

**LICENSE AGREEMENT**

**BETWEEN**

**HM DONUTS LLC**

**AND**

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

*for*

**FOR THE OPERATION, RENOVATION, AND MAINTENANCE  
OF TWO FOOD SERVICE FACILITIES ON THE HUTCHINSON RIVER PARKWAY,  
BRONX, NEW YORK**

**BRONX**

**X101-O-R**

**DATED: \_\_\_\_\_, 2021**

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**LICENSE AGREEMENT** (“License Agreement” or “License”) made this \_\_\_\_ day of \_\_\_\_\_, 2021 between the City of New York (the “City”) acting by and through the Department of Parks & Recreation (“Parks”), whose address is The Arsenal, Central Park, 830 Fifth Avenue, New York, New York 10065), and HM Donuts LLC (“Licensee” or “Concessionaire”), a New York limited liability company, whose address is 68 Culver Road, Suite 150, Monmouth Junction, New Jersey 08852.

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

**WHEREAS**, the two food service facilities on the Hutchinson River Parkway (northbound and southbound), near the Westchester Avenue Exit in the Bronx, are under the jurisdiction of Parks;

**WHEREAS**, Parks desires to provide for the operation, renovation, and maintenance of the two food service facilities at the Licensed Premises (as hereinafter defined in **Section 2.1(j)**) on the Hutchinson River Parkway for the accommodation of and use by the public;

**WHEREAS**, Parks has complied with the requirements of the Franchise and Concession Review Committee (“FCRC”) for the selection of concessionaires, including the issuance of a Request for Proposals with addenda (“RFP”) for the operation, renovation, and maintenance of the two food service facilities at the Licensed Premises;

**WHEREAS**, the Licensee desires to operate, renovate, and maintain the two food service facilities at the Licensed Premises in accordance with the terms set forth herein; and

**WHEREAS**, Parks and Licensee desire to enter into this License Agreement specifying rights and obligations with respect to the operation, renovation, and maintenance of the two food service facilities at the Licensed Premises;

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

## **I - GRANT OF LICENSE**

**1.1** Parks hereby grants to Licensee and Licensee hereby accepts from Parks this License to operate, renovate, and maintain two food service facilities at the Licensed Premises (the “Concession”), in accordance with the provisions herein and to the satisfaction of the Commissioner. All plans, schedules, services, menu items, merchandise, prices and fees, and hours of operation are subject to Parks’ prior written approval. Licensee will be responsible for all costs associated with the operation, renovation, and maintenance of the Licensed Premises.

**1.2** Licensee shall obtain any and all approvals, permits, and other licenses required by Federal, State and City laws, rules, regulations and orders which are or may become necessary to operate, renovate, and maintain the Licensed Premises and perform all Capital Improvements in accordance

with the terms of this License. In order to be in compliance with this License Agreement, Licensee must fulfill all of the obligations contained herein. Commissioner may deem as a default Licensee's failure to fulfill any of its obligations herein for any reason

**1.3** It is expressly understood that no land, building, space, or equipment is leased or otherwise conveyed to Licensee by Parks, but that during the Term of this License (as provided in **Article 3**), Licensee shall have the use of the Licensed Premises for the purposes herein provided. Licensee has the right to occupy and operate the Licensed Premises only so long as each and every term and condition in this License is strictly and properly complied with and so long as this License is not terminated by Commissioner.

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

## **II - DEFINITIONS**

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) “Gross Receipts.”

(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 food and beverages or services of any kind, provided that Gross Receipts shall exclude the amount of any Federal, State or City sales taxes which may now or hereafter be imposed upon or be required to be collected and paid by Licensee as against its sales. Gross Receipts shall include any orders placed or made at the Licensed Premises, although delivery of merchandise or services may be made outside or away from the Licensed Premises, as long as the orders are received at 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. For example, if Licensee receives a \$1,000 deposit for services to be provided at a later date, the deposit must be reported at the time of payment, regardless of when the service is provided. All sales made or services rendered from the Licensed Premises shall be construed as made and completed therein even though payment therefor may be made at some other place, and although delivery of merchandise sold or services rendered upon the Licensed Premises may be made other than at the Licensed Premises.

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

(iii) Gross Receipts shall also include receipts from all sales made by any other operator or operators using the Licensed Premises under a properly authorized sublicense or subcontract agreement, as provided in **Article 10** herein. 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 also include Licensee’s income from sublicense or subcontracting fees and commissions Licensee receives in connection with all services provided by Licensee’s subcontractors or sublicensees.

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

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

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

(k) “Licensee’s Special Events” shall mean any catered or private function (e.g. either arranged by Licensee or by reservation of the Licensed Premises through Licensee by third parties) for a Parks-appropriate purpose at the Licensed Premises, excluding “Parks’ Special Events” as defined in **Section 13** of this Agreement. Subject to prior written approval from Parks Licensee may conduct special events or programs at the Licensed Premises. Licensee shall submit to Parks for approval all plans for any events or programs at the Licensed Premises, and in no



event shall the Licensed Premises be closed to conduct private activities during public hours of use except when such activities are specifically approved or sponsored by Parks and such a closure has been announced to the public at least two weeks in advance of such activities or events. Licensee must document each of Licensee's Special Events via sequentially pre-numbered contracts that capture event information, including the time and date of the event, the estimated number of attendees and required payment. All revenue generated through such Special Events must be reported to Parks as Gross Receipts.

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

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

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

### **III - TERM OF LICENSE**

**3.1** The License shall become effective upon Parks' written Notice to Proceed following registration with the Comptroller's Office ("Notice to Proceed"). The Concession shall commence on March 18, 2020 (the "Commencement Date") and shall terminate three (3) years from the Commencement Date or upon the sooner termination of this License pursuant to any provision of **Article 3** of this License ("Termination Date" or "Expiration Date"). The period between the Commencement Date and the Termination Date shall be referred to as the "Term." There shall be up to two (2) one-year renewals options exercisable upon Parks sole discretion. In no event shall the Concession become effective prior to registration with the Comptroller.

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

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

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

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

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

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

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

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

**3.6** Licensee agrees that upon the expiration or sooner termination of this License, it shall immediately cease all operations pursuant to this License and shall vacate the 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 and Personal Equipment from the Premises unless such property is held by the Commissioner pursuant to **Section 3.5**. Licensee acknowledges that any personal property remaining on the Premises after 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 Premises during the time prescribed in this Agreement. Pursuant to **Section 4.4** herein, City may use the Security Deposit to recover such damages in part or in whole.

