers of patrons admitted for ice skating and spectator fee
Gift Cards	Gross Receipts from the sale of gift cards redeemable at the Licensed Premises (which shall be appropriately accounted for in order to avoid any duplicate revenue recognition)
Ice skate rental	Gross Receipts from rates and charges for use of ice skates provided by Licensee
Ice rink rental	Gross Receipts from rates and charges for use of ice rink for hockey, figure skating and other rentals
Ice Skating instruction	Gross Receipts from skating instruction, with separate reporting of any net deductions for ice skating instruction;
Ice skate sharpening/repairs	Gross Receipts from skate sharpening/repairs
Special Events	Gross Receipts from Licensee's Special Events at the Licensed Premises;



Pro Shop	Gross Receipts from the operation of a pro shop at the Licensed Premises;
Food and Beverage	Gross Receipts from the sale of any and all food and beverage at the Licensed Premises;
Locker Rentals	Gross Receipts from locker rentals at the Licensed Premises;
Vending Machine	Net Receipts from vending machines at the Licensed Premises;
Miscellaneous	Any other sources of income realized from the Licensee's operations at the Licensed Premises, including sublicense fees.

**(b)** In addition to the categories above, Licensee shall include in the monthly statements of Gross Receipts, qualitative and quantitative information regarding free and/or low-cost programming as well as any other charitable benefits or services related to the food service operation or general operations at the Licensed Premises. Parks reserves the right to request additional types of information to be included in the Gross Receipts reports.

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

**(d)** 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, may be deducted from Gross Receipts or from the compensation due under this License.

**(e)** Should Licensee refund a payment made to Licensee by a patron seeking to reserve all or a portion of the Licensed Premises in a month subsequent to the month in which Licensee received said payment, or if any payment made on credit shall become uncollectible, or if a patron fails to make any payment required to be made under a contract providing for installment payments, then upon proof submitted to Parks of Licensee's efforts to collect such uncollectible debt, Licensee may deduct said refund or uncollectible debt, as applicable, from Gross Receipts reported for the month in which the payment is refunded or such debt becomes uncollectible, as applicable. Licensee shall report Gross Receipts as provided in Section 4.5(a) above and shall separately set forth, in the same Gross Receipts report, refunds made by Licensee and any uncollectible debt.

**(f)** In the event that after the expiration of this License Agreement Licensee refunds a deposit to a patron, then Licensee may deduct an amount equal to the applicable percentage of Gross Receipts of said refund from any such final payment of License fees due to Parks (or if the final payment to Parks shall have already been made, Parks shall refund the same to Licensee within thirty (30) days of request) if in fact said deposit was included in the calculation of Gross Receipts, and, provided that such deposit had not been transferred to a new licensee. The provisions set forth herein shall survive the expiration or sooner termination of this License.

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

preceding sentence shall be in a format reasonably approved by Parks. Licensee may not deduct fees paid for credit card transactions from monthly statements of Gross Receipts

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

**(b)** Licensee shall use and shall cause any sublicensee to 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 Interim Period and the Term of this License, and at any time thereafter, in order to assure that the procedures are adequate to reveal the true, correct and entire business conducted by the Licensee. Licensee shall maintain each year's records, books of account and data for a minimum of ten (10) years after the date of creation of the record.

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

any missing monthly records, provided that the prior year's month is the same month for which records are missing. For example, if April 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.

(d) All records kept and maintained pursuant to this Section 4.7 may be maintained in an electronic format.

**4.8** In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached, in any material respect, any of the provisions contained in Article 4, 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.

**4.9** License fees shall be made, at Licensee's election, via ACH transfer to an account designated by the City or 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  
Concessions Unit  
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 and any sublicensee to verify compliance with this License Agreement and/or Gross Receipts as reported by the Licensee. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 50 miles or more from the City, the records must be brought to the City for examination and audit or Licensee must pay the food, board and travel costs incidental to two (2) auditors conducting such examination or audit at said location. Audits by Parks will be performed in a manner that will not unreasonably interrupt the operation of the business at the Licensed Premises.

**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 following the giving of notice and expiration of applicable cure periods pursuant to Section 3.3(a) hereof.

**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 Interim Period and the Term of this License, a minimum of Ten Million Eight Hundred Ninety-Two Thousand One Hundred Two Dollars (\$10,892,102.00) for Capital Improvements. The architectural and design fees and other soft costs necessary to implement the Capital Improvements and all other Capital Improvement Costs shall be included in the foregoing amount, and may be incurred prior to the Notice to Proceed, but not the Design Review Fee referenced in Section 6.2 herein. Such Capital Improvements shall include, but are not limited to, the items listed in the Schedule of Capital Improvements attached hereto as **Exhibit D**. Licensee shall perform and complete all such Capital Improvements in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, in the Commissioner's sole discretion. All Additional Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this Article 6 shall become, at Parks' option, the property of Parks upon the Expiration Date or sooner termination of this Agreement, it being expressly agreed and understood that Licensee shall not remove or replace the Additional Fixed Equipment, Expendable Equipment, and/or Capital Improvements, except in accordance with this Agreement, nor permit the same to be subject to a lien at any time during the Interim Period and the Term.

**(b)** Licensee must provide Americans with Disabilities Act ("ADA") accessibility as required by prevailing code throughout the Licensed Premises, including, but not limited to, providing ADA accessible counters, tables and chairs (if applicable), installing ramps, as needed, providing adaptable ice sleds, and providing ADA signage. Licensee shall comply with all City, State and Federal requirements to provide safe and accessible recreational opportunities for everyone, including persons with disabilities. This accessibility shall be clearly indicated by signs and included in all advertising by Licensee as appropriate. Licensee shall include in its advertising and promotion program, provided for in Article 10 herein, a plan which describes how it intends to make the programs, services and activities provided at the Licensed Premises readily accessible and useable by individuals with disabilities. Such plan shall provide for compliance with the applicable provisions of the ADA and any other similarly applicable legislation. Licensee is encouraged to exceed accessibility requirements whenever possible and not simply provide the minimum level required. Licensee acknowledges that these are the minimum ADA requirements and Licensee shall make reasonable efforts to exceed accessibility requirements whenever possible.

**6.2 (a)** Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of One Hundred Eight Thousand Nine Hundred Twenty-One Dollars and Two Cents (\$108,921.02) representing one percent of the cost of the minimum guaranteed Capital Improvements described in Section 6.1 above, as a fee for design review by Parks personnel (the "Design Review Fee").

(b) To guarantee prompt payment of moneys due to a contractor or her or his subcontractors and to all persons furnishing labor and materials to the contractor or her or his subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such work. Such bond or other undertaking shall be in a form acceptable to Parks. For purposes of this provision, a “Capital Improvement Project” shall mean a set of Capital Improvements that are reasonably related in time and purpose as determined by Parks in its sole discretion. In the event that Licensee does not post or cause to be posted a payment bond as required hereunder, or provide another form of undertaking as permitted herein, the following undertaking will satisfy the requirements of this Section 6.2(b): Licensee guarantees payment in accordance with the provisions of **Exhibit C**, attached hereto and made a part hereof.

(c) Licensee shall maintain a Capital Reserve Fund. “Capital Reserve Fund” shall mean, one hundred fifty thousand dollars (\$150,000.00) or a greater amount as may be increased by Licensee in its sole discretion, which Licensee shall set aside in an account solely dedicated to providing for work at the Licensed Premises, in the event that any repairs are needed, for capital replacements, capital improvements, equipment, other work necessary for the operation of the Concession, and/or restoration costs as approved by Parks (“Eligible Work”), it being agreed and understood that Licensee may use the funds set forth in the Capital Reserve Fund with approval from Parks for the purposes set forth in this Agreement with no obligation to restore the same other than as expressly set forth in this Section (c). The first installment to the Capital Reserve Fund shall be deposited by no later than the first day of Operating Year 3, unless otherwise approved by Parks, in an account with an institutional lender (“Depository”) selected by Licensee and reasonably approved by Parks pursuant to an agreement with Depository in a commercially reasonable form. Thereafter, commencing in Operating Year 4 and continuing to the end of the Term, within thirty (30) days after the end of each Operating Year, Licensee shall deposit into the Capital Reserve Fund an amount equal to \$150,000.00 or greater if determined by Licensee in its sole discretion. 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; however, if there are any funds in the Capital Reserve Fund upon expiration or earlier termination of the License other than for cause, such funds shall be disbursed to Licensee. Licensee shall not be entitled to use the Capital Reserve Fund without obtaining Parks prior written approval. At any time during the Term, Parks may request plans from Licensee for Eligible Work identified by Parks that Licensee shall be required to provide, and further, upon Parks’ approval, Licensee shall use the Capital Reserve Fund toward such Eligible Work. Licensee shall provide Parks with the balance in the Capital Reserve Fund in its monthly reports of Gross Receipts. Licensee shall also provide to Parks an annual report detailing the deposits and balance of the Capital Reserve Fund. In addition, the annual report shall include all disbursements from the Capital Reserve Fund as well as the work financed by such disbursements.

**6.3** The total cost of the Capital Improvements shall be verified by the Commissioner based upon construction documents, invoices, labor time sheets, canceled checks, credit card receipts, bank statements, and such other supporting documents or other data as the Commissioner may reasonably require. Expenditures for ordinary repairs and maintenance shall not be considered Capital Improvement Costs. Expenditures for Capital Improvements reflected in **Exhibit D** shall be included

in the total cost of the Capital Improvements in addition to architectural/engineering fees incurred by the Licensee and other fees permitted herein. In verifying the total cost of Capital Improvements, Commissioner may request any information the Commissioner 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 within thirty (30) days following Commissioner's determination of Final Completion. If Licensee fails to expend the amount listed in Section 6.1 herein by the Expiration Date, or sooner termination for cause pursuant to Section 3.3 of this License, the City may require the then unexpended portion of the minimum Capital Improvement Cost to be remitted to the City as additional License fees. Parks reserves the right to determine whether certain repairs and material purchases can be accepted as Capital Improvements.

**6.4** Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to Unavoidable Delays. In such situations, the Licensee shall propose for the Commissioner's reasonable approval, a revised completion schedule and, if approved, Licensee shall complete such Capital Improvements in accordance with such approved revised schedule. In the event Licensee fails to Finally Complete a particular improvement by the date specified for completion in **Exhibit D**, Licensee may be required to pay the City liquidated damages of \$100 per day until the outstanding improvement is completed, provided that such failure is not the result of Unavoidable Delays or 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 diligently commence cure within the period specified in such notice. In the event of any delay by Parks or any City, State or federal permitting agency, or any Unavoidable Delays, 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 (subject to Unavoidable Delays) for a period of thirty (30) days following written notice shall constitute a default upon which Commissioner may terminate this License Agreement by giving thirty (30) days' written notice and cure periods set forth in Section 3.3(a). In the event of Unavoidable Delays, Parks and Licensee shall attempt in good faith to negotiate a mutually acceptable solution, provided that in no event shall Licensee expend or cause to be expended less than Ten Million Eight Hundred Ninety-Two Thousand One Hundred Two Dollars (\$10,892,102.00) for Capital Improvements.

**6.5** Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Buildings ("DOB"), the New York City Public Design Commission ("PDC"), and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a registered architect or licensed professional engineer, who will oversee the entire construction project. Licensee shall submit the architect's or engineer's qualifications to Parks for prior written approval. All designs, plans, specifications, schematics, and working and mechanical drawings shall be in such detail as Parks shall require. Licensee is required to provide Parks with all plans and specifications upon completion of the construction documents. All necessary permits and approvals for capital work must be obtained from DOB, and all other agencies with jurisdiction, including, but not limited to,

obtaining a construction permit, Certificate of Occupancy or completion, public assembly permit and letters of no objection, Department of Health and Mental Hygiene (“DOHMH”) permits, New York City Fire Department (“FDNY”) certificates, New York City Department of Environmental Protection (“DEP”) permits, New York State Department of Environmental Conservation (“DEC”) approvals, as needed. All designs, outdoor signage, capital work and construction will require prior written approval from Parks, PDC, the New York State Historic Preservation Office, the New York City Landmarks Preservation Commission (“LPC”) (if applicable), DOB and any other agency having jurisdiction. All work shall be undertaken in accordance with the plans, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. The supervising architect or engineer is required to ensure that all construction conforms to the plans approved by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed in accordance with the plans and specifications for such Capital Improvement that have been approved by Parks. The Commissioner’s determination as to whether the Capital Improvements are Finally Complete shall not be unreasonably delayed.

**6.6** At Parks’ request, Licensee shall provide Parks with one (1) complete set of final, approved “AS-DESIGNED” plans in a format acceptable by Parks. Plans submitted in the format required by PDC for final approval or by DOB for building permits shall be acceptable to Parks. All “AS-DESIGNED” drawings submitted must be so labeled. Each drawing shall contain the name, address & 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 Department of Buildings approval / application number.

**6.7** For any Capital Improvements commenced under this License, Licensee shall apply for applicable licenses from Parks’ Concessions Unit prior to commencement of work. Licensee shall commence Capital Improvements only after the issuance of a construction license from Parks, and a building permit issued by the DOB, insofar as it has jurisdiction over Capital Improvements. Licensee shall also, prior to commencing work, obtain all other necessary governmental approvals, permits, and licenses. Licensee will also be responsible for obtaining, amending and complying with the Certificate of Occupancy, or letter of no objection as required, public assembly permits, DOHMH permits, FDNY certificates and all other permits and approvals including, but not limited to, New York City Department of Small Business Services, DEP, DEC, New York State Historic Preservation Office, LPC, each to the extent applicable, and/or other government agency approvals and permits necessary for any alterations to the existing premises. Licensee shall notify Commissioner of the specific date on which construction shall begin.

**6.8** Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall except as may be approved by Parks be new, free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. If available, Licensee shall obtain in Licensee’s name, all manufacturer’s warranties and guarantees for all such equipment and materials included in its Capital Improvements, as applicable. Licensee shall assign to the City all guarantees and other warranties with respect to any portion of the Licensee’s Capital Improvements when and if, as set forth in this License Agreement, the City exercises its option to take title to such equipment and materials, as may

be requested by the City from time to time. Upon written request from Parks or the City, 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 (but only after the date on which title to such equipment and materials passes to the City in accordance with the terms and conditions of this License). All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

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

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

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

**6.12** During performance of the Capital Improvements and up to the date of Final Completion, Licensee shall be responsible for the protection of the finished and unfinished Capital Improvements against any damage, loss or injury. In the event of such damage, loss or injury, except to the extent caused by the gross negligence, or intentional tortious acts of Parks, the City or its authorized agents or employees. Licensee shall promptly replace or repair such Capital Improvements at its sole cost and expense.