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

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

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

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

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

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

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

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

#### **IV - PAYMENT TO CITY**

**4.1 (a)** Licensee shall pay the City License fees for each year in the License Term consisting of the higher of the minimum annual fee or 6% of the Gross Receipts derived from the operation of the Licensed Premises as set forth below:

<u>YEAR</u>	<u>MINIMUM ANNUAL FEE</u>	<u>% OF GROSS RECEIPTS</u>
<u>1</u>	\$ 160,000	6%
<u>2</u>	\$ 168,000	6%
<u>3</u>	\$ 176,400	6%
<u>Option Year 1 (if applicable)</u>	\$ 185,220	6%
<u>Option Year 2 (if applicable)</u>	\$ 194,481	6%

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

**4.3** Late charges shall be assessed on any payment that is overdue for more than ten days. In the event that payment of any License fees, percentage fees or any other charges shall become overdue for ten days following the date on which such fees are due and payable as provided in this License, a late charge of two percent (2%) per month on the sums so overdue (computed on a thirty day month) from the date they were due and payable shall become immediately due and payable

to Parks as liquidated damages for the administrative cost and expenses incurred by Parks by reason of Licensee's failure to make prompt payment, and said late charges shall be payable by Licensee without notice or demand. For example, a monthly payment, in the amount of one thousand dollars (\$1,000), due on the 1<sup>st</sup> day of the month must be received no later than the 10<sup>th</sup> day of the month. If no payment is received, a 2% late charge in the amount of twenty dollars (\$20) will be assessed on the 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 10th day of the month following the month in which it shall be due, or is already past due, an additional charge of two percent (2%) of the total of such fee and arrears shall be added thereto and shall be payable and collectable with the next monthly License fee installment. Failure to abide by the terms of this Article shall be presumed to be a failure to substantially comply with the terms, conditions and covenants of this License Agreement and shall be a default hereunder. No failure by Commissioner to bill Licensee for late charges shall constitute a waiver by Commissioner of such late charges or Commissioner's right to enforce the provisions of this Article. If any local, state or federal law or regulation which limits the rate of interest which can be charged pursuant to this Article is enacted, the rate of interest set forth in this Article shall not exceed the maximum rate permitted under such law or regulation.

**4.4** (a) Upon affixing its signature to this License, Licensee shall deposit with the City the amount of thirty-six thousand four hundred sixty-five dollars (\$36,465) as its security deposit ("Security Deposit"). The Security Deposit may be in the form of an interest-bearing account or other format approved by Parks. The Security Deposit shall be held by the City, without liability for the City to pay interest thereon, as security for the full, faithful and prompt performance of and compliance with each and every term and condition of this License to be observed and performed by the Licensee. The Security Deposit shall remain with the City throughout the Term of this License.

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

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

**4.5** (a) On or before the thirtieth (30<sup>th</sup>) day following each month of each year of the License Term, Licensee shall submit to Parks, in a form annexed hereto as **Exhibit B** or other form satisfactory to Parks, a statement of Gross Receipts, signed and verified by an officer of Licensee, reporting any Gross Receipts generated under this License Agreement during the preceding month. The statement shall include the following phrase: “I hereby certify the above statement to be true and correct.” Each of the reports of Gross Receipts shall report the Gross Receipts generated at the Licensed Premises in the following categories:

Beverages	Gross Receipts from beverages sold at the Licensed Premises, excluding catering sales.
Food	Gross Receipts from food sold at the Licensed Premises, excluding catering sales.
Vending Machine	Net receipts from the operation of snack and beverage vending machines, if any, at the Licensed Premises.
Catering Sales	Gross Receipts from catered events, if any, at the Licensed Premises.
Catered Event Deposits	Gross Receipts from deposits for catered events, if any, at the Licensed Premises.
Gift Cards	Gross Receipts from the sale of gift cards redeemable at the Licensed Premises.
Merchandise	Gross Receipts from the sale of merchandise at the Licensed Premises.
Miscellaneous	Any other sources of income realized from the Licensee’s operations at the Licensed Premises, including reservation of the Licensed Premises for Licensee’s Special Events.

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

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

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

**4.7** (a) Licensee, during the Term of this License, shall maintain a revenue control system to ensure the accurate and complete recording of all revenues, in a form and manner acceptable to the City. This revenue control system must maintain detailed sales information from each sales transaction. Specifically, sales information must be recorded electronically, via a computerized point-of-sale system, and must include, but is not limited to, details on each sales transaction, the item(s) sold, time, date of sale and price of the item sold. In addition, Licensee must also document each of Licensee's Special Events via signed sequentially pre-numbered contracts that capture event information, including the time and date of the event, the number of attendees and required payment. Licensee shall also establish a dedicated bank account for all deposits related to revenue generated at the Licensed Premises. 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 point of sale receipts, and sales books; and duplicate bank deposit slips and bank statements.

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

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

Gross Receipts are missing and the highest April Gross Receipts occurred in April 2004, then April 2007's "revised" Gross Receipts shall be calculated using April 2004's figures multiplied by the applicable CPI increases during that period. Licensee shall pay any assessment based upon such reasonable projections by Parks or the Comptroller within fifteen (15) days after receipt thereof, and the failure to do so shall constitute an additional substantial violation of this License and a default hereunder.

**4.8** In the event Parks reasonably determines that Licensee or Licensee's employees, agents, sublicensees, or subcontractors have breached any of the provisions contained in **Sections 4.1** through **4.7** hereinabove, Licensee may be subject to a charge of five hundred dollars and zero cents (\$500.00) with respect to each incident of breach as liquidated damages. The imposition of such liquidated damages shall not preclude the exercise by the City of any other remedy permitted under this License or under the law.

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

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

## **V - 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 Licensee for the purpose of examination, audit, review or any purpose they deem necessary. Licensee shall also permit the inspection by Parks, Comptroller or other duly authorized representatives of the City of any equipment used by Licensee, including, but not limited to, cash registers and recording machines, and all reports or data generated from or by the equipment. Licensee shall cooperate fully and assist Parks, the Comptroller or any other duly authorized representative of the City in any examination or audit thereof. In the event that the Licensee's books and records, including supporting documentation, are situated at a location 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 auditors conducting such examination or audit at said location.

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

**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.



## **VI - CAPITAL IMPROVEMENTS**

**6.1** (a) Licensee shall expend or cause to be expended during the Term of this License a minimum of five hundred thousand dollars (\$500,000) for Capital Improvements as defined in **Section 2.1(b)** herein. The architectural and design fees necessary to implement the Capital Improvements shall be included in the foregoing amount, but not the Design Review Fee referenced in **Section 6.2** herein. Such Capital Improvements shall include, but are not limited to, the items listed in the Schedule of Capital Improvements attached hereto as **Exhibit D**. Licensee shall perform and complete all such Capital Improvements at its sole cost and expense and in accordance with designs and plans approved by Parks and other government agencies having jurisdiction. If, for reasons outside the control of Licensee, Licensee does not receive approval for any and all permits from Parks or any other agency of the City of New York (provided that in each case the party applying for any such permit or approval has submitted a complete application for, and has made diligent and good faith efforts to comply with all conditions of the governmental agency granting such, permits or approvals), Licensee and Parks shall work together to revise the plan for Capital Improvements. Notwithstanding the foregoing, Licensee is permitted to make additional Capital Improvements, provided, however, Licensee first obtains the express written consent of the Commissioner, which shall not be unreasonably withheld, conditioned or delayed. All Additional Fixed Equipment and Expendable Equipment applied toward the Capital Improvements required in this **Section 6** shall become the property of Parks upon installation, at Parks' option.

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

**6.2** (a) Upon affixing its signature to this License Agreement, Licensee shall pay to the City the amount of five thousand dollars (\$5,000), representing one percent (1%) of the cost of the minimum guaranteed Capital Improvements described in **Section 6.1** above, as a fee for design review by Parks personnel (the "Design Review Fee").