**6.13** Licensee shall provide written notice to Commissioner when Licensee believes that the Capital Improvements are Substantially Completed. Within 30 days after receiving such notice, Commissioner shall inspect such Capital Improvements. After such inspection, Commissioner and Licensee shall jointly develop a single final list of incomplete and outstanding items incorporating all findings from such inspection concerning all work not completed to the satisfaction of the Commissioner. Licensee shall proceed with diligence to complete all items on that list within a reasonable time as determined by the Commissioner.

**6.14** Licensee, within three (3) months of Substantial Completion, shall furnish the Commissioner with a certified statement, issued by Licensee, detailing the actual costs of construction. Accompanying such statement shall be construction documents, bills, invoices, labor time books, accounts payable, daily reports, bank deposit books, bank statements, checkbooks and canceled checks. Licensee shall maintain accurate books and records of account of construction costs, which shall be segregated from other accounts, and shall itemize and specify those costs attributable to the Licensed Premises to permit audit by Parks or the Comptroller upon request subject to the terms and conditions of Article 5 hereof.



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

**6.16** Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design appear or to which damages may occur because of such defects, during the one year period subsequent to the date of the Final Completion of such Capital Improvements; provided that the Commissioner provides License with written notice of the same within the one (1) year period set forth above. Failure to comply with this Section 6.16 shall constitute a default and may result in the termination of this License, subject to the terms and conditions of Section 3.3(a) of this Agreement.

**6.17** Neither Parks, nor the City, nor the agencies, officers, agents, employees or assigns thereof shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this License by the City, the Commissioner, or any other officer, agent or employee of the City, before the Final Completion and acceptance of the Capital Improvements, from showing that the Capital Improvements or any part thereof do not in fact conform to the requirements of this License and from demanding and recovering from the Licensee such damages as Parks or the City may sustain by reason of Licensee's failure to perform each and every part of this License in accordance with its terms (subject to the terms and conditions of this License), unless such determination, decision, approval order, letter, payment or certificate shall be made pursuant to a specific waiver of this Section 6.17 signed by the Commissioner or Commissioner's authorized representative.

**6.18** 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 the Licensee, to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee.

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

**6.20** Licensee understands that the United States Environmental Protection Agency has issued a phaseout of the production and import of ozone depleting substances (ODS) and that starting on January 1, 2020, U.S. production and import of HCFC-22 (hydrochlorofluorocarbons), a refrigerant in many ice rinks, will end. Licensee shall be responsible for ensuring the ice making system and plant for the ice rink is functional during the Term of the License, regardless of whether this will constitute a Capital Improvement.

## **7. ALTERATIONS**

**7.1 (a)** Licensee may alter the Licensed Premises only in accordance with the requirements of subsection (b) of this Section. Alterations shall become property of City, at its option at any time after their attachment, installation or affixing, subject to the provisions of Section 6.18 hereof.

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

**(i)** Obtain Commissioner's written approval 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, in a good and workerlike manner, and within a reasonable time; and

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

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

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

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

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

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

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

**8.5** Title to all Expendable Equipment obtained by Licensee 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, ordinary wear and tear excepted. Notwithstanding its vacating and surrender of the Licensed Premises, Licensee shall remain liable to City for any damage it caused to the Licensed Premises.

## **9. UTILITIES**

**9.1 (a)** Parks makes no representations or warranties regarding the adequacy of utilities currently in place at the Licensed Premises or that any entity can or will make such service available. As required to operate the Licensed Premises, and/or as consistent with Capital Improvements, Licensee shall, at its sole cost and expense, install or cause to be installed, connect to and/or upgrade any existing utility service or create a new utility system, maintain all utilities, service lines, conduits, meters, pipes, transformer(s), and supplies of power necessary for the proper operation of this License (except to the extent the same shall be the responsibility of the applicable utility provider). Licensee shall establish a dedicated meter and/or submeter that captures electricity usage on the Licensed Premises and an account with Con Edison, or other relevant providers, as appropriate. Licensee shall not undertake the installation of any new utility lines without first having obtained all necessary permits and approvals from Parks and such other federal, State or City agencies or entities as have jurisdiction over the construction and operation of the Premises during the Interim Period and the Term. Subject to review, approval, and verification by Parks, the work set forth herein may be considered Capital Improvements.

**(b) (i)** Licensee shall pay for any and all utility costs connected with the operation of the Licensed Premises during the Interim Period and the Term. These utility costs include, but are not limited to, electricity (in accordance with the provisions of clause (ii) below) as well as all water and sewer charges that the New York City Department of Environmental Protection ("DEP") assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Interim Period and the Term. Licensee is strictly prohibited from unauthorized use of utilities used, operated or owned by the City.

**(ii)** In terms of actual payment of utilities, the City shall directly pay for all

electricity and gas, and Licensee shall reimburse the City for such utilities' costs (without markup) within thirty (30) days following receipt of an invoice therefor. Licensee shall directly pay for all other utilities.

(c) **Stationary Engineer.** Parks shall provide and supervise a licensed stationary engineer at Wollman Rink and the Licensee shall reimburse Parks for the actual costs to Parks, net of fringe benefits, of providing said stationary engineer at Wollman Rink within thirty (30) days following receipt of an invoice therefor. The licensed stationary engineers shall staff the compressor rooms and operate in accordance with FDNY regulations and Parks' guidelines at Wollman Rink. In the event of Licensee's disagreement with the Chief Engineer (also known as the Senior Stationary Engineer) as to the function of the stationary engineers, the Licensee shall immediately contact the Concessions Unit at (212) 360-1397 and the Concessions Unit shall make a reasonable effort to resolve such differences.

## 10. OPERATIONS

**10.1 (a)** Licensee, at its sole cost and expense, shall operate and maintain the Licensed Premises for the use and enjoyment of the general public, subject to the terms and conditions of this License, and as permitted by, and in compliance with, all laws, rules, regulations and orders of government agencies having jurisdiction. Licensee may only operate at the Licensed Premises as set forth herein and only when the park in which the Licensed Premises is located is open. All hours and days of operation are subject to Parks' prior written approval. All services, menu items and merchandise and all rates, fees and prices, or changes thereto, to be charged by Licensee for any goods, rights or services provided pursuant to the operation of this License must also be approved in advance in writing by Parks. Annexed hereto as **Exhibit B** is the Schedule of Approved Hours, Rates, Fees and Prices, Menu and Proposed Services for the commencement of operations hereunder. At its reasonable discretion, but based upon written request from Licensee, Parks may allow changes to Licensee's approved operating hours/schedule. If the Commissioner grants the request, Licensee shall continue to be responsible for all other obligations of Licensee under the License Agreement, including payment of all License fees.

(b) Licensee shall obtain any and all necessary approvals, permits, and licenses for the construction and operation of this Concession. Licensee shall also comply with all national safety guidelines and federal, state and City laws, rules and regulations related to the operation and maintenance of the Licensed Premises.

(c) At Parks' direction, and subject to plans approved by Parks, Licensee shall provide additional temporary public restrooms on the Overlook during the Ice Rink Season.

(d) Licensee must provide all equipment necessary for the successful operation of the whole Concession granted hereby, which for the rink may include, but is not limited to, dasher boards, ice making equipment, headers, coils, benches, an ice rink refrigeration system, ice mats, a Zamboni or other equivalent ice resurfacing machine, lighting, rubber flooring, and other support and expendable equipment during the Ice Rink and Non-Ice Rink Seasons. Notwithstanding the above, Parks will make ice skates, a forklift, and two Zambonis and one Olympia (ice resurfacing machines) available to Licensee upon commencement of the Term, and Licensee accepts them "as-is". Licensee shall be responsible for the operation, maintenance, repair, and replacement of the two Zambonis and

one Olympia and forklift during the Term. The ice skates, forklift, and ice surfacing machines are City property and Parks makes no representations as to their condition.

(e) (i) Licensee, at its sole expense, shall be responsible for the annual installation, removal, storage, and obtaining and maintaining all required permits for the seasonal ice rink and all seasonal ice rink equipment, which may include, but is not limited to ancillary equipment to make and maintain ice, lighting, rubber flooring, and other support and Expendable Equipment. Licensee shall be responsible for all startup and close-down activities, including but not limited to the assembly and disassembly of the seasonal ice rink and ancillary equipment, no sooner and completed no later than the dates which define the Ice Rink Season. At the end of each Ice Rink Season, during the Transition Period, the Licensee, at its sole cost and expense, shall: melt the ice and properly drain all wastewater and dispose of any melted ice paint in accordance with all local and state regulations including but not limited to DEC, DEP, EPA and Parks; Licensee shall safely remove the ice mat and store off-site; Licensee shall also perform necessary repairs and maintenance of the drainage pipes and rink slab; Licensee shall also repair and repaint the rink slab surface for non-ice rink use, which may include, but not be limited to, use for other sporting or recreational activities and events, such as pickleball.

(ii) Upon Parks' inspection and request, as required by Section 10.20, Licensee shall address issues related to the maintenance and operation of the ice mat system and associated parts and equipment, including but not limited to, damage, necessary repairs, and replacements if deemed necessary by Parks. Licensee's plan to address said issues will be subject to Park's prior written approval.

(f) Licensee shall operate a well-stocked skate rental and sharpening/repairs facility at the Licensed Premises. The exact size and location of the skate rental and sharpening station are subject to Parks prior written approval. All equipment to be rented at the skate rental and sharpening/repairs facility and the proposed prices of those items are subject to Parks' prior, written approval. Licensee shall provide adaptive ADA ice sleds at no additional cost to customers who may request them. Licensee shall have a minimum of one (1) adult and one (1) child adaptive ADA ice sled available.

(g) Licensee must operate and maintain a well-stocked pro shop, including the sale of merchandise, supplies, and equipment. The location, size, merchandise and prices of the pro shop are subject to Parks' prior written approval.

(h) Licensee shall operate and maintain, year-round, a properly licensed and well stocked food service facility within the clubhouse at the Licensed Premises. Such food service facility must be of a high standard of quality. The exact size and location of the food service facility is subject to Parks' prior written approval. Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages. Subject to Parks, PDC, LPC, and other agencies having jurisdiction, Licensee may operate and maintain, year-round, a properly licensed and well stocked secondary food service facility at the Overlook or other location at the Licensed Premises, subject to approval by Parks. Such secondary food service facility must be of a high standard of quality. The exact size and location of the secondary food service facility is subject to Parks' prior written approval. Licensee shall maintain an adequate inventory to assure a constant supply of food and beverages.

(i) Licensee acknowledges 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 will be required to purchase merchandise from authorized licensees of the City of New York. At Parks' request, Licensee shall sell Parks related merchandise produced by vendors authorized by the City of New York. Parks will not permit the sale of merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products for non-park-related events. Licensee shall work with Parks to develop Wollman Rink branded merchandise to be sold at the pro shop, subject to Parks' prior written approval. Notwithstanding the foregoing, Licensee shall be permitted to sell event-related merchandise through third parties at Licensee's Special Events, subject to Parks' prior written approval.

**(j)** The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises may result in the immediate termination of this License Agreement and seizure of the Security Deposit.

**(k)** Licensee may provide or sell alcoholic beverages at the Licensed Premises, subject to the Commissioner's prior approval, 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 and all other agencies having jurisdiction. All efforts must be made by Licensee to keep alcohol consumption discrete. Licensee must keep in mind that the Licensed Premises is in a public park and the consumption of alcohol should be encouraged only as an accompaniment to the cuisine.

**(l)** Any staff assigned by Licensee to sell food and beverages to the public must possess all Federal, State, and City authorizations, and possess, and at all times display, appropriate DOHMH permits. Licensee may only provide food service at 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. If Licensee uses Mobile Food Units for the sale of food and/or beverages, Licensee shall obtain a DOHMH Vendor License for each person designated as an operator of a Mobile Food Unit and a DOHMH Mobile Food Vending Unit Permit for its Mobile Food Unit(s). Licensee must submit both a valid DOHMH Vendor License and a DOHMH Mobile Food Vending Unit Permit to Parks before the operation of its Mobile Food Unit(s) can commence.

**(m)** Licensee may place temporary structures, such as tables, chairs, umbrellas, benches, and bleachers, tents, canopies, and other temporary structures at the Licensed Premises. The design, color, placement, and number of all tables, chairs, umbrellas, benches, bleachers, and other temporary structures, and food service equipment, are subject to Parks' prior, written approval. Licensee must ensure free and open public access to any outdoor seating areas. Licensee, at its sole expense, shall be responsible for the seasonal ice rink and all seasonal ice rink equipment, which may include, but is not limited to ancillary equipment to make and maintain ice, lighting, rubber flooring, and other support and Expendable Equipment. It should be understood that all startup and close-down activities, including but not limited to the assembly and disassembly of the seasonal ice rink and ancillary equipment, must be undertaken by the Licensee no earlier and completed no later than the dates which define the Ice Rink Season.

**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 B** is the Schedule of Approved Hours, Rates, Fees and Prices for the commencement of operations hereunder (which may be subject to change as provided in Section 10.1(a)).

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

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

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

**(d)** Licensee is prohibited from selling any beverages in glass bottles. All beverages shall be in non-glass, shatter-proof containers. Single-use plastic beverage bottles, as defined in New York City Mayoral Executive Order 54, are prohibited in the operation of the Concession.

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

**10.4** Licensee, at its sole cost and expense, shall obtain, possess and display prominently at the Licensed Premises all approvals, permits, licenses, and certificates (including amendments thereto) that may be required for the operation and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits, including (if and to the extent applicable) Certificates of Occupancy and Permits of Assembly, as issued. In the event that, at the Commencement Date Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from the DOB. Furthermore, in the event that, at the Commencement Date, or at any time during the Term, Licensee does not have a Certificate of Occupancy, where required, and does not have a "Letter of No Objection," Licensee may conduct its operations in temporary structures that have been approved by Parks. Licensee shall obtain any necessary licenses and permits for such temporary structures before the commencement of operations 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, or "Letter(s) of No Objection." Nothing in this Section 10.4 shall limit Licensee's obligation to make any payments due under this License Agreement. Licensee shall obtain a Temporary Certificate of Occupancy and/or Temporary Public Assembly Certificate for the installation and operation of temporary structures during the Term, as required by DOB.

**10.5** Licensee warrants that all merchandise, food, beverages, and services of any kind sold or rented pursuant to this License shall be of a high quality. Licensee shall operate in such a manner as to maintain a high health inspection rating.

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

**10.7** Licensee shall provide equipment (such as a safe) 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.

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

- (a) collecting and safeguarding all monies generated under this License;
- (b) conducting and supervising all activities to be engaged in upon the Licensed Premises including but not limited to the provision of qualified food service personnel and cashier(s); and
- (c) maintaining and securing the Licensed Premises.

**10.9** The Licensee shall also comply with all New York 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. Such accessibility shall be clearly indicated by signs and included in all advertising by Licensee as appropriate. Licensee shall include in its advertising and promotion program, described in Section 10.15 below, a plan which describes how it intends to make facilities and services available at the Licensed Premises readily accessible and useable by individuals with disabilities.

**10.10** Pursuant to a plan reasonably approved in writing by Parks, Licensee shall, at its sole cost and expense, be responsible for all security at the Licensed Premises year-round during the Interim Period and the Term and shall provide for a twenty-four hour per day security system at the Licensed Premises. Licensee shall secure the Licensed Premises and any equipment every evening before closing for the day during the Interim Period and the Term. On a daily basis, security guard(s) shall be stationed appropriately at key location(s) as well as rove throughout the Licensed Premises. Additionally, at least one security guard shall monitor CCTV for the Licensed Premises. All security guards shall be trained and equipped with necessary equipment, including radios and flashlights. Licensee must coordinate with Citywide Special Events, Central Park Police as well as PEP to ensure that any large events at the Licensed Premises are appropriately monitored.

**10.11** Licensee shall prepare and provide to Parks operational status reports and reports of major accidents or unusual incidents occurring on the Licensed Premises, on a regular basis and in a format reasonably acceptable to the Commissioner. Licensee shall notify Parks, within twenty-four (24)



hours or sooner if Licensee becomes aware thereof, of major accidents or unusual incidents, including but not limited to injury, death, fire, flood, casualty, property damage, or theft occurring at the Licensed Premises. Licensee shall promptly notify Parks, in writing, within twenty-four (24) hours or sooner of any claim for injury, death, property damage or theft which shall be asserted against Licensee with respect to the Licensed Premises. Licensee shall also designate a person to handle all such claims, including all insured claims for loss or damage pertaining to the operations of the Licensed Premises, and Licensee shall notify Parks in writing as to said person's name and address.

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

**10.13** Licensee shall maintain close liaison with the PEP and New York Police Department ("NYPD"). Licensee shall cooperate with all efforts to enforce Parks Rules and Regulations at the Licensed Premises and adjacent areas. Licensee shall use its commercially reasonable efforts to prevent illegal activity on the Licensed Premises and shall immediately report any illegal activity to the police upon becoming aware of same.

**10.14** Licensee 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 may release news items to the media as it sees fit. If the Commissioner in her reasonable discretion, however, finds any advertising or other releases to be in violation of the provisions of this Section 10.14, then upon written notice, Licensee shall cease or alter such advertisements or releases as directed by the Commissioner. The Commissioner shall have prior reasonable approval as to design and distribution of all advertising and promotional materials, subject to the provisions of this Section 10.14.

**10.15** Licensee will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Licensed Premises, without the prior written approval of Parks. The display or placement of tobacco or electronic cigarette or non-tobacco smoking product advertising shall not be permitted. The following standards will apply to all allowed advertising: Any type of advertising which is false or misleading, which promotes unlawful or illegal goods, services or activities, or which is otherwise unlawful, including but not limited to advertising that constitutes the public display of offensive sexual material in violation of Penal Law Section 245.11, shall be prohibited. Advertising of product brands is prohibited without Parks' prior written approval. Any and all signage is subject to Parks' prior written approval. The design and placement of all signage, including signage which includes Licensee's name, trade name(s) and/or logos, is subject to Parks' prior written approval. Licensee will be prohibited from placing advertisements on the exterior of the Licensed Premises. With regard to the dasher boards, only the NYC Parks logo and the words "Wollman Rink" and "Central Park" may be displayed. For the avoidance of doubt, no images, logos, numbers or other items can be displayed. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks, at Licensee's sole cost and expense.

**10.16** Licensee must obtain the prior written approval of Parks prior to entering into any marketing or sponsorship agreement. Licensee's sponsorships will aim at enhancing overall public access,

programming, and amenities at the Licensed Premises. In the event Licensee breaches this provision, Licensee shall take any action that the City may deem necessary to protect the City's interests.

**10.17** Should Commissioner reasonably determine that Licensee is not operating the Licensed Premises in a manner consistent with a typical high-quality public ice skating rink, or in an otherwise unsatisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within thirty (30) days, subject to Unavoidable Delays, notwithstanding any other provisions herein, then Commissioner may terminate this License.

**10.18** 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.

**10.19** Licensee shall operate the Licensed Premises in accordance with all applicable FDNY codes, including but not limited to the provision of supplemental equipment for fire protection such as extinguishers, hoses and hose reels.

**10.20** Inspectors from Parks will visit the site unannounced to inspect operations and ensure proper maintenance of the Licensed Premises. Based on their inspections, Parks may issue directives regarding deficiencies the Licensee will be obligated to rectify in a timely fashion. Violations of the terms of the License Agreement may result in the assessment of liquidated damages which, if not paid promptly, may be deducted from the Licensee's Security Deposit. If the Licensee fails to provide the cleaning, maintenance, and operational services required by the License Agreement, Parks shall notify the Licensee in writing, and the Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If the Licensee fails to cure the violation within the timeframe set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate the license agreement. Parks may impose a \$250 administrative fee for reinstatement of a suspended license. Liquidated damages may be assessed in accordance with the following schedule:

PROVISION				LIQUIDATED DAMAGES PER OCCURRENCE
Unauthorized Merchandise	Menu	Items	or	\$150
Missing or Unauthorized Price List				\$250
Overcharging				\$350
Expanding				\$350
Blocked Exits				\$350
Improper Disposal (noxious liquids, debris, etc.)				\$350

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

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

#### 1. Filing an Appeal

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.

If no appeal is received within 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

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.

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

**10.21** Licensee recognizes that this License Agreement does not grant Licensee exclusive rights to sell in the park in which the Licensed Premises is located. Moreover, Parks may grant other licenses

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

**10.22** Parks makes no representations that there is adequate storage at the Licensed Premises. Licensee, at its sole expense, will be responsible for the storage of all seasonal or temporary structures, lighting, and other support and Expendable Equipment for the operation of the Concession. Additionally, Licensee, at its sole expense, will be responsible for the off-season storage of all Wollman Rink equipment, which may include, but is not limited to, ancillary items to make and maintain ice, ice mats, Zamboni or other equivalent ice resurfacing machine, rubber flooring, and other support and Expendable Equipment. Licensee shall also be responsible for, at its sole cost and expense, obtaining any additional storage space required for the operation of the concession granted hereby. Licensee shall not store any equipment or supplies at the Licensed Premises without the prior written approval of Parks. No item shall be placed upon any public space, including the ground adjacent to the Licensed Premises without Parks' prior, written approval. Licensee will be required to secure all outdoor equipment (e.g., tables and chairs) on a nightly basis and anytime the Licensed Premises is closed.

**10.23** Licensee is responsible for providing safe lighting throughout the Licensed Premises.

**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 Concession granted hereby. Parks reserves the right to require that all staff wear uniforms that have been reasonably approved in writing by Parks. Licensee shall provide no fewer than three skate guards wearing clean and clearly recognizable uniforms, of a design to be reasonably approved by the Commissioner, on the ice rink during all hours that the ice rink is open to the public.

**10.25** Licensee shall comply with all laws, rules and regulations of appropriate agencies, specifically 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 music or music programming. Licensee may operate and play sound equipment and music only at a sound level reasonably acceptable to the Commissioner. Outdoor amplified sound will not be permitted past 10 p.m. Any musical programming or other types of entertainment must be approved by Parks.

**10.26** Licensee must observe applicable vehicle and traffic regulations, and adhere to instructions from Central Park Conservancy, NYPD, New York City Department of Transportation, and Parks. Licensee is not permitted to operate vehicles on pedestrian pathways without Parks' prior written approval. Licensee acknowledges the following with respect to vehicles and vehicle access to the License Premises: The use of vehicles is restricted within Central Park and Licensee may only access Central Park roadways to pick-up or deliver items essential to the operation of the Concession. Personal vehicles are not allowed on any Central Park drive without Parks' prior written approval. Available entrances and exits to Central Park may be impacted. The maximum speed limit on Central Park drives is 15 miles per hour but may be subject to change. Motorists should reduce speed and exercise extreme caution when park drives are congested, and vehicles must travel only in the marked vehicle lane. Drivers must always yield to pedestrians and cyclists and turn on hazard lights when

operating in the park. During the Interim Period and the Term of the License, traffic regulations may be subject to change. Licensee is prohibited from placing or caused to be placed any vehicles, dumpsters, or other items on the paths or ground adjacent to the Central Park Zoo Emergency Exit (as outlined on the Licensed Premises map in **Exhibit A**).

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

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

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

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

**10.29** Beginning two (2) years prior to the termination or expiration of the License, or if at any time during the Term Licensee proposes to assign this License Agreement, then at the same time Licensee provides Parks its Gross Receipts monthly report as required by Section 4.5, Licensee shall also submit to Parks a list of all unexpired, unused, or partially used gift cards, gift certificates, or other forms of credit usable for good or services which Licensee sold or rendered at the Licensed Premises during the Term. If the Commissioner so directs in writing, Licensee shall provide to any successor licensee the list of outstanding credits, and (i) negotiate in good faith the transfer of such credits to the new licensee or (ii) make best efforts to refund the owners of such credits.

**10.30** Licensee agrees to work in good faith to cooperate with Parks' efforts to advance Parks-approved volunteering events and programming at or near the Licensed Premises. Parks' concession unit will coordinate these activities with the concessionaire. Upon Parks' request, Licensee agrees to provide up to 100 free boxed lunches for Parks-approved volunteer events and programming per Year.

**10.31** Licensee shall include an integrated sustainability by design plan in accordance with **Exhibit H**, attached hereto and made a part hereof. Parks' inspectors shall visit the Licensed Premises and determine whether or not Licensee is in compliance with the sustainability provisions in **Exhibit H**.

**10.32** Licensee shall provide seasonal shade at the Licensed Premises, as approved by Parks, as follows:

(a) Eight on-court cabanas offering comfortable, shaded seating for approximately nine individuals;

(b) Six new on-court shaded seating pods offering sun protection for up to approximately eight players;

(c) Six on-patio cabanas offering comfortable, shaded seating for approximately nine individuals, before and after court play;

(d) A minimum of six on-patio large market umbrellas and/or sunshade sails to extend sun protection to all patio visitors;

(e) Other potential sunshade solutions such as sails to be integrated, and as approved by Parks.

**10.33** 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 take action 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, 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 discretion, may then extend such period of time in order to permit Licensee to cure, under such terms and conditions as appropriate.

**10.34** At any time during the Term, Parks reserves the right to request a list and contact information of patrons who have a membership-type relation to the Concession, including but not limited to patrons who have season passes or are part of a weeks-long class or program (e.g. "learn to skate" program). Licensee shall inform all such patrons that their contact information may be shared with Parks/the City, subject to applicable law. Further, beginning two (2) years prior to the expiration of the License or in the event of a proposed assignment of this License Agreement by Licensee, then at the same time Licensee provides to Parks its monthly report of Gross Receipts as required by Section 4.5, Licensee shall provide to Parks this patron list with contact information, subject to applicable law.

**10.35** Licensee may, with Parks' prior written reasonable approval, install or have installed such number of vending machines at the Licensed Premises as Parks shall approve. In the event that Parks authorizes Licensee to place vending machines at the Licensed Premises, such vending machines shall be placed in locations reasonably approved by Parks. Further, Licensee will be required to comply with the Citywide Beverage Vending Machines Standards and Standards for Food Vending Machines, attached hereto as **Exhibits I-1 and I-2**, which apply to all beverage vending machines located on City property, for the entire Term. 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. If Licensee fails to comply with any new and/or changed food or beverage standards, as directed by Parks, following

notice from Parks and a reasonable opportunity to cure, Licensee shall remove any vending machines on the Licensed Premises.

**10.36** During the Term of the License, Licensee may operate Mobile Food Unit(s) at the Licensed Premises for the sale of snack food items, including but not limited to items such as hot dogs, hamburgers, salads, soft drinks, and non-alcoholic beverages. The number of Mobile Food Unit(s), type of Mobile Food Unit(s), mobile food vending location(s), and exact layout of the Mobile Food Unit(s), at the Licensed Premises are subject to Parks' prior written approval. At the discretion of Parks, the mobile food vending location is subject to change or removal during the Term of the License. The Mobile Food Unit shall be operated and maintained in accordance with the guidelines set forth in **Exhibits J-1 and J-2**.

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

**11.1** Licensee shall, at its sole cost and expense (or through arrangements with third parties), operate and maintain the Licensed Premises in good and safe condition and in accordance with industry standards during the Interim Period and the Term. This includes, but is not limited to, the maintenance of and the making of all necessary repairs to the entire Licensed Premises, all interior and exterior structures, building systems, utility systems and connections, sewer systems and connections, public restrooms (including the stocking of supplies), locker rooms, equipment, lighting, sidewalks, paved areas, vaults, gutters, curbs, and fixtures during the Interim Period and the Term. This includes but is not limited to making the repairs necessary to protect the safety of all visitors to the Licensed Premises, including the clean-up and removal of all debris and abandoned equipment from the Licensed Premises. In addition, all signs and structures on the Licensed Premises must be kept in good condition and free of graffiti. Licensee shall make all necessary repairs at the Licensed Premises at its sole cost and expense. The erecting of any ancillary structures at the Licensed Premises shall be subject to Parks' prior written approval, subject to Section 6.11 hereof.

**11.2** During the Interim Period and the Term 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, Parks, in addition to other remedies, shall be entitled to use the Capital Reserve Fund or Security Deposit to offset any costs incurred by Parks to perform such maintenance in the event that Licensee fails to commence performing the same within thirty (30) days following notice from Parks.

**11.3** At Parks' request, and in accordance with Section 1.4 hereof, 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 in accordance with Section 11.1 during the Interim Period and the Term.

**11.4** Licensee shall be responsible for, at its sole cost and expense, clean-up and removal of all snow, waste, garbage, refuse, rubbish and litter at the Licensed Premises and the area withing fifty (50) feet of the Licensed Premises. Licensee shall provide adequate and easily accessible waste and recycling receptacles, reasonably 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 reasonable approval. Licensee shall comply with all

City, State, and Federal regulations regarding recycling. In addition, Licensee shall demonstrate to Parks' reasonable satisfaction, through a detailed maintenance plan, that it will keep and maintain the Licensed Premises in excellent condition during the Interim Period and the Term.