(b) At Parks' discretion, Licensee may be required to provide a construction security deposit, in an amount and format approved by Parks, to ensure that all Capital Improvement work is completed. If required, this security deposit, preferably in the form of a letter of credit, must be in place before any Capital Improvement work commences. No construction security deposit shall be required for the Capital Improvements listed on **Exhibit D**.

(c) To guarantee prompt payment of moneys due to a contractor or his or her subcontractors and to all persons furnishing labor or materials to the contractor or his or her subcontractors in the prosecution of any Capital Improvement Project with an estimated cost exceeding two hundred fifty thousand dollars (\$250,000), Licensee shall post or cause to be posted a payment bond or other form of undertaking approved by Parks in the amount of one hundred percent (100%) of the cost of such Capital Improvement Project before commencing such

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

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

**6.4** Licensee shall proceed in good faith and with due diligence to complete all necessary Capital Improvements in accordance with the schedule set forth in **Exhibit D**. Licensee shall complete or cause to be completed all Capital Improvements so that the services to the public contemplated herein may commence and continue, unless such work cannot be completed due to circumstances beyond the control of Licensee as reasonably determined by the Commissioner, including acts of God, war, enemies or hostile government actions, revolutions, insurrection, riots, civil commotion, strikes, fire or other casualty. In such situations, the Licensee shall propose for the Commissioner’s approval 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 applicable date specified for completion in **Exhibit D** (as may be extended by the Commissioner due to circumstances beyond the control of Licensee), Licensee may be required to pay the City liquidated damages of one hundred dollars (\$100) per day until the outstanding improvement is completed, provided that such failure is not the result of delay by Parks or any City, state, or federal permitting authority and provided further that Parks has given Licensee a notice to cure such failure to complete and Licensee has failed to cure within the period specified in such notice. In the event of any delay by Parks or any City, state, or federal permitting authority, the date specified for completion of the item affected by the delay shall be adjusted to reflect the duration of such delay. The scope of

work may be modified with the prior written approval of Parks in the event of unforeseen circumstances that could not have been reasonably anticipated affecting construction conditions at the Licensed Premises, provided that in no event shall Licensee expend or cause to be expended less than five hundred thousand dollars (\$500,000) for Capital Improvements.

**6.5** Licensee shall pay all applicable fees and shall submit to Parks, the New York City Department of Buildings (“DOB”), the New York City Public Design Commission, and all other agencies having jurisdiction, for prior written approval, all designs, plans, specifications, schematics, working and mechanical drawings, which shall be signed and sealed by a registered architect or licensed professional engineer (if requested by Parks), 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 will be responsible for obtaining all necessary permits, licenses and approvals from all City, State and Federal Agencies having jurisdiction for the operation and maintenance of the Licensed Premises and the performance of all Capital Improvements at the Licensed Premises. This may include, but is not limited to, obtaining DOB construction permits, DOB Public Assembly Permits, DOB Certificate of Occupancy or Letter of No Objection, approval from the Public Design Commission, Department of Health and Mental Hygiene (“DOHMH”) permits, fire department certificates, Department of Environmental Protection (“DEP”) permits, New York State Department of Environmental Conservation (NYS DEC) approvals, New York State Historic Preservation Office approvals, and New York City Landmarks Preservation Commission approvals. Licensee shall retain a professional licensed engineer or registered architect approved by Parks for design and filings of proposed capital work and to oversee the entire construction project. This supervising architect or engineer will be required to ensure that all construction conforms to the plans approved by Parks’ Design Division. All designs for construction to be performed on the Licensed Premises require written approval from Parks. All work shall be undertaken in accordance with the plans, designs, specifications, schematics, and working and mechanical drawings approved in writing in advance by Parks. No Capital Improvement shall be deemed Finally Completed until the Commissioner certifies in writing that the Capital Improvement has been completed to Commissioner’s satisfaction.

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

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

**6.8** Licensee shall perform all Capital Improvements in accordance with all federal, state, and City laws, rules, regulations, orders, and industry standards, and with materials as set forth in the approved plans, specifications, schematics, working and mechanical drawings. All equipment and materials installed as part of the Capital Improvements shall be new or like-new (provided that Licensee may use high-end recycled materials to the extent consistent with its trade dress), free of defects, of high grade and quality, suitable for the purpose intended and furnished in ample quantities to prevent delays. Licensee shall obtain all manufacturer's warranties and guarantees for all such equipment and materials, as applicable, and shall assign same to the City when and if the City exercises its option to take title to such equipment and materials in accordance with the terms of this License Agreement except to the extent that Licensee retains the obligation to maintain such equipment and materials under this License Agreement. In furtherance of the preceding sentence, as applicable, Licensee shall execute and deliver to the City any documents reasonably requested by the City in order to enable the City to enforce such guaranties and warranties. All of the City's rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the City to any subsequent licensees of the Licensed Premises.

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

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

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

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

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

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

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

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

**6.17** Licensee shall promptly repair, replace, restore, or rebuild, as the Commissioner reasonably may determine, items of Capital Improvements in which defects in materials, workmanship or design may appear or to which damages may occur because of such defects, during the one (1) year period subsequent to the date of the Final Completion of such Capital Improvements.

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

**6.19** Upon installation, title to all construction, renovation, improvements, and fixtures made to the Licensed Premises as well as to all furnishings, finishes, and equipment accepted by Parks as Capital Improvements shall vest in and thereafter belong to the City at the City's option, which may be exercised at any time after the Substantial Completion of their construction, renovation, improvement, affixing, placement or installation. To the extent the City chooses not to exercise

its option with respect to any of the construction, renovation, improvements, equipment or fixtures made to the Licensed Premises, it shall be the responsibility of Licensee, at the termination or expiration of this License, to remove such equipment and restore the Licensed Premises to the satisfaction of the Commissioner at the sole cost and expense of the Licensee.

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

## **VII - 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, upon their attachment, installation or affixing.

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

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

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

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

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

## **VIII- FIXED AND EXPENDABLE EQUIPMENT**

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

**8.2** City has title to all Fixed Equipment on the Premises as of the Commencement Date. Title to any Additional Fixed Equipment and to all construction, renovation, or improvements

made to the Licensed Premises other than Personal Equipment shall vest in and belong to the City at the City's option, which option may be exercised at any time after the substantial completion of the affixing of said equipment or the substantial completion of such construction, renovation or improvement. To the extent City chooses not to exercise such option it shall, at the termination or expiration of this License, be the responsibility of Licensee, at its sole cost and expense and to the satisfaction of Commissioner, to remove such equipment and restore the Licensed Premises to Parks in a condition better than at the commencement of the Term.

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

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

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

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

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

## **IX - UTILITIES**

**9.1** Parks makes no representations regarding the adequacy of utilities currently in place at the Licensed Premises. Licensee will be required to connect to and/or upgrade any existing utility service or create a new utility system and obtain the appropriate permits and approvals. This includes establishing a dedicated meter and/or submeter that captures electricity usage at the Licensed Premises and an account with Con Edison (or other relevant provider) as appropriate. Licensee will be required to pay for any and all utility costs connected with its operations at the Licensed Premises during the Term. These utility costs include, but are not limited to, paying all

water and sewer charges that DEP assesses for water usage. Licensee shall adhere to all DEP directives and restrictions regarding drought and water conservation issues during the Term.

## **X - OPERATIONS**

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

(a) Parks may authorize Licensee to change its approved rates, fees and/or prices as set forth in **Exhibit C**, provided that Licensee provides a written request and documentation, if applicable, to the reasonable satisfaction of the Commissioner of the proposed changes. Licensee may make the proposed price changes only with the prior written approval of Parks. Should Licensee choose to charge less than the prices approved by Parks, this choice shall in no way be interpreted as a waiver of Licensee's right to charge the approved prices at any other time.

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

(c) (i) Licensee shall operate, renovate, and maintain the food service facilities at the Licensed Premises at a high standard of quality. The exact size and location of the food service facilities are subject to Parks' prior written approval:

(ii) Licensee shall maintain adequate inventory to assure a constant supply of food and beverages. 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 operate the food service facility if it has obtained the appropriate valid permits and authorizations required by DOHMH. In addition to a Parks' license a staff person with a valid DOHMH food handler's license must be present at all times the food service facilities are operating. If Licensee operates without all necessary permits, it may be subject to fines and/or confiscation of merchandise.



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

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

**10.3** (a) Smoking of any tobacco product, non-tobacco smoking product, or electronic cigarettes is strictly prohibited at the Licensed Premises except in parking lots.

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

(c) 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, renovation, and maintenance of the Licensed Premises in accordance with all applicable Federal, State, and City laws, rules and regulations. Licensee shall operate and occupy the Licensed Premises in accordance with all applicable law and shall, at its sole cost and expense, obtain all approvals, licenses, permits and certificates (including amendments thereto) that may be required to operate the Licensed Premises in accordance with applicable law, including any necessary Certificate(s) of Occupancy or Temporary Certificate(s) of Occupancy. Licensee shall at all times operate the Licensed Premises in accordance with the provisions of any required licenses or permits. In the event that, at any time during the Term, Licensee does not have a Certificate of Occupancy because one is not legally required, then Licensee shall obtain a "Letter of No Objection" from DOB, if required. Furthermore, in the event that, at 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 Temporary Certificate(s) of Occupancy or "Letter(s) of No Objection." Nothing in this section shall limit Licensee's obligation to pay the fees due under this License Agreement. Licensee shall obtain a Temporary Certificate of Occupancy for the installation of and operation of temporary structures authorized by Parks.

**10.5** Licensee is prohibited from cutting down, pruning or removing any trees on the Licensed Premises without prior written approval from Parks. Licensee shall report dead and diseased trees to Parks and upon Parks' request they will remove them. Any attachments to the trees, such as lights, will not be permitted.

**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 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 subcontractor or sublicensee whenever reasonably requested by Commissioner.

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

**10.8** 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) maintaining the Licensed Premises; and
- (c) conducting and supervising all activities to be engaged in upon the Licensed Premises.

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

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

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

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

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

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

**10.14** Licensee will be prohibited from displaying, placing or permitting the display or placement of advertisements in the Premises without the prior written approval of Parks. 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 its Licensed Premises. Any prohibited material displayed or placed shall be immediately removed by the Licensee upon notice from Parks at Licensee's sole cost and expense.

**10.15** Licensee shall, at its sole cost and expense, post throughout the Licensed Premises such signs as may be necessary to direct patrons to its services and facilities. The placement, design and content of all directional signage is subject to Parks' prior written approval, which approval shall not be unreasonably withheld, conditioned or delayed. Such signs shall include the necessary wording and arrows to direct patrons to Licensee's attendants. If Licensee contemplates placing any signs off-site, such as on nearby highways or streets, Licensee shall be responsible for obtaining any necessary approvals or permits from any governmental agency having jurisdiction over such highways, streets or locations. The design and content of all such signs, whether on or off Parks' property, are subject to Commissioner's prior written approval.

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

**10.17** Should Commissioner determine that Licensee is not operating the Licensed Premises in a satisfactory manner, Commissioner may in writing order Licensee to improve operations or correct such conditions as Commissioner may deem unsatisfactory. In the event that Licensee fails to comply with such written notice or respond in a manner reasonably satisfactory to Commissioner within the timeframe set forth in said notice, subject to unavoidable delays beyond

the reasonable control of Licensee, notwithstanding any other provisions herein, then Commissioner may terminate this License.

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

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

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

**10.21** Parks' inspectors shall visit the Licensed Premises unannounced to inspect operations, ensure proper maintenance of the Licensed Premises and determine whether or not Licensee is in compliance with the terms of this License Agreement. Based on their inspections, Parks may issue directives regarding deficiencies which Licensee shall rectify in a timely fashion. Violations of the terms of this License Agreement may result in the assessment of liquidated damages, which, if not paid promptly, may be deducted from the Security Deposit. Should Licensee fail to provide the cleaning, maintenance, and operational services required by this License, Parks shall notify Licensee in writing, and Licensee shall be required to correct such shortcomings within the timeframe set forth in such notice. If Licensee fails to cure the violation within the time frame set forth in the notice, Parks may, at its option, in addition to any other remedies available to it, assess liquidated damages and/or suspend or terminate this License Agreement. Parks may impose an additional two hundred fifty dollars (\$250) administrative fee for reinstatement of suspected license. Liquidated damages may be assessed in accordance with the following schedules:

<b>PROVISION</b>	<b>LIQUIDATED DAMAGES PER OCCURRENCE</b>
Unauthorized Menu Items or Merchandise	\$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 liquidated damages, there is a process by which the assessment may be appealed if Licensee feels that the assessment has been assessed in error. The procedure is outlined below:

## 1. Filing an Appeal

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

## 2. Adjudication of Appeal

- A. The appeal shall be sent to the Director of Operations Management & Planning, whose office is located at the Arsenal, 830 Fifth Avenue, New York, NY 10065. The Commissioner has designated the Director of Operations Management & Planning to decide on the merits of these appeals. The decision of the Director of Operations Management & Planning shall constitute the final decision of Parks.
- B. The Director of Operations Management & Planning is authorized to investigate the merits of the appeal, but is not required to hold a hearing or to speak to Licensee in person.

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

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

**10.24** Licensee shall have a sufficient number of staff available at the Licensed Premises during regular operating hours to ensure proper operation of the concession granted hereby. Parks reserves the right to require that all staff wear uniforms that have been approved in writing by Parks.

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

**10.26** If the operations permitted under this License Agreement must be suspended in order to comply with federal, state, or local law, rules, regulations, or orders, Licensee shall maintain all insurance policies required by this License Agreement during the period of suspension. In addition, Licensee shall be responsible for all maintenance and security required under this License Agreement during the period of suspension.

**10.27** Licensee may only sell merchandise using the City's trademarks if it has been purchased from authorized licensees of the City of New York. Licensee may not sell merchandise promoting musicians, entertainers, sports figures, cartoon characters, commercial products or non-park-related events at the Licensed Premises. The knowing sale of counterfeit or unlicensed merchandise at the Licensed Premises will result in the immediate termination of the License Agreement and seizure of the Security Deposit.