**11.5** Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. In addition, Parks requires that any trees on the Licensed Premises be pruned as needed. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All horticultural work to be performed at the Licensed Premises is subject to Parks' prior written approval. 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. Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises in connection with Licensee's Capital Improvements or operations without the prior written approval of Parks. Any attachments to the trees, such as lights, will not be permitted. Licensee shall report dead and diseased trees to Parks and upon Parks' request will remove them. Subject to the review, approval, and verification by Parks, such tree removal work may be considered Capital Improvements.

**11.6** 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 Interim Period and the Term hereof. Such graffiti removal shall be commenced within twenty-four (24) hours or sooner if Licensee becomes aware thereof following the appearance of any such graffiti and shall continue until such graffiti is removed.

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

**11.8** 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 Randalls Island, New York. Licensee shall perform or have performed a tightness test conducted at least once every five years, to comply with Parks monitoring leak detection checklists for the tank(s) and all other legal requirements. Any changes, removals or additions of tanks must be pre-approved by Parks.

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

## **12. APPROVALS**

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



shall provide Licensee with reasonable cooperation in obtaining the necessary approvals, permits, and licenses and shall not unreasonably withhold or delay its consent to signing, where its signature is needed, for any valid and appropriate application made by Licensee required to obtain such approvals, permits and licenses.

**12.2** Whenever any act, consent, approval or permission is required of the City under this License, the same shall be valid only if it is, in each instance, in writing and signed by the Commissioner or the Commissioner's duly authorized representative. No variance, alteration, amendment, or modification of this instrument shall be valid or binding upon the City or its 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)** Licensee shall cooperate with Parks in connection with Parks' Special Event(s) (as defined in this Section 13.1(a)), unanticipated events, and emergencies occurring in Central Park at or near the Licensed Premises. For the purposes of this Section 13 the term "Parks' Special Event(s)" shall mean any event for which Parks has issued a Special Event Permit. The Commissioner represents to Licensee that the Commissioner has not, as of the date hereof, granted to any other person or entity any license, permit, or right of possession or use which would prevent in any way Licensee from performing its obligations and realizing its rights under this License. It is expressly understood that this Section 13 shall in no way limit Parks' right to sponsor or promote Parks' Special Events, as defined herein, or to enter into agreements with third parties to sponsor or promote such events, provided that Parks will use its reasonable efforts to ensure that such third parties will be responsible for maintenance and clean-up associated with any such Parks' Special Event.

**13.2 (a)** Parks, acting on behalf of the City of New York, reserves the right to host a maximum of six (6) annual events at the Licensed Premises, including benefits and other non-profit or public events, and Parks/the City shall have use of the Licensed Premises for such events on dates mutually agreed upon by both parties and shall be reserved in writing not less than one (1) month in advance. Parks will use its best efforts not to interfere with the Licensee's rights, powers and privileges necessary for the proper conduct and operation of the License Premises. Parks will notify Licensee promptly after scheduling any such event. During any such event, Licensee shall be obligated to operate the entire or portions of the Licensed Premises utilized by Parks/the City without cost to Parks/the City, including but not limited to providing skates, skating guards and food service personnel; however, Parks/the City will pay for food and beverage items connected with such events.

**(b)** Additionally, up to ten (10) times a Year, Parks may request, and Licensee shall provide non-exclusive use of a portion or the entire Licensed Premises by way of free skating/recreational activities for up to 25 attendees, at no cost to Parks. Parks shall have use of the Licensed Premises for such events on dates mutually agreed upon by both parties and shall be reserved in writing not less than one (1) month in advance.

**13.2** Subject to prior written approval from Parks, Licensee may conduct Licensee's Special Events at the Licensed Premises. Licensee shall direct all requests for Licensee's Special Events to Parks Chief of Concessions and to Parks Director of Concessions Compliance at such addresses provided to Licensee after the Notice to Proceed and updated as necessary by Parks and Parks shall respond to Licensee's request for a Licensee's Special Events within five (5) business days following Licensee's delivery of such request. If Parks shall fail to respond to Licensee within such five (5) 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 Parks shall be deemed to have approved such Licensee's Special Events, provided that such second notice shall have borne the following legend typed in bold, capital letters at the top: **"IF PARKS SHALL FAIL TO RESPOND TO THIS REQUEST FOR APPROVAL WITHIN FIVE (5) BUSINESS DAYS AFTER PARKS' RECEIPT OF THIS REQUEST FOR APPROVAL, PARKS SHALL BE DEEMED TO HAVE APPROVED THE LICENSEE'S SPECIAL EVENTS DESCRIBED HEREIN"**. Specifically, Licensee shall submit to Parks for approval, in writing, all plans for any Licensee's Special Events at the Licensed Premises, and in no event shall the Licensed Premises be completely closed to conduct private activities during public hours of use unless otherwise sponsored or approved by Parks and such a closure has been announced to the public at least two (2) weeks in advance of such activities or events, unless otherwise approved by Parks. All revenue generated through such Licensee's Special Events must be reported to Parks as Gross Receipts. Furthermore, Parks and Licensee may, promptly following the execution of this License, work in good faith to develop a procedure, consistent with this License, pursuant to which Licensee's Special Events may be approved by Parks. Reservation of the Licensed Premises for full closures will generally take place on Monday and Tuesday. All revenue generated through such Licensee's Special Events must be reported to Parks as Gross Receipts.

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

**14.1** Subject to the terms of this Article 14, Licensee shall not sell, transfer, assign, sublicense or encumber in any way this License, forty-nine percent (49%) or more of the shares of or interest in Licensee, or except as otherwise set forth in this License, 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. The Commissioner may request any additional information the Commissioner deems reasonably 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 forty-nine percent (49%) or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law. No sale or transfer of the stock of or interest in Licensee or its nominee may be made under any circumstance if such sale or transfer will result in a change of control of Licensee violative of the intent of this Article.

**14.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of 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, which shall not be unreasonably withheld. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be 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 sufficient to comply with Licensee's obligations under this License Agreement, together with a certification from the assignee or sublicensee that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

**14.3** No consent to or approval of any assignment or sublicensee granted pursuant to this Article shall constitute consent to or approval of any subsequent assignment or sublicense.

**14.4** Licensee may, subject to the prior written approval of Parks, enter into agreements with third parties to provide all or any of the services contemplated in this License in accordance with the terms and conditions set forth herein. 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 operation and maintenance of the Licensed Premises (or the applicable portion thereof, in the event of a sublicense of a portion 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 operation and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required of Licensee under this License Agreement or such lesser coverage, as approved in writing by Parks, provided that Licensee is maintaining all insurance required under this Agreement with respect to the sublicensed premises and indemnifying the City and the Central Park Conservancy, and their respective officials and employees as set forth in Articles 19 and 20 herein, as such indemnity may be applicable to each sublicensee, and Licensee shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it, subject to any notice and cure periods provided in this License, Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License.

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

**14.6** Notwithstanding anything to the contrary contained in this Article 14 or elsewhere in this License Agreement, transfer(s) of the Licensee's interests or shares of any class of stock or securities (or any other form of ownership interests) among existing owners, members or partners of Licensee, as the case may be, shall not be deemed an assignment of this License Agreement; provided however, that Licensee change pertinent information in PASSPort and promptly notify Parks of the transfer(s).

## **15. PARKS CONSTRUCTION AND SUSPENSION**

**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 Interim Period and the Term. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least fourteen (14) days' 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' construction, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury resulting from its work hereunder, except to the extent such claims, damages and injury are caused by the negligence or intentional tortious acts or omissions (where there is a duty to act) of Licensee.

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

## **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 Interim Period and 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. Licensee shall comply with ADA and regulations pertaining thereto as applicable. Any violation of this Article shall be a material breach of this License.

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

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

**18.1** No acceptance by the 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 the Commissioner to terminate this License. No waiver by Commissioner of any default on the part of Licensee in performance of any of the terms and conditions herein shall be construed to be a waiver of any other or subsequent default in the performance of any of the said terms and conditions.

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

### **19.1 Licensee Responsibility**

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

(b) 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, except as otherwise provided in this License.

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

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, State or 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 Licensee or the Licensed Premises (collectively "Environmental Laws"). Except as may be agreed by the City as part of this License, Licensee shall not cause or permit, or allow any of Licensee's personnel to cause or permit, any Hazardous Materials to be brought upon, 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.

### **19.2 Indemnification and Related Obligations**

(a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City and Central Park Conservancy, and their respective officials and employees (collectively, the "Indemnitees", each an "Indemnitee") harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related to any of the operations under this License (regardless of whether or not Licensee itself has been negligent) and/or Licensee's failure to comply with the law or any of the requirements of this License. To the extent any such claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs or expenses are caused by the negligent or intentional tortious acts of any Indemnitee, including, for the avoidance of doubt, the respective officials and employees of the City and Central

Park Conservancy, Licensee shall have no obligation to defend, indemnify or hold such Indemnitee harmless. Insofar as the facts or law relating to any of the foregoing would preclude any Indemnitee from being completely indemnified by Licensee, such Indemnitee shall be partially indemnified by Licensee to the fullest extent permitted by law.

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

## **20. INSURANCE**

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

(a) Throughout the Interim Period, as relevant, and the Term, the Licensee shall ensure that the types of insurance indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits, provided, in each case, the same are commercially reasonable, if, in the opinion of the Commissioner, Licensee's operations warrant it.

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

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

(a) The Licensee shall maintain Commercial General Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) per occurrence for bodily injury (including death) and property damage and Three Million Dollars (\$3,000,000) 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 Six Million Dollars (\$6,000,000). Licensee shall maintain coverage for products/completed operations in the amount of One Million Dollars (\$1,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, and shall be "occurrence" based rather than "claims-made."

(b) Such Commercial General Liability insurance shall include the City and Central Park Conservancy, together with their respective officials and employees, as Additional Insureds for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 10 and CG 20 37, and the limits for the City and Central Park Conservancy shall be no lower than Licensee's. "Blanket" or other forms are also acceptable if they provide the City and Central Park Conservancy, together with their respective officials and employees, with coverage at least as broad as ISO Form CG 20 10 and CG 20 37.

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

The Licensee shall maintain, or for workers not directly employed by Licensee, cause to be maintained, Workers' Compensation insurance, Employers Liability insurance, and Disability

Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

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

With regard to all operations under this License and if applicable, the Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least One Million Dollars (\$1,000,000) each accident (combined single limit) for liability arising out of the ownership, maintenance or use of any owned, non-owned or hired vehicles. Coverage shall be at least as broad as the latest edition of ISO Form CA 00 01. If vehicles are used for transporting hazardous materials, such Commercial Automobile Liability insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS-90.

#### **20.5 Property Insurance**

(a) The Licensee shall maintain comprehensive, broad-form property insurance (on a "Special Cause of Loss" form) covering all buildings, structures, equipment and fixtures on the Premises ("Concession Structures"), whether existing at the beginning of this License or built at any time before its expiration or termination. Such insurance shall provide full replacement cost coverage for the Concession Structures (without depreciation or obsolescence clause) and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), wind and subsidence. Such insurance shall designate the Licensee as Named Insured and the City and the Central Park Conservancy as Loss Payee as their 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) To the extent applicable, the Licensee shall maintain flood insurance through the National Flood Insurance Program (NFIP) for each building on the Licensed Premises (it being agreed that the same is not applicable as of the date hereof). 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 and Central Park Conservancy are listed as loss payees 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 and Central Park Conservancy are listed as loss payees under all such policies.

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

(a) In the event the Licensee or any sublicensee enters into a contract with another entity 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 sublicensee/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 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 and the Central Park Conservancy, together with their officials and employees, as Additional Insureds. Coverage for the City and Central Park Conservancy shall be at least as broad as the Licensee's. If this insurance is issued on a claims-made basis, such policy or policies shall have a retroactive date on or before the beginning of the contractor's work, and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years after the termination of such work.

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

## **20.8 Liquor Law Liability Insurance**

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

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

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

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



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

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

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

## **20.10 Proof of Insurance**

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

(b) For Workers’ Compensation, Employers Liability Insurance, Disability Benefits insurance policies, the Licensee shall submit one of the following: C-105.2 Certificate of Worker’s Compensation Insurance; U-26.3 -- State Insurance Fund Certificate of Workers’ Compensation Insurance; Request for WC/DB Exemption (Form CE-200); equivalent or successor forms used by the New York State Workers’ Compensation Board; or other proof of insurance in a form acceptable to the City. ACORD forms are 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 and the Central Park Conservancy have been made an additional insured or loss payee, as required herein. All such Certificates of Insurance shall be accompanied by a duly executed "Certification by Insurance Broker or Agent" in the form required by the Commissioner, attached hereto as **Exhibit F**.

(d) Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner upon the expiration date of coverage of all policies required under this License. Such Certificates of Insurance shall comply with subsections (b) and (c) directly above.

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

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

## **20.11 Miscellaneous**

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

(b) Licensee shall require its construction contractors that perform construction on the Licensed Premises to maintain Commercial General Liability Insurance in accordance with Section 20.2, and such insurance shall include the City, and Central Park Conservancy, including their respective officials and employees, as an additional insured with coverage at least as broad as ISO Forms CG 20 10 and CG 20 37. In the event the Licensee requires any other entity, by contract or otherwise, to procure insurance with regard to any operations under this License and requires such entity to name the Licensee as an Additional Insured under such insurance, the Licensee shall ensure that such entity also name the City, and Central Park Conservancy, including their respective officials and employees, as Additional Insureds (with coverage for Commercial General Liability insurance at least as broad as ISO form CG 20 10).

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

(d) Where notice of loss, damage, occurrence, accident, claim or suit is required under a policy maintained in accordance with this Article, the Licensee shall notify in writing all insurance carriers that issued potentially responsive policies of any such event relating to any operations under this License (including notice to Commercial General Liability insurance carriers for events relating to the Licensee's own employees) no later than 20 days after such event. For any policy where the City is an Additional Insured, such notice shall expressly specify that "this notice is being given on behalf of the City of New York as Insured as well as the Named Insured." Such notice shall also contain the following information: the number of the insurance policy, the name of the named insured, the date and location of the damage, occurrence, or accident, and the identity of the persons or things injured, damaged or lost. The Licensee shall simultaneously send a copy of such notice to the City

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

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

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

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

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

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

## **21. WAIVER OF COMPENSATION**

**21.1** Licensee hereby expressly waives any and all claims for compensation for any and all loss or damage sustained by reason of any defects, including, but not limited to, deficiency or impairment of the water supply system, gas mains, electrical apparatus or wires furnished for the Licensed Premises, or by reason of any loss of any gas supply, water supply, heat or current which may occur from time to time, or for any loss resulting from fire, water, windstorm, tornado, explosion, civil commotion, strike or riot, and Licensee hereby expressly releases and discharges Commissioner, her 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, subject to the terms and conditions of this Agreement.