**10.28** Parks reserves the right to approve of any name selected for the Licensed Premises by Licensee. Parks may require that the City own the portion of any new name selected by the Licensee for the Licensed Premises that indicates Parks property or a preexisting facility name. The City will not own any portion of a new name that consists of the name, portrait or signature of a living or deceased individual or a restaurant identifier that is not otherwise associated with Parks' property.

**10.29** Licensee may, with Parks' prior written approval, provide snack and beverage service through vending machines inside the Licensed Premises. A maximum of two (2) vending

machines may be placed inside the Licensed Premises. Licensee shall remove any vending machines at the direction of the Commissioner. Licensee shall comply with the Citywide Food and Beverage Vending Machines Standards (“Standards”) found in **Exhibit H**. The Standards may be changed during the term of the License and Licensee will be required to comply with any new and/or changed food or beverage standards in the operation of vending machines at the Licensed Premises. Notwithstanding the foregoing, if the implementation of such new or changed Standards will result in a material adverse effect on Licensee’s cost, upon submission to Parks of documentation satisfactory to Parks demonstrating such effect, Licensee and Parks may amend the License Agreement as agreed upon between Parks and Licensee. If Licensee fails to comply with any new and/or changed Standards, as directed by Parks, Licensee shall remove any vending machines on the Licensed Premises

## **XI - MAINTENANCE, SANITATION AND REPAIRS**

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

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

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

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

**11.5** Licensee shall maintain and improve the landscaping at the Licensed Premises. This shall include, but is not limited to, performing any seeding, trimming, pruning, planting, fertilization, terrain shaping, and soil improvements. Licensee shall report dead and diseased trees to Parks and upon Parks' request, Licensee shall remove them at its sole cost and expense. In addition, Parks requires that any trees on the Licensed Premises be pruned by Licensee as needed, with Parks' prior approval. Licensee shall submit detailed plans to Parks of all horticultural and landscaping work to be performed. All-work to be performed at the Licensed Premises is subject to Parks' prior written approval. 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.

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

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

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

**11.9** For any vehicle fuel dispensing tanks or underground heating oil storage tanks over 1,100 gallon capacity, Licensee shall maintain up-to-date Petroleum Bulk Storage ("PBS") registrations with State Department of Environmental Conservation ("DEC") and register such tanks with the 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 Citywide Services on Randall's 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.

**11.10** Licensee shall provide safe lighting throughout the Licensed Premises and promptly replace lamps after lamp outages.

**11.11** Licensee shall maintain public parking lots, of which a limited number of spaces will be for facility staff and patrons. Licensee shall ensure that the number, placement and specifications of all accessible spaces comply with ADA guidelines as well as with all City, State and Federal regulations, including striping and signage specifications.



## **XII - 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.

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

## **XIII - RESERVATION FOR SPECIAL EVENTS**

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

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

## **XIV - PROHIBITION AGAINST TRANSFER; ASSIGNMENTS AND SUBLICENSES**

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

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

The term “assignment” shall be deemed to include any direct or indirect assignment, sublet, sale, pledge, mortgage, transfer of or change in ten (10%) percent or more in the stock or voting control of or interest in Licensee, including any transfer by operation of law.

**14.2** No assignment or other transfer of any interest in this License Agreement shall be permitted which, alone or in combination with other prior or simultaneous transfers or assignments, would have the effect of changing the ownership or control, whether direct or indirect, of ten (10%) percent or more of the stock or voting control of Licensee in the Licensed Premises without the prior written consent of Commissioner. Licensee shall present to Commissioner the assignment or sublicense agreement for approval, together with any and all information as may be required by the City for such approval, including a statement prepared by a certified public accountant stating the financial net worth of the proposed assignee or sublicensee, a certification from the proposed assignee or sublicensee that its financial net worth is sufficient to comply with Licensee’s obligations under this License Agreement, and a certification from the proposed assignee or sublicensee that it shall provide management control acceptable to the Commissioner for the management and operation of the Licensed Premises. The constraints contained herein are intended to assure the City that the Licensed Premises are operated by persons, firms and corporations which are experienced and reputable operators and are not intended to diminish Licensee's interest in the Licensed Premises. Parks reserves the right to require payment of a reasonable transfer fee as a condition of the granting of any required consent or approval.

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

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

**14.5** In the event that Parks authorizes Licensee to enter into a sublicense for operations at the Licensed Premises, the terms and conditions of any such sublicense shall be subject to the prior written approval of Parks. Any such sublicense which is authorized hereunder shall be subject and subordinate to the terms and conditions of this License and Licensee shall require the sublicensee to acknowledge in writing that it received a copy of this License and that it is bound by same. All provisions of this License applicable to Licensee with respect to the operation, renovation, and maintenance of the Licensed Premises shall be equally applicable to any sublicensee. Licensee shall require any sublicensee to agree in writing that it will comply with Parks’ directives and the provisions of this License applicable to Licensee with respect to the renovation, operation, and maintenance of the Licensed Premises, including, but not limited to, obtaining insurance required

of Licensee under this License Agreement and indemnifying the City as set forth in **Paragraph 19** herein, and shall be responsible for assuring such compliance. If any sublicensee does not comply with this License insofar as applicable to it Parks may direct Licensee to terminate that sublicensee's operations. No sublicense may be assigned without the prior written consent of Parks. Any subsequent sublicense agreement(s) will be subject to the terms and conditions as set forth in this License.

## **XV - PARKS CONSTRUCTION**

**15.1** Parks reserves the right to perform safety, maintenance or construction work deemed necessary by Commissioner in the Commissioner's sole discretion at or throughout the Licensed Premises at any time during the Term at Parks' sole cost and expense. Licensee agrees to cooperate with Parks to accommodate any such work by Parks and provide public and construction access through the Licensed Premises as deemed necessary by the Commissioner. Parks shall use its reasonable efforts to give Licensee at least 30 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' work, then Licensee may propose and submit for the Commissioner's approval a plan to equitably address the impact of the closure, including but not limited to a suspension of all financial obligations of this License. Licensee shall be responsible for security of all Licensee's property on the Licensed Premises at all times. Parks shall be solely responsible for claims, damages, or injury (including death) resulting from Parks' work pursuant to this **Section 15.1**, except to the extent such claims, damages and injury are caused by the negligent or intentional tortious acts or omissions of Licensee.

## **XVI - COMPLIANCE WITH LAWS**

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

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

## **XVII - 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.

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

### **XVIII - NO WAIVER OF RIGHTS**

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

### **XIX – RESPONSIBILITY FOR SAFETY, INJURIES, OR DAMAGE, AND INDEMNIFICATION**

**19.1** (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 (including death) resulting from any and all operations under this License.

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

(d) Licensee shall use the Licensed Premises in compliance with, and shall not cause or permit the Licensed Premises to be used in violation of, any and all federal, state or 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** (a) To the fullest extent permitted by law, Licensee shall indemnify, defend and hold the City, its officials and employees harmless against any and all claims, liens, demands, judgments, penalties, fines, liabilities, settlements, damages, costs and expenses of whatever kind or nature (including, without limitation, attorneys' fees and disbursements) arising out of or related

to any of the operations under this License (regardless of whether or not Licensee itself has been negligent) and/or Licensee's failure to comply with the law or any of the requirements of this License. Insofar as the facts or law relating to any of the foregoing would preclude the City or its officials and employees from being completely indemnified by Licensee, the City and its officials and employees shall be partially indemnified by Licensee to the fullest extent permitted by law.

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

**19.3** For purposes of **Sections 19 and 20** hereof, the term "operations under this License" shall include any operations ancillary to or connected with Licensee's operations pursuant to this License.

## **XX - INSURANCE**

**20.1**      **A.** Throughout the Term, Licensee shall ensure that the types of insurance required of Licensee indicated in this Article are obtained and remain in force, and that such insurance adheres to all requirements herein. The City may require other types of insurance and/or higher liability limits and other terms if, in the opinion of Commissioner, Licensee's operations warrant it.

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

**20.2**      **A.** Licensee shall maintain Commercial General Liability insurance in the amount of at least Two Million Dollars (\$2,000,000) per occurrence for bodily injury (including death) and property damage and One Million Dollars (\$1,000,000) for personal and advertising injury. In the event such insurance contains an aggregate limit, the aggregate shall apply on a per-location basis applicable to the Licensed Premises and such per-location aggregate shall be at least Five Million Dollars (\$5,000,000). This insurance shall protect the insureds from claims that may arise from any of the operations under this License. Coverage shall be at least as broad as that provided by the most recently issued Insurance Services Office ("ISO") Form CG 00 01, shall contain no exclusions other than as required by law or as approved by the Commissioner, and shall be "occurrence" based rather than "claims-made."

**B.** Such Commercial General Liability insurance shall name the City, together with its officials and employees, as Additional Insured for claims that may arise from any of the operations under this License. Coverage shall be at least as broad as the most recent edition of ISO Form CG 20 26 and CG 20 37, and the limits for the City shall be no lower than Licensee's. "Blanket" or other forms are acceptable if they provide the City and its officials and employees with coverage at least as broad as ISO Form CG 2026 and CG 20 37.

**20.3** Licensee shall maintain Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance on behalf of, or with regard to, all employees involved in the Licensee's operations under this License, and such insurance shall comply with the laws of the State of New York.

**20.4 A.** With regard to all operations under this License, Licensee shall maintain or cause to be maintained Commercial Automobile Liability insurance in the amount of at least Three Million Dollars (\$3,000,000) 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.

**B.** 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 A.** Licensee shall maintain comprehensive broad form property insurance (such as an "All Risk" policy) covering all buildings, structures, equipment and fixtures on the Licensed Premises ("Concession Structures"), whether existing at the Commencement Date or built at any time before the Termination Date. Such insurance shall provide full Replacement Cost coverage for the Concession Structures (without depreciation or obsolescence clause) at a value reasonably determined by Parks and include, without limitation, coverage for loss or damage by acts of terrorism, water (other than flood-related), subsidence and earthquake. Such insurance shall be "occurrence" (rather than "claims-made") based and shall designate the Licensee as Named Insured and the City as Additional Insured and Loss Payee as its interests may appear.

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

**C.** In the event of any loss to any of the Concession Structures, 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, 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 A.** In the event the Licensee enters into a contract with another that involves abatement, removal, repair, replacement, enclosure, encapsulation and/or delivery, receipt, or disposal of any petroleum products, asbestos, lead, PCBs, or any other hazardous materials or substances, the Licensee shall maintain, or cause the contractor to maintain, Contractors Pollution Liability Insurance covering bodily injury (including death), property damage, cleanup costs/remediation expenses and legal defense costs. Such insurance shall provide coverage for

sudden and non-sudden pollution conditions arising out of the contractor's operations at the Premises.

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

**20.7** Licensee represents and warrants that its operations at the Licensed Premises will not involve asbestos, lead, PCBs, or any other hazardous materials, unless required under this License Agreement.

**20.8 A.** Policies of insurance required under this Article shall (i) be provided by companies that may lawfully issue such policy, (ii) have an A.M. Best rating of at least A- / "VII", a Standard and Poor's rating of at least A, a Moody's Investors Service rating of at least A3, a Fitch Ratings rating of at least A- or a similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department, and (iii) be in effect at all times throughout the Term.

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

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

**D.** There shall be no self-insurance program or self-insured retention with regard to any insurance required under this Article unless approved in writing by the Commissioner. Under no circumstances shall the City be responsible for the payment of any self-insured retention (or any other aspect of a self-insurance program). Further, Licensee shall ensure that any such self-insurance program provides the City with all rights that would be provided by traditional insurance under this Article, including but not limited to the defense and indemnification obligations that insurers are required to undertake in liability policies.

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

**F.** All required policies, except for Workers' Compensation insurance, Employers Liability insurance, and Disability Benefits insurance, shall contain an endorsement requiring that

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

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

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

**B.** For Workers' Compensation, Employers Liability Insurance, and Disability Benefits insurance policies, Licensee shall submit one of the following:

1. C-105.2 Certificate of Worker's Compensation Insurance;
2. U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance;
3. Request for WC/DB Exemption (Form CE-200);
4. Equivalent or successor forms used by the New York State Workers' Compensation Board; or
5. Other proof of insurance in a form reasonably acceptable to the City. ACORD forms are not acceptable proof of workers' compensation coverage.

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

**D.** Certificates of Insurance confirming renewals of insurance shall be submitted to the Commissioner prior to the expiration date of coverage of all policies required under this



License Agreement. 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.** 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.

**20.10 A.** 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 be solely responsible for the payment of all premiums for all policies and all deductibles or self-insured retentions to which they are subject, whether or not the City is an insured under the policy. If the Commissioner authorizes a self-insured retention, the Licensee must allow the City to pay the self-insured retention upon the Licensee's failure to pay. If the City pays such self-insured retention, the City may deduct the self-insured retention from the Security Deposit.

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

**D.** 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 Agreement. Such breach shall not be waived or otherwise excused by any action or inaction by the City at any time.

**E.** Insurance coverage in the minimum amounts provided for in this Article shall not relieve the Licensee of any liability under this License Agreement, 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 Agreement or the law.

**F.** 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, Licensee shall at all times fully cooperate with the City with regard to such potential or actual claim at no cost to the City.

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

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

**I.** In the event 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, 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, Licensee shall ensure that there is no interruption in any of the insurance coverage required under this Article.

## **XXI - WAIVER OF COMPENSATION**

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

**21.2** Licensee further expressly waives any and all claims for compensation, loss of profit, or refund of its investment, if any, or any other payment whatsoever, in the event this License is

terminated by Commissioner sooner than the fixed term because the Licensed Premises are required for any park or other public purpose, or because the License was terminated or revoked for any reason as provided herein.

## **XXII - INVESTIGATIONS**

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

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

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

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

(B) If any non-governmental party to the hearing requests an adjournment, the Commissioner or agency head who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit, or license pending the final determination pursuant to **Section 22 (d)** below without the City incurring any penalty or damages for delay or otherwise.

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

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

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

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

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

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

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

(iv) The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties under **subsection (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 **subsection (b)(ii)(A)** above gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity must present evidence at the hearing demonstrating the potentially adverse impact a penalty will have on such person or entity.