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

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

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

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

**(i)** The disqualification for a period not to exceed five years from the date of an

adverse determination of any person or entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from the City; and/or

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

(d) The Commissioner or agency head shall consider and address in reaching her or his 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 Section 22.1(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 Section 22.1(b)(ii)(A) above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

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

(iii) The term "entity" as used herein shall be defined as any firm, partnership,

corporation, association, or person that receives monies, benefits, licenses, leases, or permits from or through the City or otherwise transacts business with the City.

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

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

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

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

**23.2** Any and all claims asserted by or against the City or Licensee 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 eighteen (18) months of the termination or conclusion of this License, or within eighteen (18) 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 without additional compensation any and all reasonable assistance which the City 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, agent, or in any other capacity, for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

## **27. BACKGROUND CHECKS**

**27.1 (a)** For purposes of this Section and Section 28, the word "personnel" means each employee and volunteer whose duties and responsibilities relate primarily to working with children or in close proximity to children. Licensee will be responsible for the recruitment and screening of appropriate personnel and verification of credentials, references, and suitability for working with

children. Licensee agrees to comply with all guidelines and procedures of Parks concerning the screening and employment of personnel provided in writing to Licensee, including, but not limited to, the following:

- (i) Licensee will be responsible for screening of all personnel, including:
  - (A) substantiating credentials, including, but not limited to, School-Age Child Care (SACC) Certification in accordance with the New York Codes, Rules, and Regulations (“NYCRR”) under 18 NYCRR 414;
  - (B) conducting reference checks; and
  - (C) conducting criminal background checks and outlined in the Background Checks Rider, annexed hereto as **Exhibit G**.
- (ii) Licensee agrees not to hire or retain any personnel who refuse to:
  - (A) provide the names of references;
  - (B) provide documentation of credentials; and
  - (C) provide other requested information, which may bear on the applicant’s fitness to work with or in close proximity with children.
- (iii) Licensee agrees not to hire or retain any personnel:
  - (A) to the extent disclosed by a background check consistent with Section 296 of the New York State Executive Law and Section 8-107 of the Administrative Code of the City of New York, whose criminal convictions record directly bears on their fitness to work with or in close proximity with children, or whose employment would involve an unreasonable risk to the safety or welfare of children, subject to and consistent with Article 23-A of the New York State Correction Law; and,
  - (B) who have been the subject of an indicated child abuse and maltreatment report on file with the State Central Registry, or are the subject of an ongoing investigation pursuant to a child abuse and maltreatment report on file with this Registry.

## **28. INDEPENDENT STATUS OF LICENSEE**

**28.1** Licensee and Parks agree that Licensee is an independent contractor. Licensee is not an employee of the City and in accordance with such independent status, it is understood and agreed that all personnel employed by Licensee are employees of Licensee and are not employees of the City, and that Licensee alone is responsible for their work, direction, compensation, and personal conduct while engaged pursuant to this Agreement. Licensee agrees that neither it nor its personnel, employees or agents will hold themselves out as, nor claim to be officers, employees, or agents of the City of New York, or of any department, agency, or unit thereof, and they will not, by reason hereof, 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 and disability insurance coverage, unemployment insurance benefits, social security coverage or employee retirement membership or credit.

## **29. CREDITOR-DEBTOR PROCEEDINGS**

**29.1** 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.

### **30. CONFLICT OF INTEREST**

**30.1** Licensee represents and warrants that to the best of its knowledge 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 her/his personal interest or the interest of any corporation, partnership or association in which s/he is, directly or indirectly, interested nor shall any such person have any interest, direct or indirect, in this License or in the proceeds thereof.

### **31. PROCUREMENT OF AGREEMENT**

**31.1** 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.

**31.2** 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.

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

**32.1** 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.

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

**33.1** 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.

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

**34.1** 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.

### **35. JUDICIAL INTERPRETATION**

**35.1** 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.

### **36. MODIFICATION OF AGREEMENT**

**36.1** 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.

### **37. NOTICES**

**37.1** 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. All notices and demands under this Agreement shall be in writing.

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

**38.1** Licensee represents and warrants that Licensee is a Delaware limited liability company, in good standing under the laws of the State of New York, qualified to do business in 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.

### **39. MISCELLANEOUS**

**39.1** The headings of articles, 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.

**39.2** If either party hereto shall be delayed in or prevented from the performance of any act required hereunder by reason of Unavoidable Delay, as reasonably determined by Parks, performance of such act shall be excused for the period of such delay. Notwithstanding anything to the contrary herein, in no event shall Licensee's financial condition or inability to obtain financing constitute an Unavoidable Delay and the Unavoidable Delay shall be deemed to have occurred only to the extent

that in each case despite reasonable efforts, Licensee has been unable to prevent or mitigate such Unavoidable Delay.

**39.3** If during the License Term, Licensee reasonably demonstrates to Parks that Licensee is unable to profitably operate the Licensed Premises as reasonably determined by the Commissioner, Licensee may propose and submit for the Commissioner's approval a plan to equitably address such operational issues, and the parties shall attempt in good faith to negotiate a mutually acceptable solution.

#### **40. ENTIRE AGREEMENT**

**40.1** 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.

#### **41. COUNTERPARTS**

**41.1** 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 Agreement to be signed and sealed on the day and year first above written.

CITY OF NEW YORK DEPARTMENT OF PARKS  
& RECREATION

WOLLMAN PARK PARTNERS II LLC

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

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

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

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

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

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

SS:

On this       day of                      , 2025 before me personally came \_\_\_\_\_ to me known, and known to be the \_\_\_\_\_ of the Department of Parks and Recreation of the City of New York, and the said person described in and who executed the foregoing instrument and (s)he acknowledged that (s)he executed the same in her/his official capacity and for the purpose mentioned therein.

SS:

On this \_\_\_\_ day of \_\_\_\_\_, 2025 before me personally came to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of Wollman Park Partners II LLC and that (s)he was authorized to execute the foregoing instrument on behalf of that company and acknowledged that (s)he executed the same on behalf of that company for the purposes mentioned therein.

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## EXHIBIT A: LICENSED PREMISES

### EXHIBIT A LICENSED PREMISES

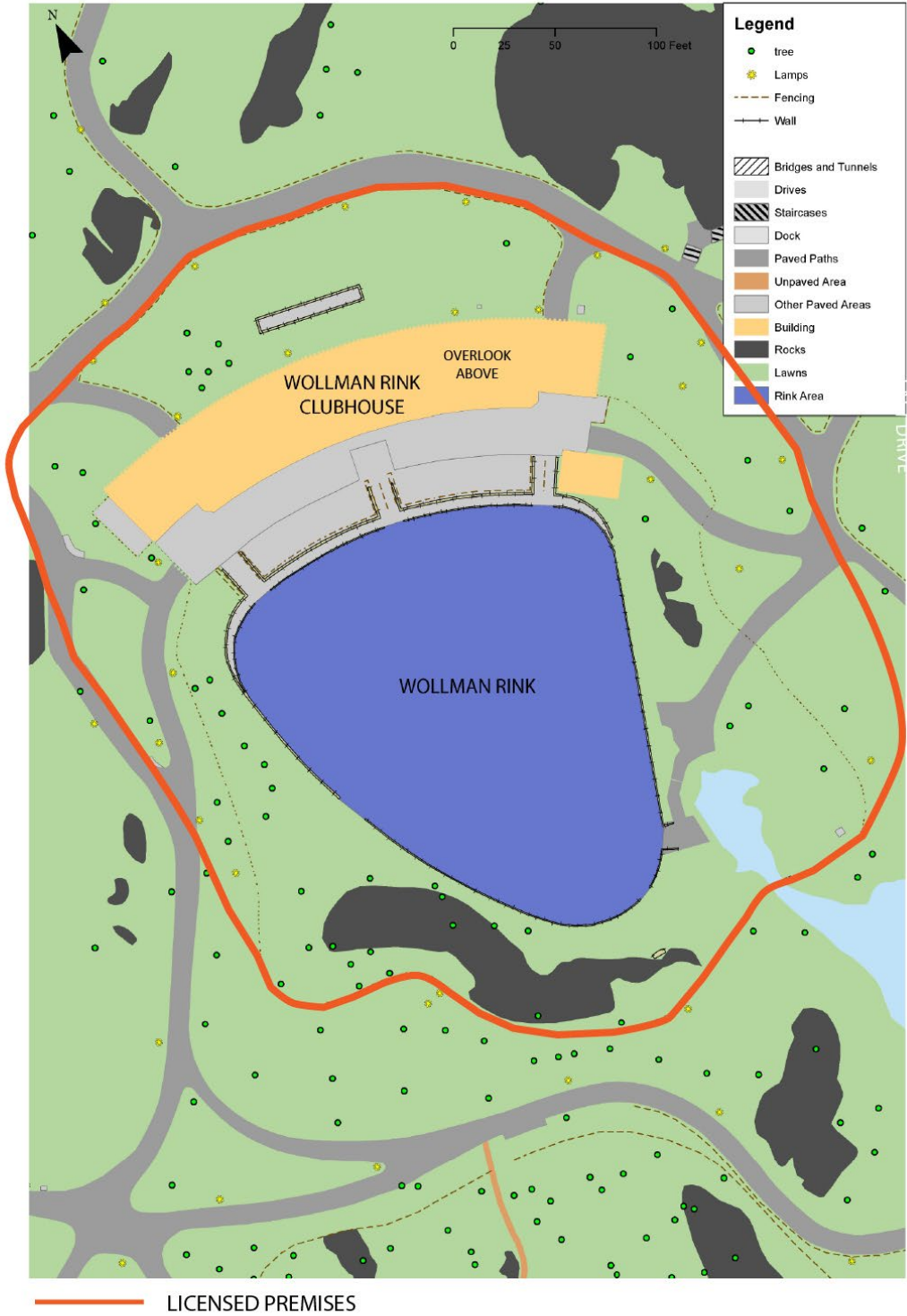
#### WOLLMAN RINK



— LICENSED PREMISES

*The licensed premises map as shown above may be subject to adjustments by Parks as required.*

**EXHIBIT A-1: LICENSED PREMISES TREE MAP**



## **EXHIBIT B: SCHEDULE OF APPROVED HOURS, RATES, FEES, AND PRICES**

**Subject to change in accordance with the terms and conditions of the License Agreement**

### **Ice Rink Season**

#### Public Session Hours

Monday - Tuesday: 10:00 am - 2:30 pm

Wednesday, Thursday, Sunday: 10:00 am - 9:00 pm

Friday & Saturday: 10:00 am - 10:00 pm

#### Admission

Prime Adult: \$40

Peak Adult: \$28

Prime/Peak/Off-Peak Child: \$11

Prime/Peak/Off-Peak Senior: \$11

Off-Peak Adult: \$16

Community/Culture Pass: FREE

WRAP: \$16

Groups: 10% DISCOUNT

#### Add-Ons

Skate Rental: \$12

Premier Pass: \$40

Locker Rental: \$8

Skate Aid Rental: \$25

#### Retail

Pro Shop: Variable Pricing (\$7 Kids Gloves - \$40 Ornament)

Group Lesson: \$60

Private Lessons: \$85

Skate Sharpening: \$20

#### Ice Rink Season Programming

Youth Skating Skills

Youth Hockey Programs

Youth Figure Skating

Adult Programs

### **Non-Ice Rink Season Pickleball**

--14 state-of-the-art pickleball courts open daily from 8AM-9PM

--Peak hours: 5PM-9PM Monday through Friday, 8AM-9PM Saturday and Sunday

--Off-Peak hours: 8AM-5PM Monday through Friday

Open seasonally, approximately early-April through mid-October, exact dates subject to Parks reasonable approval. Operations open seasonally will be weather dependent, e.g. closed when courts are wet. Licensee will promptly inform Parks of any closures.



## Non-Ice Rink Season Pickleball Programming (examples may include)

Youth Programming

Affinity Groups

Senior Programming

Nonprofit

Health Advocates for Older People

Challenged Athletes

Boys Club of New York

Pickleball 4 Parkinson's

The Michael J. Fox Foundation and PingPongParkinson

## Pickleball Pricing

Court Rental

\$120/hour Peak; begins at \$15.00 per person for a group of 8 \$80/hour Off Peak:  
begins at \$10.00 per person for a group of 8

Open Play

\$25 per player per hour

Community Play

\$5 per player per hour and includes free paddle rental.

Licensee commits to 6 hours minimum of daily community play, which as of the date  
of the License, is intended to be on 3 courts for 2 hours each

Leagues

\$30 per player per hour

Clinics

\$40 per player per hour

Paddle rentals

\$6

Food and Beverage

# THE CAFÉ

## MAINS AND MORE

Wollman Smash Burger

Secret Sauce, Cheddar Cheese, Pickles (Make it a Double +5)

\$10.00

NY Style Hot Dog

Add: Black Bean Chili \$1.25 or Cheese Sauce \$1.25

\$3.00

Field Roast Vegan Dogs

Add: Vegan Black Bean Chili \$1.25

\$4.00

Chicken Fingers

\$9.00

Soft Pretzel with Cheese

\$5.00

Tater Tots

Add: Cheese \$1.50 or Black Bean Chili \$1.25

\$4.00

French Fries

Add: Cheese \$1.50 or Black Bean Chili \$1.25

\$4.00

Mozzarella Sticks

Served with Marinara Sauce

\$8.00

Nachos with Cheese

Add: Texas Chili \$1.25 and/or Sour Cream \$0.75

\$8.00

If you have a food allergy, please notify us!