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

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

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

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

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

### **XXIII - CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE**

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

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

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

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

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

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

#### **XXIV - WAIVER OF TRIAL BY JURY**

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

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

(c) No action shall lie or be maintained against the City by Licensee upon any claims based upon this License unless such action shall be commenced within six (6) months of the termination or conclusion of this License, or within 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 assistance which the City may reasonably require of Licensee.

#### **XXV - CUMULATIVE REMEDIES - NO WAIVER**

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

#### **XXVI - EMPLOYEES**

**26.0** All experts, consultants, independent contractors, specialists, trainees, employees, servants and agents of Licensee who are employed or retained by Licensee to perform work under this License are neither employees of the City nor under contract to the City, and Licensee alone is responsible for their work, direction, compensation and personal conduct while engaged under this License. Nothing in this License shall impose any liability or duty on the City for acts, omissions, liabilities or obligations of Licensee or any person, firm, company, agency, association, corporation or organization engaged by Licensee as expert, consultant, independent contractor,

specialist, trainee, employee, servant, or agent or for taxes of any nature including but not limited to unemployment insurance, workers' compensation, disability benefits and social security.

#### **XXVII - INDEPENDENT STATUS OF LICENSEE**

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

#### **XXVIII - CREDITOR-DEBTOR PROCEEDINGS**

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

#### **XXIX - CONFLICT OF INTEREST**

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

#### **XXX - PROCUREMENT OF AGREEMENT**

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

warranties to induce the City to enter into this License and the City relies upon such representations and warranties in the execution hereof.

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

#### **XXXI - NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES**

**31.0** 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.

#### **XXXII - ALL LEGAL PROVISIONS DEEMED INCLUDED**

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

#### **XXXIII - SEVERABILITY: INVALIDITY OF PARTICULAR PROVISIONS**

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

#### **XXXIV - JUDICIAL INTERPRETATION**

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

#### **XXXV - MODIFICATION OF AGREEMENT**

**35.0** This License Agreement constitutes the whole of the agreement between the parties hereto, and no other representation made heretofore shall be binding upon the parties hereto. This License Agreement may be modified from time to time by agreement in writing, but no modification of



this License Agreement shall be in effect until such modification has been agreed to in writing and duly executed by the party or parties affected by said modification.

#### **XXXVI - NOTICES**

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

#### **XXXVII - LICENSEE ORGANIZATION, POWER AND AUTHORITY**

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

#### **XXXVIII – COUNTERPARTS**

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

#### **XXXIX - MISCELLANEOUS**

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

*[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**

**HM DONUTS LLC**

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

By: \_\_\_\_\_  
Mourad Elayan

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

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

APPROVED AS TO FORM AND  
CERTIFIED AS TO LEGAL AUTHORITY

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

STATE OF NEW YORK

ss:

COUNTY OF NEW YORK

On this    day of                    , 2021 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.

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

STATE OF NEW YORK

ss:

COUNTY OF

On this    day of                    , 2021 before me personally came Mourad Elayan to me known and who, being duly sworn by me, did depose and say that (s)he is the \_\_\_\_\_ of HM Donuts 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.

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

**EXHIBIT A**

**LICENSED PREMISES**

DRAFT

**EXHIBIT B**

**MONTHLY REPORT OF GROSS RECEIPTS**

To be provided by Parks in the written Notice to Proceed.

DRAFT

## EXHIBIT C

### SCHEDULE OF APPROVED HOURS AND RATES,

#### Food Service Facilities Days and Hours of Operation:

Hours of Operation: 4:00 am to 12:00 am,  
seven (7) days/week, year round, unless otherwise approved by Parks

#### Menu, Rates, Fees and Prices:

Menu/Price List (subject to revisions as may be permitted pursuant to the terms of the License Agreement):

**EATS**

- NEW** **Beyond Sausage® Breakfast Sandwich**  
10g of plant-based protein  
4.39 | 470 CAL
- Power Breakfast Sandwich**  
Veggie Egg White Omelet, Turkey Sausage & Cheese  
4.69 | 370 CAL
- Sausage, Egg & Cheese Croissant**  
4.69 | 710 CAL
- Bacon, Egg & Cheese Bagel**  
Cherrywood Smoked Bacon, Egg & Cheese  
4.69 | 520 CAL
- Big N' Toasted®**  
4.99 | 620 CAL
- Grilled Cheese**  
3.99 | 430 CAL
- NEW** **Maple Sugar Bacon Croissant**  
More Seasoned Bacon  
3.79 | 630 CAL
- NEW** **Dunkin' Burrito Bowls**  
Chorizo  
4.99 | 350 CAL  
Fire Roasted Veggie  
4.99 | 250 CAL
- Ham, Egg & Cheese English Muffin**  
With Black Forest Ham  
4.69 | 360 CAL
- Wake-Up Wrap®**  
Add Your Choice of Meat  
1.99 - 2.49 | 180-290 CAL
- Dunkin' Double Sausage**  
4.49 | 890 CAL

**GO2s**

- 2 EGG & CHEESE WAKE-UP WRAP® SANDWICHES** \$2
- 2 BAGELS WITH CREAM CHEESE SPREAD** \$4
- 2 BACON, EGG & CHEESE CROISSANTS** \$5

**DONUTS AND MORE**

Classic Donut	1/2 DOZ.	DOZ.	CAL
SINGLE	1.49	7.99	220-490 Per Donut

**Munchkins®**

10 CT.	25 CT.	50 CT.	CAL
3.49	7.99	13.99	60-70 Per Donut Hole

**Bagel Plain**

SINGLE	CAL
1.49	300-380

With Cream Cheese Spread  
Plain • Garden Veggie • Strawberry  
2.79 400-540

With Butter Spread with Canola Oil or Butter Packets on the side  
2.19 340-480

**Multigrain Thin**  
With Cream Cheese Spread  
2.29 230-290

**Coffee Roll**  
1.99 390

**Apple Fritter**  
1.99 420

**Muffin**  
2.29 460-590


**Multigrain Brown Sugar Oatmeal**  
With Dried Fruit  
2.49 310

**Bagel Twist**  
2.29 390

**ADD Hash Browns** 1.19 | 140 CAL

**DDSMART - Better For You Choices**  
2000 calories a day is used for general nutrition advice, but calorie needs vary. Additional nutrition information available upon request.