## SOUPS

Brunswick Stew

Shredded Chicken and Vegetable

\$10.00

Brunswick Stew Combo

Cashew Mashed Potatoes, Brunswick Stew, and House Made Cornbread

\$15.00

Vegan Chili

DF


\$8.00

Broccoli Cheddar

\$8.00

Chicken Noodle

\$8.00



# ROBERTA'S PIZZA

Roberta's Original

Fresh Made Mozzarella, Tomato, Chili Oil, Extra Virgin Olive Oil

\$15.00

Central Park Pie

Pepperoni, Mozzarella, Tomato, Chili Oil

\$16.00

## SALADS & WRAPS

Crisp Chicken Caesar Wrap

Kale, Romaes, Grapes, Parmesan, Caesar, Spinach Tortilla

\$12.00

Savory Southwest Chicken Wrap

Romaine, Cheddar Cheese, Corn + Beans Salsa, Tortilla Cheese, Parsley, Balsamic Vinaigrette, Chipotle Ranch

\$12.00

Crisp Classic Caesar


Kale, Romaes, Grapes, Parmesan, Caesar

\$12.00

Savory Southwest Salad GF

Romaine, Cheddar Cheese, Corn + Beans Salsa, Tortilla, Cheese, Parsley, Balsamic Vinaigrette, Chipotle Ranch

\$12.00



VEGAN | VEGETARIAN | GF GLUTEN-FREE | DF DAIRY-FREE

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## BEVERAGES

Hot Chocolate	\$4.00
Hot Apple Cider	\$4.00
Coke, Diet Coke, Sprite	\$4.00
La Croix	\$3.00
Celsius	\$6.00
Honest Kids Juice	\$4.00

## SNACKS

Double Fudge Brownie	\$4.00
Hal's Potato Chips	\$3.00
Ralph's Soul Cookies	\$3.00
Baked Goods	\$6.00



## **EXHIBIT C: PAYMENT GUARANTEE**

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

(1) “Contractor” means a person, firm or corporation who or which contracts with the Licensee to furnish and 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 C 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 C as a “party liable for payment” where applicable; and

(2) “Subcontractor” means a person, firm or corporation, excluding employees of a Contractor, who or which contracts with a Contractor to furnish, and 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 C as a “party liable for payment” where applicable.

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

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

(2) Materials, equipment, and supplies when valid 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 (such person, firm or corporation 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 C are subject to the limitations and conditions in this Section II and in Sections III and IV of this Exhibit C:

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

(B) Nothing in this Exhibit C 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 first 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 one (1) year after the completion of the applicable 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 C. 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 C, 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 C, 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 pay such amount to the beneficiary within fifteen (15) days after receipt of such direction. In the event the party liable for payment fails to pay the beneficiary, the Licensee shall pay the amount due and owing to the beneficiary within fifteen (15) days after 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 fifteen (15) 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, Licensee shall have no obligation to make payment on such demand pending resolution of the dispute. 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 C 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 C), the payment guarantee made pursuant to this Exhibit C shall be construed in a manner consistent with Section 5 of the New York Lien Law.

## **EXHIBIT D: CAPITAL IMPROVEMENTS**

The total cost of Capital Improvements shall be a minimum of \$10,892,102.00 and shall be completed within three (3) years of the Commencement Date:

### **Soft Costs and Miscellaneous Equipment**

- Architect & Engineering Fees
- Permitting
- Provide 1700 new skates
- Provide Dual head skate sharpening machine
- Provide Electric Zamboni

### **Hard Costs**

- Construction Management Fees
- ECM Fees
- Insurance

### **Clubhouse Facility**

- Provide Drainage Improvements
  - May include augmenting catch basins at entry gate with regrading and landscaping of the grounds and adjacent areas in order to mitigate mudslides or flooding.
  - May include replacing the northern steep entrance path on the northwest corner with water absorbing landscaping. Retention tanks and other mitigation methods will be considered.
  - Obtain all DEP SWPPP permits as may be required.
- Provide Foundation assessment and repairs
- Replace or repair Roof and Waterproofing
- Provide Overlook Plaza Deck Improvements
  - Provide plantings/shrubs to screen chimney flue
- Replace or repair Pergola
- Replace or repair Storefront
- Renovate Office, Pro Shop, and Skate Rental Interiors
- Refurbish or replace Ticketing Kiosk
- Renovate Zamboni garage
- Provide sound equipment
- Upgrade seating on Overlook
- Upgrade Existing Entrance to be ADA accessible
- Provide ADA Accessible Elevator and Stair
- Upgrade or replace Tent Structure
- Provide landscaping and lawn reseeding, as needed

### **Rink**

- Repair or replace Rink Slab and/or refinish slab surface
  - Repaint existing pickleball courts on current concrete rink slab, as needed.
- Provide Mechanical connections required for Ice Mat system

- Provide Drainage System around rink
- Provide Stormwater Management
- Provide New Dasher Boards and anchoring system
- Provide Patio rubber floor and sub-base
- Provide New exterior LED lighting system on existing poles, including electrical connections and equipment as required. Repair poles as needed.
- Renovate or provide new Zamboni Garage and add electric charging.

### **Mechanical Equipment**

- Provide New Ice Making Equipment including, but not limited to, the following:
  - Chilling Towers
  - Chilling Compressors
  - Chilling Condensers
  - Storage Receiver (TBD)
  - New Heat Transfer Fluid (TBD)
- Repair or Replace Clubhouse HVAC, Plumbing, Electrical Systems
- Repair or Replace Fire Alarm System
- Repair or Replace Emergency Lighting System
- Provide RPZ, as needed
- Upgrade Transformer Vault, as needed

### **Kitchen / Snack Bar**

- Repair or replace Kitchen Equipment
- Repair or replace Service Counters
- Provide new Interior Finishes
- Repair or replace Grease Traps
- Provide or replace LED lighting, as needed
- Refurbish or renovate Restrooms
- Provide ADA fixtures and stalls

### **Personal Equipment**

Additionally, the Licensee shall provide additional Personal Equipment necessary to successfully operate the concession, including but not limited to:

- Ice Mat System, subject to or upon Parks' approval (which may be leased)
- Temporary seasonal covering for shade in the form of cabanas, umbrellas and other shading equipment



## **EXHIBIT E: NYC EARNED SAFE AND SICK TIME ACT CONCESSION AGREEMENT RIDER**

### **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 Concession Manager 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

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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.

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

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

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

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

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

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

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

6. to enroll children in a new school; or

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

4. An employer must not require an employee, as a condition of taking safe and sick time, to search for a replacement. However, where the employee's need for safe and sick time is foreseeable, an employer may require an employee to provide reasonable notice of the need to use safe and sick time. For an absence of more than three consecutive work days, an employer may require reasonable

documentation that the use of safe and sick time was needed for a reason listed in Admin. Code § 20-914; and/or written confirmation that an employee used safe and sick time pursuant to the ESSTA. However, an employer may not require documentation specifying the nature of a medical condition, require disclosure of the details of a medical condition, or require disclosure of the details of a family offense matter, sexual offense, stalking, or human trafficking, as a condition of providing safe and sick time. Health information and information concerning family offenses, sexual offenses, stalking or human trafficking obtained solely due to an employee's use of safe and sick time pursuant to the ESSTA must be treated by the employer as confidential. An employer must reimburse an employee for all reasonable costs or expenses incurred in obtaining such documentation for the employer.

5. An employer must provide to all employees a written policy explaining its method of calculating sick time, policies regarding the use of safe and sick time (including any permissible discretionary conditions on use), and policies regarding carry-over of unused time at the end of the year, among other topics. It must provide the policy to employees using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny safe and sick time to an employee because of non-compliance with such a policy.

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

7. Safe and sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the safe and sick time was used.

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

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

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

3. an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines their own schedule, has the ability to reject or accept any assignment referred to them, and is paid an average hourly wage that is at least four times the federal minimum wage;

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

5. an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or

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

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

E. *Notice of Rights.*

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

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

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

G. *Enforcement and Penalties.*

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

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

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

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

## **EXHIBIT F: CERTIFICATES OF INSURANCE**

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

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

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

-- OR --

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

**CITY OF NEW YORK**  
**CERTIFICATION BY INSURANCE BROKER OR AGENT**

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

[Name of broker or agent (typewritten)]

[Address of broker or agent (typewritten)]

[Email address of broker or agent (typewritten)]

[Phone number/Fax number of broker or agent (typewritten)]

[Signature of authorized official, broker, or agent]

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

State of ..... )  
 ) ss.:

County of ..... )

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

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

## **EXHIBIT G: BACKGROUND CHECKS RIDER**

1. Recruitment; Screening; Fingerprinting: Licensee shall be responsible for the recruitment and screening of employees and volunteers performing work under the Agreement, including the verification of credentials, references, experience and skills necessary for working with clients and participants. Where consistent with State and federal law, if directed by the Department of Parks and Recreation (“Department”), Licensee will undertake the fingerprinting of employees and volunteers, including applicants, in accordance with instructions from the Department.
2. Convictions, Non-Pending Arrests and Criminal Accusations, and Pending Arrests: Licensee shall comply with Subdivisions 15 and 16 of Section 296 the New York Executive Law, Article 23-A of the New York Correction Law, and Subdivisions 11 and 11-a of the Admin Code. Such laws pertain to unlawful discriminatory employment practices in connection with individuals with convictions, non-pending arrests or criminal accusations, and/or pending arrests.
3. Review of Decision: Where practicable, Licensee shall provide for the review by a supervisor employed by Licensee of a decision not to hire based on convictions, non-pending arrests or criminal accusations, and/or pending arrests.
4. Consultation with the Department: Licensee may consult with the Department regarding the application of this section.

## EXHIBIT H: SUSTAINABILITY

### *Energy Efficiency and Emissions Reduction*

- i) Maintaining the concrete slab and using an ice mat with temporary cooling coils avoids the environmental impacts of demolition. It also eliminates the embodied carbon associated with new concrete production.
- ii) The use of an energy efficient ice mat will reduce the energy demand during operations
- iii) The new electric Zamboni and charging capacity in the garage will reduce the site's reliance on fossil fuel combustion. These benefits are expected to grow over the decades as renewable energy deployment is expanded and electricity from the grid gets cleaner.
- iv) Heat recovery equipment will be installed in the new ice plant to heat water for the Zamboni and reduce energy required for heating
- v) New LED lighting system at rink lights and throughout facility will consume less electricity
- vi) Lighting will operate on occupancy sensing and programmed sensing schedule to optimize energy use
- vii) All replaced appliances will be Energy Star certified where applicable, and energy & water efficient models where certification is not applicable
- viii) Bike racks will be added to the roof terrace above the clubhouse as a part of the re-roofing scope to ease the use of carbon-free transportation options to the site.
- ix) End-of-life HVAC equipment will be replaced with high-efficiency electric equipment. The design will investigate the feasibility of heat recovery from the ice rink cooling system during colder months.

### *Hazardous Materials Elimination and Mitigation*

- i) The heat transfer fluid will be upgraded from toxic brine to a non-toxic propylene glycol system.
- ii) The new Environmental Protection Agency and DEC approved ice making system will either use a CO2 based or other approved refrigerant system, but if an ammonia-based system is used, an ammonia leak detection system will be installed. These measures will protect City parkland from contamination for years to come.
- iii) Paint will be non or low VOC as defined by California Specification 01350
- iv) Green cleaning products and practices shall continue through use of environmentally friendly cleaners such as EcoLab and certified by Green Seal (GS-01, GS-09, GS-37, GS-40, GS-46) and United Laboratories (UL 175, 2759, 2777, 2784, 2791, 2792, 2795, 2795, 2796 and 2798).
- v) Construction material specifications will favor locally sourced and recycled materials, and vendors with product-specific EPDs (Environmental Product Declarations) and chemical disclosures.

### *Climate Resiliency*

- i) The installation of seasonal coverings for shade in the form of cabanas, umbrellas, and other shading equipment will preserve the spaces usability during NYC summers, which have experienced increasingly intense heat waves in recent years.



- ii) Improvements to the drainage system and stormwater management system, which may include incorporating gardens, detention systems, catch basins, landscaping, and raising the level of the rink slab, will improve Wollman Rink's resilience to major storm events.
- iii) Existing asphalt entry pathway will be removed and replaced with regraded landscaping, natural erosion controls (e.g. coir logs) and catch basins to enhance biophilic experience upon entry and natural storm water management controls, subject to Parks approval.
- iv) Deciduous trees, green roofs and landscaping will be protected during renovations to provide continued shade and reduce heat islands. Re-roofing and rubber mat replacement will utilize high-SRI roofing, pavers and matting to further reduce heat islands at the site.

#### *Waste Reduction*

- i) The facility will utilize chlorine free, compostable paper supplies, compostable cups, and compostable or bamboo plates and serving containers.
- ii) Packaging will be reduced through large format condiment dispensing and avoidance of single-serving package sizes wherever possible.
- iii) Staff will be encouraged to bring and use their own reusable water bottles.
- iv) Development of a food waste diversion program is under development and will be implemented to the extent practical with our waste hauling partner
- v) The facility will continue to support the City's initiative to reduce the usage of single plastics. Beverages shall continue to be served in recyclable aluminum bottles or an equivalent non-plastic alternative.
- vi) Sustainable food products and practices shall be utilized where possible, including the continuation of our seasonal farm-share program, used cooking oil recycling program, and cook to order food preparation.
- vii) Staff will continue to be trained on environmentally friendly food service and cleaning practices, recycling policies and signs posted describing how recyclables and landfill waste shall be separated.
- viii) A comprehensive Construction Waste Management Plan will be implemented during renovations. Post-construction, the existing waste management plan will be continued.

## EXHIBIT I-1: CITYWIDE STANDARDS FOR FOOD VENDING MACHINES

### New York City Food Standards | **FOOD VENDING MACHINES**

#### Snack Standards

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

**Calories:** no more than 200 calories

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

⋮ Nuts, seeds, nut butters and cheese are exempt

⋮ Products containing nuts or nut butters are exempt

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

⋮ Nuts, seeds, nut butters and cheese are exempt

**Trans fat:** 0 grams trans fat

**Sodium:** no more than 200 mg

⋮ Cottage cheese: no more than 400 mg

**Sugar:** no more than 10 grams

⋮ Fruit and vegetable products with no added sugar are exempt

⋮ Yogurt: no more than 30 grams sugar per 8 ounces

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

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

Required for City agencies only.

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

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

*Follow these Standards to provide healthier food options.*

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

City agencies follow these standards per Executive Order 122.

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

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

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



## 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 I-2: CITYWIDE STANDARDS FOR BEVERAGE VENDING MACHINES

New York City  
Food Standards

### BEVERAGE VENDING MACHINES

**1 Require all beverages contain 25 calories or less per 8 ounces with the following exception:**

A maximum of 2 slots/buttons may stock high calorie beverages (more than 25 calories per 8 ounces), such as regular soda, lemonade, sweetened tea and juice. The 2 slot limit applies no matter how many slots are in the machine.

Unsweetened 1% and non-fat milk not included in high calorie limit.

**2 Require water be stocked in at least 2 slots/buttons per machine.**

Water should contain 0 calories with no added color, flavor or sweetener of any kind.

If drinking water is readily available in the vicinity of the vending machine, unflavored seltzer water may be substituted for the 2 slots of water.

**3 Require water and seltzer be placed at eye level, or in the highest selling position. High calorie beverages should be placed farthest from eye level, or in the lowest selling position.**

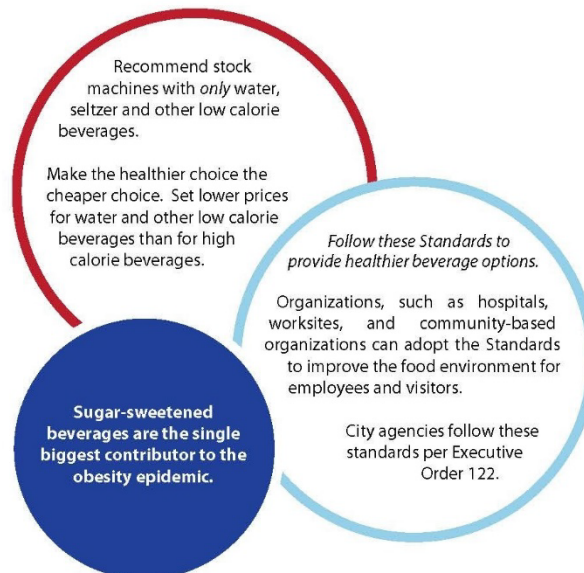
**4 Require all high calorie beverages are sold in 12 ounce containers or smaller.**

**5 Prohibit advertisements of high calorie beverages on vending machines.**

Promotional material on the front and side panels of the machine can advertise water or beverages with 25 calories or less per 8 ounces.

**6 Require calorie information is posted for each beverage, as packaged.**

Required for City agencies only.



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



## BEVERAGE VENDING MACHINES



Example of a beverage vending machine that meets the standards.

### Standards for programs serving children age 18 and under

- 1** Require all beverages contain 25 calories or less per 8 ounces. For programs serving children age 12 and under, require that all beverages contain 10 calories or less per 8 ounces.

Unsweetened 1% and nonfat milk not included.

- 2** Beverages cannot contain artificial sweeteners, other natural non-nutritive or very low-calorie sweeteners (e.g. stevia, erythritol), artificial flavors or artificial colors.

- 3** For programs serving children age 12 and under, beverages cannot contain caffeine.

- 4** Prohibit advertisements of high calorie beverages on vending machines.

Promotional material on the front and side panels of the machine can advertise water or beverages with 25 calories or less per 8 ounces.

- 5** Require calorie information is posted for each beverage, as packaged.

Required for City agencies only.

### Standards for hot beverage machines (e.g. coffee machines)

- 1** Recommend all beverages contain 25 calories or less per 8 ounces.

Condiments are not restricted (e.g. milk, sugar, sugar substitutes).

- 2** Recommend all beverages and condiments contain 0 grams trans fat.

- 3** Recommend calorie information is posted for each beverage, as packaged.

Made possible by funding from the Department of Health and Human Services.

## EXHIBIT J-1: CITYWIDE STANDARDS FOR MOBILE FOOD UNITS

**Mobile Food Units** Licensee may operate non-processing carts, processing carts, processing mobile trucks, or non-processing mobile trucks (herein referred to as “Mobile Food Units”) for the sale of either food and beverages, such as specialty sandwiches, salads, desserts, coffee, juice and other non-alcoholic beverages within the Licensed Premises in accordance with the following guidelines. The number and location(s) of Mobile Food Units are subject to approval by Parks.

- **Non-Processing Carts** Non-Processing carts (or “pushcarts”) are manually propelled carts or barrows which are self-contained service operations used to store, serve, and display food intended for individual portion service. Licensee must obtain the appropriate DOHMH permit for the preparation and sale of potentially hazardous, unpackaged foods, e.g. boiled frankfurters and sausages, soft pretzels, nuts, brewed coffee, tea and baked goods. See **Exhibit J-2** and/or § 6-03 of Chapter 6 of Title 26 of the Rules of the City of New York for additional information.
  - Unless otherwise approved by Parks, pushcarts cannot be more than 6 1/2 feet long and 3 1/2 feet wide including all handles, extensions, and protuberances. If the unit is designed so that the operator stands within the unit, the width of the unit, including its wheels, axles, and other appurtenances may not exceed four (4) feet and six (6) inches. Each pushcart may have a 3’ x 3’ freezer cart attachment for the sale of ice cream products. NOTE: Unless otherwise noted, if the Licensee operates in cold weather the Licensee may substitute the optional ice cream cart with a nut cart up to 3’ x 3’ in size. Licensee may not operate both an ice cream cart and a nut cart at the concession location at the same time.
  - DOHMH has classifications and requirements related to mobile food vending units. Non-processing pushcarts with current DOHMH permits are exempt from the new regulation until the current DOHMH permit expires. Existing non-processing pushcarts retrofitted to meet these new requirements must pass a DOHMH inspection before they begin operation. A chart of DOHMH requirements may be reviewed in **Exhibit J-2**. *DOHMH regulations require pushcarts be equipped with wastewater tanks.*
- **Processing Carts and Processing Mobile Trucks** Processing carts and processing mobile trucks are Mobile Food Units that are for the sale of foods that require cooking or any other treatment such as slicing mixing, packaging, or any other alteration that exposes the food to possible contamination. This definition does not include the boiling of hot dogs or heating of pretzels.
  - Processing carts cannot be more than ten (10) feet in length and five (5) feet in width including all handles and extensions. Processing carts with current DOHMH permits are exempt from the new regulation until the current DOHMH permit expires. Existing processing carts adapted to meet new guidelines must pass a DOHMH inspection before they begin operation.

- **Non-Processing Mobile Trucks** Non-processing mobile trucks are motorized vehicles utilized for the sale of pre-packaged foods or foods which require limited preparation.

**Mobile Food Unit Specifications & Maintenance** Licensee shall be required or cause to be required to supply, or otherwise obtain all equipment, including the Mobile Food Unit necessary for the operation of this Concession. Mobile Food Unit umbrellas, canopies and other equipment attached to Mobile Food Units shall be of a design and color subject to prior written approval by Parks. Parks expects the concessionaire to utilize Mobile Food Units of a premium quality and design. In addition, the concessionaire shall repair or replace the above if deemed necessary by Parks. Bids should include a photo or visual schematic of the type of Mobile Food Unit to be used, including the dimensions of the Mobile Food Unit. Mobile Food Units may not extend vending space beyond the confines of the unit. During the term of the Permit, Parks may require the concessionaire to adopt and apply official graphics, art, color(s), and signage to each mobile food unit, canopy, or umbrella at the Premises. It is necessary to keep Mobile Food Units clean and in good condition. This involves, but is not limited to, ensuring that the Mobile Food Units do not leak any type of fluid, including, but not limited to, water, onto the ground. It is also necessary to keep Mobile Food Units clean and free of graffiti. Mobile Food Units must not be damaged or dented. No food products or beverages may be stored on the ground or on any surface in the park other than on or in the Mobile Food Unit at the Premises.

If Licensee uses twenty pound (20 lb.) or greater propane tank(s) to fuel grills on a Mobile Food Unit are required to obtain a Certificate of Fitness license from the FDNY. Such propane tank(s) must be inspected and decal by FDNY before use at the vending location. Violators will be subject to fines and confiscation of propane tanks.

**All menu items and prices for Mobile Food Units are subject to Parks' prior written approval. The selling (specifically at Mobile Food Units) and/or advertisement of alcohol, tobacco products, or non-tobacco smoking products, or electronic cigarettes is strictly prohibited. Licensee will be required to adhere to and enforce this policy.**

**DOHMH Vendor License** All persons designated as a Mobile Food Unit operator must have a valid DOHMH Vendor License in order to operate. All mobile food vendors are required to successfully complete a DOHMH course in food protection to receive a new or renewed DOHMH Vendor License.

**DOHMH Mobile Food Vending Unit Permit** All Mobile Food Units intended for use are required to be inspected and permitted by DOHMH. DOHMH Mobile Food Vending Unit permits are only issued when after the Mobile Food Unit intended for use passes a DOHMH inspection. All Mobile Food Units in operation under a Parks Permit must have passed a DOHMH inspection. In order to schedule the Mobile Food Unit for an inspection, you must provide DOHMH with a signed License Agreement from Parks and a letter from Parks requesting a DOHMH inspection.

#### **DOHMH Letter Grades: Mobile Food Units Only**

Mobile Food Units, trucks and carts, or both, became subject to a DOHMH letter grading program on December 10, 2018. It is similar to the current program for restaurants which is

codified in Health Code Article 81.51 and Chapter 23 of Title 24 of the Rules of the City of New York and is described at

<https://www1.nyc.gov/site/doh/business/food-operators/mobile-and-temporary-food-vendors.page>

To review all NYC DOHMH rules and regulations on mobile food vending, please visit their website at <https://www1.nyc.gov/assets/doh/downloads/pdf/rii/rules-regs-mfv.pdf>. For information on operating a mobile food concession safely and legally, please review the “What Mobile Food Vendors Should Know” guidebook at <https://www1.nyc.gov/assets/doh/downloads/pdf/rii/regulations-for-mobile-food-vendors.pdf>.

Before Parks issues a written Notice to Proceed and Permit decal, vendors must provide Parks with documentation that the Mobile Food Unit passed DOHMH inspection. During the term of the License, persons that operate a Mobile Food Unit without a valid DOHMH Mobile Food Vending Unit Permit will be instructed to cease operations and will be subject to fines. When warranted, representatives of the Parks Enforcement Patrol (PEP), New York City Police Department (NYPD), FDNY, DOHMH, and other agencies having jurisdiction may confiscate the Mobile Food Unit(s), including merchandise. Parks reserves the right to require replacement of vending Mobile Food Units that are in poor condition or that do not meet DOHMH specifications and requirements.

**License Decal** The License shall become effective upon the Licensee’s receipt of a written Notice to Proceed. A License Decal and 311 sign for each Mobile Unit and a Notice to Proceed will be presented to the Licensee after registration of the License. Licensee shall not commence the operation of a Mobile Food Unit until the Licensee has received the Notice to Proceed, License Decal(s) and 311 sign(s) from Parks. Parks will provide a new License Decal for each Mobile Food Unit to the Licensee at the beginning of each year of the License Term, provided that the Licensee is in compliance with the terms of this License. **A replacement fee of \$100.00 will be charged to any vendor who loses its License Decal.**



## EXHIBIT J-2: MOBILE FOOD UNIT GUIDELINES

Supply and Equipment Requirements for Mobile Food Vending Units										
Type of Food Sold and Cooking Method	Permit Class	Potable water	Food and ware washing sinks	Hand wash sink	Waste water tank	Overhead structure	Ventilation	Cold holding	Hot holding	Thermometers
Processing	Potentially hazardous raw foods cooked on unit; e.g., fried and grilled sausages, poultry, shish kebab, hamburgers, eggs and gyros	A	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Potentially hazardous prepared foods combined on the unit; e.g., sandwiches raw fruits, vegetables and salads, breads, bagels and rolls buttered or topped with cream cheese on the unit, smoothies and soft-serve ice cream	B	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	Potentially hazardous prepackaged foods; e.g., prepackaged frozen desserts, prepackaged sandwiches, and prepackaged and pre-sliced fruits and vegetables	C	No	No	Yes <sup>3</sup>	Yes	No	Yes	Yes	Yes
Non-Processing	Non-potentially hazardous unpackaged or packaged foods; e.g., boiled frankfurters and sausages, brewed coffee and tea, donuts, pastries, rolls and bagels buttered or topped with cream cheese at a commissary, popcorn, cotton candy, nuts, candied nuts, soft pretzels, chestnuts	D	Yes <sup>2</sup>	No	No	Yes <sup>3</sup>	Yes	Yes <sup>3</sup>	Yes <sup>3</sup>	Yes <sup>3</sup>
	Non-potentially hazardous uncut fruit and vegetables (including Green Carts)	E	No	No	No	Yes	No	No	No	No
<b>Notes</b> 1. Food and ware washing sinks may be separate or multi-compartment. A single sink is acceptable for food and ware washing if food is washed in a food-grade colander. 2. Waste water tanks are required when generating liquid waste from brewing coffee or tea, boiling frankfurters, or serving or using ice. 3. Hot and cold holding equipment or methods are required for potentially hazardous foods such as hot dogs, sausages or knishes.										

## EXHIBIT K: TRADEMARK LICENSE AGREEMENT

### TRADEMARK LICENSE AGREEMENT

**WHEREAS**, The City of New York (“City”), acting by and through the Department of Parks and Recreation (“Parks”) and Wollman Park Partners II LLC (“Licensee”) entered into an agreement for the operation and maintenance of the Wollman Rink in Central Park, dated October \_\_, 2025, as amended (“the License”); and

**WHEREAS**, Licensee and Parks (“the Parties”) mutually agree that the branding and signage at Wollman Rink should be formalized/further documented in connection with the operation of the License;

**WHEREAS**, Licensee has prepared a design that includes the name of Parks property long associated with the operation of a skating rink and with the City and Parks, namely WOLLMAN RINK NYC, approved by Parks pursuant to Section 1.5 of the License, which is reflected in the design attached as Exhibit “A” hereto (collectively, the “Mark(s)”), which shall include any others as may be approved Parks, and will be incorporated into this Agreement; and

**WHEREAS**, Parks is willing to permit the Licensee to use the Mark(s) in connection with operation of the License during the term of the License subject to the terms and conditions contained in this Trademark License Agreement (the “Agreement”).

**NOW, THEREFORE**, in exchange for good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties agree as follows:

1. License Terms Control. Unless otherwise noted, all capitalized terms referenced herein shall have the meaning ascribed in the License.

2. City Ownership of Mark(s). The City is the exclusive owner of all right, title and interest in the Mark(s) and Licensee hereby assigns all right, title and interest in and to the design reflected in Exhibit “A” and any goodwill appurtenant thereto. The license granted herein shall be personal in nature, and it is expressly understood and agreed that Licensee has no right to sublicense, assign, convey or transfer in any manner to any other person or entity any rights granted to it hereunder; provided, however, that this Agreement shall transfer to an assignee upon transfer of the License as provided in Article 14 of the License. Any attempt by Licensee, or anyone acting on its behalf, to sublicense, assign, convey or otherwise transfer the license granted herein shall be null and void and shall be grounds for immediate termination of this Agreement by the City.

3. License of Mark(s) to Licensee. During the Term of the License unless earlier terminated in accordance with Section 3.2 or 3.3 of the License, or in accordance with Section 6(f) of this Agreement, the City grants to Licensee an exclusive, non-transferable right, license and privilege (without the right to sublicense) to use the Mark(s) solely in connection with identification or promotion of the Licensed Premises and for no other purpose. Promotion of the

Licensed Premises using the Mark(s) shall not include or allow any other promotional merchandising ; provided, however, that all promotional merchandise using the Mark(s) shall be reviewed and approved by Parks in writing prior to distribution or sale subject to Paragraph 4 of this Agreement.