## GREAT TASTE PLANT-BASED



**New Beyond Sausage® Sandwich**  
with egg and cheese

**BEYOND MEAT**

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## COFFEE

CHOOSE YOUR BREW

	S	CAL	M	CAL	L	CAL
<b>Cold Brew</b> Steeped for 12 hours	3.79	10-130	3.99	15-200	4.29	20-270
<b>Café Au Lait</b>	2.79	80	3.09	120	3.39	160
<b>Iced Coffee</b> Original Blend, Dark Roast, Decaf	3.29	10-130	3.49	15-200	3.79	20-270
<b>Hot Coffee</b> Original Blend, Dark Roast, Decaf	2.29	5-130	2.69	10-190	2.99	10-260
<b>Upgrade to XL:</b>	3.29	15-320				
<b>Frozen Coffee</b> Original Blend, Caramel	3.99	420-600	4.49	630-900	4.99	840-1190

### MORE DRINKS

	S	CAL	M	CAL	L	CAL
<b>Iced Tea</b>	2.39	0	2.69	0	2.99	0
<b>Hot Tea</b> Black, Green, Decaf Black Caffeine Free Chamomile, Mint, Hibiscus	2.29	0	2.69	0	2.99	0
<b>Hot Chocolate</b> Original Dunkaccino®, Oreo®, Mint, Salted Caramel	2.69	210-240	2.99	300-350	3.39	410-490
<b>Frozen Chocolate</b> Original, Dunkaccino®	3.99	220-240	4.49	330-350	4.99	450-490
<b>Vanilla Chai</b>	2.79	230	3.09	340	3.49	450
<b>Coolatta®</b> Blue Raspberry, Vanilla Bean, Strawberry	3.99	240-420	4.49	360-630	4.99	470-840

### ADD TO CUSTOMIZE

**Sweetened Flavors**  
110-270 CAL

**Winter White Chocolate**

**Gingerbread S'Mores**

**Peppermint Mocha**

French Vanilla

Hazelnut

Caramel

Mocha

**Unsweetened Flavors**  
5-20 CAL

French Vanilla

Hazelnut

Raspberry

Toasted Almond

Blueberry

Coconut

**Substitute**  
Almondmilk \$1.00

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## ESPRESSO DRINKS

HANDCRAFTED FOR YOU

	S	CAL	M	CAL	L	CAL
<b>Hot Signature Latte</b> Caramel Craze, Cocoa Mocha*	3.79	300-320	4.39	410-440	4.69	530-570
<b>Iced Signature Latte</b> Caramel Craze, Cocoa Mocha*	4.29	300-320	4.79	410-440	4.99	530-570
<b>Latte</b>	3.39	120	3.99	170	4.39	230
<b>Iced Latte</b>	3.99	120	4.49	170	4.99	230
<b>Cappuccino</b>	3.39	80	3.99	120	4.39	160
<b>Iced Cappuccino</b>	3.99	80	4.49	120	4.99	160
<b>Macchiato</b>	3.69	80	4.29	120	4.69	160
<b>Iced Macchiato</b>	4.29	80	4.69	120	4.99	160
<b>Americano</b>	2.59	10	3.09	10	3.59	15
<b>Iced Americano</b>	3.59	10	3.79	10	4.09	15
<b>Espresso</b>	1.69	5				

\*Made with hot chocolate powder





## SIGNATURE LATTES

HOT & ICED

**Holiday Eggnog**

**Merry Mocha Mint**

**Frosted White Chocolate**

**Toasted Gingerbread**



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## **EXHIBIT D**

### **SCHEDULE OF CAPITAL IMPROVEMENTS**

The following Capital Improvements shall be completed in accordance with the terms of the License. The following Capital Improvements shall be completed in accordance with the terms of the License. The Capital Improvements shall be completed 120 days from when Licensee receives the written Notice to Proceed from Parks.

<b>CAPITAL IMPROVEMENTS &amp; REPAIRS</b>	<b>COST</b>
<ul style="list-style-type: none"><li>• Make improvements to increase energy efficiency and sustainability of two food service facilities including the following:<ul style="list-style-type: none"><li>○ Use of energy-efficient LED lighting</li><li>○ Use of paint with zero VOCs</li><li>○ Recycling at least 50% of construction waste</li><li>○ Use of high-efficiency heating and cooling equipment</li><li>○ Use of low-flow water fixtures</li></ul></li><li>• Renovate the two food service facilities as follows:<ul style="list-style-type: none"><li>○ Installation of commercial charging stations for solar or electric powered vehicles in the parking lots.</li><li>○ Upgrade signs, as needed</li><li>○ Site work, as needed</li><li>○ Landscaping, as needed</li><li>○ Upgrade electric, as needed</li><li>○ Upgrade plumbing, as needed</li><li>○ Upgrade HVAC units</li><li>○ Upgrade existing bathrooms, as needed</li><li>○ Refurbish or replace exterior guardrails, as needed.</li><li>○ Upgrade interior finishes as needed, including sheet rock, floorings, ceiling, tiles, interior and exterior paint, and equipment, as needed</li><li>○ Upgrade/repair roof as needed</li></ul></li></ul>	\$250,000 per food service facility for energy efficiency updates and renovations
<b>TOTAL</b>	<b>\$500,000</b>



## **EXHIBIT E**

### **PAID SICK LEAVE LAW CONCESSION AGREEMENT RIDER**

#### **Introduction and General Provisions**

The Earned Sick Time Act, also known as the Paid Sick Leave Law (“PSLL”), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time.<sup>1</sup> Concessionaires of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City’s Department of Consumer Affairs (“DCA”); DCA’s rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York (“Rules”).

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

The Concessionaire must notify the Concession Manager in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, the Concessionaire must cooperate with DCA’s education efforts and must comply with DCA’s subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of the Concessionaire. The Concessionaire is advised to review the PSLL and Rules in their entirety. On the website [www.nyc.gov/PaidSickLeave](http://www.nyc.gov/PaidSickLeave) there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which the Concessionaire can get more information about how to comply with the PSLL. The Concessionaire acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

#### **Applicability, Accrual, and Use**

An employee who works within the City of New York for more than eighty hours in any consecutive 12-month period designated by the employer as its “calendar year” pursuant to the

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<sup>1</sup> Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

PSLL (“Year”) must be provided sick time. Employers must provide a minimum of one hour of sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee’s regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- such employee’s mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee’s need for medical diagnosis or preventive medical care;
- such employee’s care of a family member (an employee’s child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee’s spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee’s place of business by order of a public official due to a public health emergency; or
- such employee’s need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee’s use of sick time pursuant to the PSLL must be treated by the employer as confidential.

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

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

## Exemptions and Exceptions

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code;
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

## Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

## Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at <http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml>.

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

## Records

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

### Enforcement and Penalties

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

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

### More Generous Policies and Other Legal Requirements

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

**EXHIBIT F**  
**CERTIFICATES OF INSURANCE**

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

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

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

-- OR --

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

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

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

\_\_\_\_\_  
[Name of broker or agent (typewritten)]

\_\_\_\_\_  
[Address of broker or agent (typewritten)]

\_\_\_\_\_  
[Email address of broker or agent (typewritten)]

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

\_\_\_\_\_  
[Signature of authorized official, broker, or agent]

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

State of .....)

) ss.:

County of .....)

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

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

**EXHIBIT G**  
**PAYMENT BOND - PAYMENT GUARANTEE**

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

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

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

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

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

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

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

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

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

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

(C) Every person who has furnished labor or material, to the Licensee, a Contractor or to a Subcontractor of the Contractor, in the prosecution of the Capital Improvement Project and who

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

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

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

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

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

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



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

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

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

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

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

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

## **EXHIBIT H**

### **DOHMH VENDING MACHINE GUIDELINES**

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.

Recommend stock machines with *only* water, seltzer and other low calorie beverages.

Make the healthier choice the cheaper choice. Set lower prices for water and other low calorie beverages than for high calorie beverages.

*Follow these Standards to provide healthier beverage 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.

**Sugar-sweetened beverages are the single biggest contributor to the obesity epidemic.**

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.

# 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).