4. City Approval Rights. Prior to Licensee's use of any of the Mark(s) in each instance, Licensee must obtain Parks' prior written approval, in Parks' discretion, to the form, substance, means and manner of each proposed use of the Mark(s). Parks shall endeavor to respond to requests for approval of use of the Mark(s) within 10 business days after Parks' receipt from Licensee of a sample of the proposed use. A sample of each proposed use that requires approval of Parks in accordance with the terms of this Agreement shall be sent for Parks' approval to Parks' Concessions Unit, 830 Fifth Avenue, Central Park, New York, NY 10065.

5. Protective Measures. Licensee agrees that Parks and the City shall have the right to take all other steps necessary to ensure that, in such cases as Parks and the City may reasonably require, the use or display of the Mark(s) is in a manner sufficient to indicate that Parks and the City own all right, title and interest in and to the Mark(s). Without limiting the generality of the foregoing, Licensee agrees to include in any use of the Mark(s) the trademark designation legally required or useful for enforcement, as directed by Parks and the City (e.g. "TM", "SM" or ®, as applicable) in connection with Licensee's use of the Mark(s). Licensee shall include the following statement on the Licensee website, on approved products and other printed or other materials bearing the Mark(s): "WOLLMAN RINK and the design are trademarks of the City of New York." In addition, if Parks or the City provides Licensee with any materials subject to copyright protection in connection with the Mark(s), for use in connection with this Agreement, all use by Licensee of such materials shall bear the following copyright notice: "© [INSERT YEAR OF FIRST PUBLICATION, e.g., 2021] City of New York. All rights reserved."

6. Rights in the City's Marks.

a. Exclusive Ownership. Licensee recognizes the City's sole and exclusive ownership of all rights in the Mark(s) and agrees that the Licensee has no right to use (and shall not permit Licensee or its respective affiliates, directors, officers, employees, agents and consultants to use) the Mark(s), except for the use expressly provided in this Agreement.

b. No Registration. No Claim to Ownership/Goodwill. Licensee shall not acquire or seek to acquire a trademark or domain name or Internet name in any jurisdiction for any term that incorporates the Mark(s), except for the Licensee Website identified in Exhibit "B", or other domain name or URL registered by Licensee in accordance with Section 8 of this Agreement. Licensee acknowledges that the Marks(s) represents significant goodwill of the City and Parks, and that all use of the Marks(s) hereunder shall inure solely to the benefit of the City and/or Parks. Licensee shall not challenge the City's rights in or registration(s) for the Mark(s), or assert independent rights therein. Licensee further acknowledges that any use of any of the Mark(s) that violates the provisions of this Agreement would cause the City and Parks irreparable harm.

c. Quality. Licensee's use of, and services and activities conducted under, the Mark(s), shall at all times be in keeping with the stature and high standards of quality of Parks and City; shall not dilute or tarnish the Mark(s), and shall not violate any applicable legal requirements as required by Section 16 of the License.

d. Licensee's Cooperation. Licensee agrees to execute any and all documents and to complete any other actions reasonably necessary in the judgment of Parks and the City as requested to maintain all of the City's rights in the Mark(s).

e. Disassociation of the Mark. Upon the expiration or sooner termination of this Agreement neither Licensee nor any other person or entity shall have any right to use the Mark(s).

f. Termination; Rights and Remedies. In addition to any other right or remedy of the City hereunder or at law or in equity, the City shall have the absolute right to terminate this Agreement, effective immediately, if the City determines in its sole discretion that this Agreement is not within the best interests of the City. Moreover, the City shall have the absolute right, but not the obligation, to terminate this Agreement if any of the Mark(s) are used by the Licensee, or any of its affiliates, directors, officers, agents and consultants in any manner that is not expressly permitted under this Agreement and the Licensee does not cure such violation within ten (10) business days of receipt of written notice (which may include electronic means) by the City of such violation provided that, notwithstanding the foregoing if such violation cannot reasonably be cured within the time period set forth herein, Licensee shall have such additional time as may be reasonably necessary to cure such violation, as determined by the City, provided that Licensee shall have commenced curing such violation within such time period set forth in this Section 6(f) and shall thereafter diligently prosecute such cure to completion. In the event of a breach of this Section 6(f) then in addition to all of the other remedies available to the City hereunder for a breach of this Agreement, the City shall be entitled to immediate injunctive relief and all other applicable remedies, including damages in connection therewith, against the Licensee.

7. Indemnification.

a. The City shall indemnify, defend, and hold free and harmless Licensee from and against any and all claims which may be suffered, incurred or paid by Licensee or any of them arising, in whole or in part, directly or indirectly, from or out of or relating to any breach of the warranties and representations made by the City regarding the City's ownership and validity of the WOLLMAN RINK portion of the Mark(s) in this Agreement.

b. Without limiting any obligation of Licensee pursuant to the License, Licensee hereby agrees to indemnify, defend, and hold free and harmless the City from and against any and all claims which may be suffered, incurred or paid by the City or any of them arising, in whole or in part, directly or indirectly, from or out of or relating to (i) the Licensee's acts or omissions, in connection with the use of the design portion of the Mark(s) (except for such use authorized by this Agreement), (ii) any trademark, copyright, domain name, right of publicity, right of privacy action, proceeding or claim, or threat of such action, proceeding or claim, arising from

Licensee's use of the Marks(s) in violation of this Agreement or its use of any Mark(s) not approved by Parks, (iii) any breach of or default by the Licensee of any of the terms, covenants or provisions of this Agreement relating to the Mark(s), or (iv) any breach of the warranties and representations made by Licensee in this Agreement.

8. Websites.

(a) Licensee shall, at its sole cost and expense, provide a link to the "Licensee Website" (as herein defined) for the Licensed Premises to the City's Website (as defined herein) and shall be the exclusive owner of the domain names as displayed in the URL addresses used in connection with the business conducted by and through an internet website created and maintained by Licensee during the Term and identified in Exhibit "B" attached hereto (the "Licensee Website"). The Licensee Website shall be accessible from the "City Website" identified in Exhibit "C" (the "City Website") and the City shall provide access from the "City Website" to the Licensee Website. For purposes of clarity, Licensee shall acquire no trademark rights in any Mark(s) contained in the domain names identified in Exhibit "B". The City and Parks agree that Licensee shall have the right to use the Mark(s) on any Licensee Website established by Licensee for the Licensed Premises in a manner preapproved in writing by \_\_\_\_\_, on behalf of Parks and pursuant to this Agreement.

(b) The Licensee Website shall be acquired in the name of, and shall be owned by, Licensee, and may be used by Licensee during the Term. Licensee shall own and direct all copyrights in and to the content of the Licensee Website, to the extent that such content does not consist of the Mark(s) or any copyrightable material owned by the City or Parks. Upon the expiration or sooner termination of this Agreement, Licensee shall discontinue use of any Licensee Website unless the continued use of such domain name and URL shall be approved by the City or Parks in writing. Within ten (10) business days from the expiration or sooner termination of this Agreement, Licensee shall transfer ownership of the Licensee Websites to the City.

(c) Additional domain names to be registered by Licensee and used as links or redirects to the Licensee Website, other than those listed in Exhibit "B", shall be mutually agreed upon by the Parties in writing and in advance of use or registration of any additional domain names.

9. Trademark Ownership.

(a) Licensee agrees that by virtue of this Agreement it does not and shall not claim any right, title, or interest in the Mark(s) or any part thereof (except the right to use them in accordance with this Agreement), and that any and all uses thereof by Licensee shall inure to the benefit of the City. Licensee acknowledges the City's sole right, title, and interest in and to, and ownership of the Mark(s) and the validity of the trademarks and service marks that are part of the Mark(s) and the City's rights therein. Licensee agrees that it will not raise or cause to be raised any challenges, questions, or objections to the validity, registrability, or enforceability of the Mark(s), to this Agreement or to the validity of the Mark(s) and the City's rights therein, and shall not contest such right and title, nor do or permit to be done any act or omission which will in any

way impair the rights of the City with respect to such Mark(s). Any violation of this paragraph shall constitute an immediate breach of this Agreement and the License and cause for immediate termination by the City in accordance with the first sentence of Paragraph 6(f).

(b) Licensee agrees to reasonably assist the City in protecting the City's rights to the Mark(s), including but not limited to reporting to \_\_\_\_\_, on behalf of the City any infringement or imitation of the Mark(s) of which Licensee becomes aware. The City shall have the sole right to determine whether to institute litigation with respect to such infringements, as well as the sole right to select counsel. The City may commence or prosecute any claims or suits for infringement of the Mark(s) in its own name or the name of Licensee or join Licensee as a party thereto. The City shall be entitled to keep the entire amount of any recovery. If the City brings an action against any infringement of the Mark(s), Licensee shall cooperate with the City and lend whatever assistance is reasonably necessary in the exclusive judgment of counsel to the City, subject to being reimbursed for its reasonable and pre-approved out-of-pocket expenses.

(c) If claims are made against the City or Licensee with respect to the use of the Mark(s), then the parties agree to consult with each other on a suitable course of action. In no event shall Licensee, without the prior written consent of the City, have the right to acknowledge the validity of the claim of such party, to obtain or seek a license from such party, or to take any other action which might impair the ability of the City to defend or otherwise contest the claim of such party. The City shall have the right to participate at its own expense in the defense of any claims or suit instituted against Licensee with respect to the use by Licensee of the Mark(s).

(d) Licensee agrees to make modifications requested by the City in Licensee's use of the Mark(s) or to discontinue use of the Mark(s), if the City, in its sole discretion, determines such action to be necessary or desirable to resolve or settle a claim or suit or to eliminate the threat of a claim or suit by any party. Licensee shall be reimbursed for its reasonable costs and expenses in connection with any such modifications requested by the City with respect to the WOLLMAN RINK name or portion of the Mark(s).

#### 10. Goodwill.

(a) Licensee recognizes and acknowledges that the Mark(s) and the City's name and reputation are the exclusive property of the City and that they communicate to the public, worldwide, a reputation for high standards of quality and service, which reputation and goodwill have been and continue to be unique to the City. Licensee further recognizes and acknowledges that the Mark(s) have acquired secondary meaning in the mind of the public. The Mark(s) shall not be used in connection with any illegal, illicit or immoral purpose or activity, or in any manner which would be inconsistent with or damaging to the City's name and reputation. The City shall have the right to terminate this Agreement immediately, upon written notice, in the event that any part of the Mark(s) is used by Licensee in connection with any illegal, illicit or immoral activity. In addition, in the event that any part of the Mark(s) is used by Licensee in any way which, in the reasonable judgment of the City, is inconsistent with or damaging to the City's name or reputation, the City shall so notify Licensee in writing and this Agreement shall terminate in accordance with the first sentence of paragraph 6(f) of this Agreement.

(b) Licensee shall use the Mark(s) only in the manner specified by the City. Licensee acknowledges and agrees that all use of and goodwill in the Mark(s) shall inure to the sole benefit of the City. Licensee shall not acquire any rights in the Mark(s) by virtue of any use it makes of the Mark(s). Licensee shall not attempt to register the Mark(s) alone or as part of any other trademark, service mark, trade name, or corporate identifier (including without limitation its own trademark), nor shall Licensee use, adopt as its own, or attempt to register any marks, names, domain names, designations, or indicia that are the same as or similar to the Mark(s).

(c) Any art work or other materials conceived under or resulting from this Agreement that utilizes the Marks, including but not limited to copyrighted materials and trademarks, trade names, service marks, service names and trade dress and the like, whether developed by Licensee or on behalf of Licensee shall be considered “work made for hire” within the meaning of 17 U.S.C. §101 and is the exclusive property of the City upon creation. In the event that such materials are deemed not to be a work made for hire, Licensee hereby irrevocably assigns to the City its entire right, title, and interest in and to such work and any derivative works thereof (including without limitation all rights of copyright). Licensee agrees to execute any documents as may be deemed necessary or desirable by the City to register in its own name, record, confirm, clarify, or otherwise cause the foregoing assignment of rights to the City to have full legal effect. If Licensee desires to develop any new or different design for any mark, symbol, logo character or other element included within the Mark(s), Licensee shall first obtain the City’s written approval, and in any event all such designs shall be fully subject to the provisions of this paragraph and owned in full by the City.

11. Survival. Sections 6(a)-(f), 7, 8, and 9, shall survive the expiration or sooner termination of this Agreement.

*[remainder of page intentionally left blank]*

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year first above written.

NEW YORK CITY  
DEPARTMENT OF PARKS & RECREATION

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

Title: \_\_\_\_\_

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

WOLMAN PARK PARTNERS II, LLC

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

Title: \_\_\_\_\_

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

APPROVED AS TO FORM  
CERTIFIED AS TO LEGAL AUTHORITY:

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



**EXHIBIT A**

The Marks

Wollman Rink

Wollman Rink NYC



**WOLLMAN**  
RINK NYC



## **EXHIBIT B**

### Licensee Websites

<https://wollmanrinknyc.com/>

<https://wollmanparkpartners.com/>

DRAFT

**EXHIBIT C**

City Website

<https://nycgovparks.org>

DRAFT

### EXHIBIT L: PAYMENT SCHEDULE OPERATING YEARS 1-3

If Percentage Fees become applicable, the aggregate payment of License Fee(s) to the City for a particular Operating Year shall not exceed the Percentage Fee for such Operating Year.

Operating Year	Minimum Annual Fee and Due Date (see section 4.1)	Percentage Fee and Due Date (see section 4.1)
Operating Year 1	<ul style="list-style-type: none"><li>• \$850,000.00 due on the last day of Operating Year 1</li><li>• \$1,694,530.00 due on the first day of Operating Year 4</li><li>• \$855,470.00 due in equal monthly installments commencing on the first day of Operating Year 5 and ending on the last day of Operating Year 10</li></ul>	Percentage Fee for Operating Year 1, if applicable, shall be paid by no later than the thirtieth (30th) day of Operating Year 2.
Operating Year 2	<ul style="list-style-type: none"><li>• \$1,751,000.00 due on the last day of Operating Year 2</li><li>• \$1,751,000.00 due in equal monthly installments commencing on the first day of Operating Year 5 and ending on the last day of Operating Year 10</li></ul>	Percentage Fee for Operating Year 2, if applicable, shall be paid by no later than the thirtieth (30th) day of Operating Year 3
Operating Year 3	<ul style="list-style-type: none"><li>• \$1,803,530.00 due on the last day of Operating Year 3</li><li>• \$1,803,530.00 due in equal monthly installments commencing on the first day of Operating Year 5 and ending on the last day of Operating Year 10</li></ul>	Percentage Fee for Operating Year 3, if applicable, shall be paid by no later than the thirtieth (30th) day of Operating Year 4